

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.366 of 2017

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment dated 25.07.2017 passed by the learned Additional District Judge, Malkangiri in RFA No.12 of 2014 confirming the judgment and decree dated 21.08.2014 and 27.09.2014 respectively passed by the learned Senior Civil Judge, Malkangiri in C.S. No.51 of 2013.

***Smt. Sadhana Mandal &
Another***

....

Appellants

-versus-

***Sri Bhabani Sankar Padhi &
Another***

....

Respondents

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellants - Mr.G.N. Sahu
(Advocate)

For Respondents - *सम्पत्तिक न्यायो*

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 22.06.2022 : Date of Judgment:04.07.2022

D.Dash,J. The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment dated 25.07.2017 passed by the learned Additional District Judge, Malkangiri in RFA No.12 of 2014.

By the same, the Appeal filed by the present Appellant No.1 (Defendant No.1) under section 96 of the Code has been dismissed and thereby the judgment and decree dated 21.08.2014 and 27.09.2014

respectively passed by the learned Senior Civil Judge, Malkangiri in C.S. No.51 of 2013 have been confirmed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. The Plaintiff's case is that the suit land original belonged to Bishnupriya Sethi. The Defendant No.1 has purchased the land measuring Ac.0.06 decimals from out of sabik plot no.1612 and khata no.337/82 of Mouza-Malkangir. The Plaintiff has purchased the suit land from said Defendant No.1 by registered sale deed in the year 1996 for valuable consideration. The Defendant No.1, being a member of the Scheduled Caste community, had obtained permission for sale of suit land to the Plaintiff as required under section 22 of the Odisha Land Reforms Act (in short, 'the OLR Act').

It is stated that in view of the absence of the Plaintiff's father, who being the guardian of the Plaintiff, who is a minor, the suit land somehow came to be recorded in the name of Defendant No.1 under hal khata no.699, plot no.1813/5824, in the current settlement operation. The Plaintiff further states that he has been in possession of the suit land since the time of his purchase through his father guardian, who has filed the present suit as his next friend. The Plaintiff, therefore, filed the suit for declaration of his right, title and interest over the suit land and correction of the record.

4. The Defendants, in their written statement, have stated that the Settlement Authority having rightly found the title in respect of the suit

land in favour of Defendant No.1 and that the record has been correctly prepared.

5. The Trial Court, in the backdrop on the above pleadings and on going through the evidence on record, has finally decreed the suit by declaring the right, title and interest of the Plaintiff over the suit land with a direction for correction of the record by answering all the seven issues.

6. The unsuccessful Defendants, having moved the First Appellate Court, has not been able to get the finding as well as the result recorded by the Trial court annulled.

7. Learned counsel for the Appellants submitted that the Plaintiff has failed to prove the sale deed (Ext.1) in accordance with law and that it is a valid transaction and in that regard, the plea of the Defendant No.1 that the same has been obtained by the father of the Plaintiff by practicing fraud has not been duly adjudicated upon. It was stated that the evidence of identifying witness (P.W.3) ought not to have been believed as he was present before the Sub-Registrar at the time of registration of the sale deed and the evidence of P.W.2, the scribe of the sale deed being of no avail to the case of the Plaintiff in proving the sale deed, the Courts below ought to have been dismissed the suit. He submitted that the findings of the Courts below not only contrary to the weight of the evidence on record but also perverse. He, therefore, contended for admission of this Appeal to answer the above as the substantial questions of law.

8. Keeping in view the above submission, I have carefully read the judgments passed by the Courts below.

9. Issue no.3 is the issue, which has been framed to answer as to whether the sale deed (Ext.1) is null and void and that has rightly been taken up first for decision by the Trial Court.

The Plaintiff's case is that he had purchased the suit land measuring Ac.0.06 decimals of land from Defendant No.1 vide sale deed Ext.1 which is now alleged by the Defendants to have been the outcome of fraud/misrepresentation. It is the admitted position that the Defendant No.1 being a member of Scheduled Caste community, had obtained prior permission of the Competent Authority as required under section 22 of the OLR Act for the said sale transaction. This document has been marked as Ext.2. When it is said that Defendant No.1 had never executed such sale deed, it is her evidence that she had given the original sale deed standing in her favour to the father of the Plaintiff for obtaining permission from the Competent Authority.

The Plaintiff has examined the scribe of the sale deed (P.W.2) and one attesting witness (P.W.3). The Trial Court has found the sale deed to have been duly executed by Defendant No.1 and it has then been registered. The allegations relating to fraud/misrepresentation, which have been taken as a ground to nullify such sale deed, as per law are required to be proved by the Defendant No.1 by pleading all such required particulars. The Courts below have discussed the evidence on record and have not only concurrently found that the Plaintiff has proved the sale transaction as required under law, but also have held that Defendant No.1 has failed to discharge the heavy burden of proof lying upon her in establishing that such sale deed had been taken from her by practicing fraud and by way of misrepresentation. Such finding having been recorded on detail discussion of evidence on record and their examination, nothing is surfacing therefrom to show that in that regard,

the Courts below have either omitted to take into account any important evidence available on record or to have considered some extraneous facts and circumstances not appearing in the evidence. Thus, this Court is not in a position to take a view that such finding suffers from the vice of perversity.

The intention of Defendant to sell the suit land is apparent when her evidence is gone through that she had handed over the sale deed to the father of the Plaintiff for obtaining permission under section 22 of the OLR Act in order to sell the suit land to the Plaintiff.

10. In view of the aforesaid and on the face of the settled position of law that mere recording of the land in the record of right does not create title in favour of the person so recorded therein nor extinguishes the title over the said land of the person i.e. the true owner; the submission of the learned counsel for the Appellant stands repelled. Therefore, this Court is of the view that there surfaces no such substantial question of law for being answered so as to admit this Appeal.

11. Resultantly, the Appeal stands dismissed. There shall, be no order as to cost.

**(D. Dash),
Judge.**

Basu