

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.227 of 2014

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 25.01.2014 and 21.02.2014 respectively passed by the learned Additional District Judge, Sundargarh in R.F.A. No.06/33/41 of 2009-11-13 confirming the judgment and decree dated 24.01.2009 and 03.02.2009 respectively passed by the learned Civil Judge, Junior Division, Sundargarh in T.S. No.121/73 of 1999-02.

Sadhu Sahu (Since Dead) through ***Appellants***
his L.Rs

-versus-

Secretary to Government, Revenue ***Respondent***
Department, Government of
Odisha & Others

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

For Appellants - Mr.U.K. Samal, C.D. Sahoo,
S.P. Patra & S. Naik,
Advocates

For Respondent - Mr.G.N. Rout,
Addl. Standing Counsel

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 28.03.2022 : Date of Judgment:11.04.2022

The original Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree dated 25.01.2014 and 21.02.2014 respectively passed by the learned Additional District Judge, Sundargarh in R.F.A. No.06/33/41 of 2009-11-13.

The Appellant as the Plaintiff having been unsuccessful in T.S. No.121/73 of 1999-02 filed against the Respondents arraigning them as the Defendants for declaration of his right, title, interest and confirmation of possession and in the alternative, for recovery of possession as also mandatory injunction, had carried an Appeal under section 96 of the Code, which has also been dismissed.

During pendency of the Appeal, the original Appellant (Plaintiff) having died, his legal representatives, being substituted, have come on record and are now pursuing the Appeal.

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 Suit.

3. The Plaintiff's case is that one Dana Naik of Village Aleikera had applied for reclamation of land of Plot Nos.51/1, 54/1 and 54/3d measuring a total area of Ac.2.73 decimals corresponding to Sabik Khata No.33. On 20.08.1949, the reclamation was granted to him by the Ruling Chief of Gangpur State in Reclamation Case No.90 of 1946-47. He was accordingly granted with the permanent Hukumnama by the then Sub-Divisional Officer in respect of the properties vide R.R. No.33 of 1956-57. Dana Naik, while in possession of the said land, sold an area of Ac.2.58 decimals to the Plaintiff in order to meet his legal necessity. For the purpose, Dana executed the document on a stamp paper having received the agreed consideration of Rs.210/-. It is said that pursuant to the said sale, possession of the suit land was delivered to the Plaintiff. However, during Settlement Operation, the land was recorded in the name of Government under Abadjogya Anabadik and Rakhit Khata of said mouza under Hal Khata No.205, 206, 209, 210,

211 and 212. The Plaintiff is said to be regularly paying the rent to the Government. Thereafter, encroachment cases bearing 9/01 of 1986 and 204/99 had been initiated for eviction of the Plaintiff from the suit land alleging his possession to be unlawful. It is stated that the rules prevailing in Gangpur State as well as the administration of the Orissa State Order 1948 and merger agreement between Ruling Chief of Gangpur State Governor General, Dominion of India do not permit such initiation of the eviction proceeding. It is also said to be against the Status Rule 1988 of the Government of Orissa. The Plaintiff, therefore, filed the suit for declaration of his right, title and interest in respect of those properties, for confirmation of possession and in case of eviction, for recovery of possession and injunction.

4. The Defendants did not file the written statement nor contested the suit. The Trial Court, proceeding to determine as to whether the Plaintiff has proved his case, upon discussion of evidence and their evaluation, in the backdrop of the pleading taken in the plaint, has dismissed the suit holding the Plaintiff to be not entitled to the reliefs as claimed.

The Plaintiff then having carried First Appeal has also been non-suited.

5. The present Appeal has been admitted on the following substantial question of law-

“(1) Whether the courts below on the basis of the fact that the Plaintiff claims possession through his vendor who was the holder of the Hukumnama and in view of the evidence that he has continued to possess the suit land for upward of the period prescribed on the strength of that unregistered sale deed ought to have held that the Plaintiff has perfected title by adverse possession?”

6. Mr.U.K. Samal, learned counsel for the Appellants submitted that the Plaintiff having proved the Hukumnama and other connected documents (Exts.1 to 6) and further proved the sale deed (Ext.7), which have remained unchallenged; the Courts below ought to have decreed the suit granting all the reliefs to the Plaintiffs as prayed for.

7. Mr.G.N.Rout, learned Additional Standing submitted all in favour of the findings recorded by the courts below. According to him, the Trial Court has disbelieved the very document, i.e, Ext.7 through which the Plaintiff claims to have entered into the possession of the suit land. According to him, such a finding is based on proper appreciation of evidence, both oral and documentary in the backdrop of the averments taken in the plaint. He, therefore, submitted that such unregistered document has been held to be highly doubtful one and thus it has rightly been said that the same does not come to the aid of the claim of the Plaintiff. According to him, the courts below are finally right in holding the Plaintiff to have not established his case of acquisition of title by adverse possession.

8. The very claim of the Plaintiff as to have acquired title over the suit land is based upon the document Ext.7, which is a deed on a stamp paper of the value of Rs.2/- (Rupees two).

Assuming for a moment that Dana Naik was having the Hukumnana, and that for the time being even taken as a document for title; it is seen that as per the Plaintiff's case, the document in question had been executed by Dana Naik. In the entire document, only under the signature of the person who has taken thumb impression of the executant Dana Naik, date appears as 09.13.1965. The document does not reveal as to who has scribed the same nor there is any endorsement to that

effect is given. The consideration being written as Rs.210/- (Rupees two hundred and ten) therein, the same is not a registered one. Therefore, no title can be said to have passed to the hands of the Plaintiffs thereunder as the same is compulsorily registerable so as to be given effect to as such as required under section 17 of the Registration Act. The Plaintiff here is Sadhu Sahu, son of Jangya Sahu whereas in Ext.7 his father's name has been stated as Pankaj Sahu, which is not explained in any way. As his signature in Ext.7 is not there; the scope of comparing the same with the signatures of Plaintiff as it appears in the records of the suit, is not there to even accept for a moment that the said mention of the father's name of the Plaintiff is an apparent mistake.

All the above suspicious circumstances surrounding Ext.7 when emanate from the evidence on record, the Trial Court is found to have rightly held that the Plaintiff has failed to prove that this document (Ext.7) had been executed by Dana Naik evidencing the sale of the suit property to the Plaintiff. Thus the genuineness of the document when stand doubted, the Plaintiff's case that he came to possess the suit land after the purchase basing upon that document (Ext.7) is pushed into the thick cloud and away from the range of visibility to the legal eyes. Furthermore, this Ext.7 being not found to be wholly free from the suspicious circumstances and its genuineness being thus under scanner, the claim of possession of the Plaintiff over the subject matter of that document either sought to be established in a direct way or indirectly even as an alternative but is certainly springing up or flowing from that document which has no place in the Court of law to be taken cognizance of. Admittedly, when in the record of right, the suit land has been recorded in the name of Government as Abadjogya Anabadi under

Rakhit Khata, the Plaintiff being found to be in unauthorized occupation, Encroachment Cases had been registered.

Importantly again, the Plaintiff in his evidence has deposed that he has paid the fine imposed on him in those encroachment cases. So, once having paid the fine, the Plaintiff has acknowledged the title of the State and that his possession to be unauthorized. In that view of the matter when we even accept the factum of possession of the Plaintiff over the suit land for a long time, animus possidendi or the hostile animus being absent, the most essential ingredient of adverse possession remains unfulfilled. Therefore, the Plaintiff having failed to establish his case as laid in the plaint in claiming the reliefs over the suit land; the decisions rendered by the Courts below in non-suiting the Plaintiff are not liable to be interfered with.

9. For all the aforesaid, the substantial question of law finds answer against the case/claim of the Plaintiff.

10. In the result, the Appeal stands dismissed. There shall, however, be no order as to cost.

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