

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.428 of 2017

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 25.07.2017 and 09.08.2017 respectively passed by the learned District Judge, Dhenkanal in T.A. No.54 of 1992 setting aside the judgment and decree dated 07.09.1992 and 17.09.1992 respectively passed by the learned Additional Sub-Ordinate Judge, Dhenkanal in T.S. No.49/5 of 1987-1990.

Somanath Ray Choudhury & Appellants
Another

-versus-

Shri Nabin Chandra Narayan Das Respondents
& Others

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

For Appellants - Mr.S.Mishra
(Advocate)

For Respondents - Mr.R.K.Mohanty
(Senior Advocate)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 19.10.2022 : Date of Judgment:25.11.2022

D.Dash,J. The Appellants, in filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), assailed the judgment and decree dated 25.07.2017 and 09.08.2017 respectively passed by the learned District Judge, Dhenkanal in T.A. No.54 of 1992.

By the same, the Appeal filed by the Respondents (Defendants) under section 96 of Code, has been allowed and thereby the judgment and decree dated 07.09.1992 and 17.09.1992 respectively passed by the learned Additional Sub-Ordinate Judge, Dhenkanal in T.S. No.49/5 of 1987-1990 have been set aside. Consequently, the predecessor-in-interest of the present Appellants, namely, Padmabati Bewa, who had filed the suit, as the Plaintiff, has been non-suited.

It may be stated there that during pendency of the First Appeal, the sole Plaintiff, who was the Respondent No.1 therein having died, these present Appellants had come on record. It may also be stated here that one Obed Kumar Sahoo (Defendant No.2) in the suit having died during pendency of the suit, his name has been expunged as dead since no further substitution was found necessary. Similarly, during pendency of the First Appeal, Padmanav Swain, one of the Appellants therein, who was the Defendant No.4 in the suit having died, his legal representatives are there on record.

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. Plaintiff's Case:-

The Plaintiff is the wife of Kalumohan Sahoo. It is stated that Kalumohan, the husband of the Plaintiff had purchased the suit land out of his own earning orally from its recorded owner Sachidananda Singh. It was a case of oral purchase and Kalumohan, being delivered with the possession of the suit land, remained in possession and enjoyment of the same. It is further stated that he had constructed a house over a portion of the suit land. After the death of Kalumohan,

the Plaintiff, being his wife, claimed to have remained in possession of the said house and land covered by a boundary wall all around. It is stated that during Hal Settlement Operation, name of Saiman Sahu, who had absolutely no such relationship with Kalumohan suddenly surfaced in the record of right in respect of the suit land along with the Plaintiff (Padmabati). It is next stated that Saiman is Christian by religion and the Plaintiff had no relationship with Saiman. Be that as it may, Padmabati did not take any step for correction of the record of right under an impression that as Saiman has no heir that would hardly matter if it remains as such.

On 24.02.1986 as the Defendants, all of a sudden, came to possess the suit land by force, the suit has come to be filed.

4. The Defendants, traversing the plaint averments in their written statement, submitted that Kalumohan and Saiman are two brothers. It is stated that Kalumohan's wife had predeceased Kalumohan and he had not married for the second time nor he had any issue through his legally married wife. They state that Plaintiff was a concubine of Kalumohan and as such residing with him till his death. During Hal Settlement Operation, the record of right in respect of the suit land has thus been jointly prepared in the name of Padmavati and Saiman as the successors of Kalumohan as the property originally belonged to Makunda, the father of Kalumohan and Saiman. It has also been stated that Kalumohan and Saiman are brothers and they had embraced Christianity and in a family settlement, the northern portion of the suit land was allotted to Kalumohan towards his share whereas the rest southern part was to Saiman. Saiman is stated to have left behind his only son Obed (Defendant No.2). That Obed, being in need of money, had sold Ac.0.08 decimals of land to Defendant No.4 by executing sale

deeds which had been registered. Said Obed, pursuant to the sale, had delivered possession of those lands to those respective vendors and they (Defendant Nos.3 & 4) are in peaceful possession of the same.

5. Above written statement being filed, the Plaintiff amended the plaint in introducing the plea of acquisition of title over the suit land by way of adverse possession stating that having remained in open, peaceful and continuous possession for upward of the prescribed period as the owner of the suit land exercising all the rights as such, exhibiting hostile animus and denying the title of the true owner, there has been perfection of title by way of adverse possession since the time of Kalumohan.

6. The Trial Court, on the above rival pleadings, framed as many as thirteen issues. Answering the issue as to if Makunda is the original recorded owner of the suit land, upon examination of the evidence and their analysis, the same has been answered in the negative. It has next been said that the land as per the settlement record when stands recorded in the name of Sachidananda Singh, there is no sufficient evidence to establish that the suit land was purchased by Kalumohan from that Sachidananda. Having said above, the Trial Court has arrived at a finding that the Plaintiff (Padmabati) being the wife of Kalumohan since has remained in possession of the suit land for a long period from the time of her husband fulfilling all the required ingredients, she has perfected title over the same by way of adverse possession. Accordingly, the suit filed by Padmabati stood decreed and she was declared to be having the right, title and interest over the suit land and her possession over the suit land stood confirmed. The Defendant Nos.1, 2 & 4 were

permanently enjoined from entering upon the suit land and creating any disturbances in the possession of the Plaintiff.

7. The Defendants, being aggrieved by the said judgment and decree passed by the Trial court, carried the First Appeal. In addressing the contentions raised, the First Appellate Court has finally held the Plaintiff to have failed to prove her claim/case in so far as the suit land is concerned as having acquired the right, title and interest and as such, in possession of the same.

8. Mr.S.Mishra, learned counsel for the Appellant submitted that the Trial Court, on detail discussion of the evidence both oral and documentary, had come to the conclusion that the Plaintiff is in possession of the suit land having constructed the house over a portion of it with the boundary wall all around. He, therefore, submitted that when the Defendants have not been found to have dispossessed the Plaintiff and as such, she continued to be in possession of the suit land as of right, the Trial Court was right in decreeing the suit which the First Appellate Court has erroneously set aside. He further submitted that on the face of the finding of the Trial Court that simply because of the inclusion of the name of Sachidananda in the record of the year 1962, which is manifestly wrong, the claim of right by Defendants over the property claiming to have purchased the same from the son of Saiman, namely, Obed, ought to have ignored and in that event, the First Appellate Court should not have overturned the judgment and decree passed by the Trial Court. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

9. Mr.R.K.Mohanty, learned Senior Counsel for the Respondents, in assisting the Court in the matter of admission, submitted that when even for a moment, it is said that the Defendants have not acquired title over the suit land on which great emphasis has been given by the Trial Court, the same cannot lead to passing of a decree in the suit, as prayed for by the Plaintiff. He further submitted that here the specific case of the Plaintiff that her husband Kalumohan had orally purchased the suit property and after his death, she has been in possession of the same as the only successor and thus there being the concurrent finding on fact that Kalumohan had never purchased the suit property orally from Sachidananda, the erstwhile recorded owner, the conclusion has to be that Kalumohan had no right, title and interest over the property and that as such, was not inherited by the Plaintiff as the wife of Kalumohan. He, therefore, submitted that the Plaintiff in the suit thus can only succeed if the alternative case set up during pendency of the suit by amending the plaint that there has been acquisition of title over the suit, land by way of adverse possession is ruled in her favour. Placing the evidence on record as also the discussion made by the First Appellate Court in great detail with reference to the obtained evidence, he submitted that the suit, in any case, is liable to be dismissed and that has been rightly so ordered by the First Appellate Court. He, therefore, urged that this Appeal does not merit admission as there surfaces no such substantial questions of law to be answered.

10. Keeping in view the submissions made, I have carefully read the judgments and decrees passed by the Courts below. I have travelled through the pleadings and the evidence both oral and documentary on record.

11. The suit before us is one where the Plaintiff claims right, title and interest over the suit land as also her possession. She seeks a decree for confirmation of possession, in the alternative for recovery of possession in case of dispossession and permanent injunction against the Defendants.

It is the settled principles of law that in a suit of this nature, the Plaintiff has either to stand or fall on his/her own and he/she cannot take advantage of the failure on the part of the Defendants to prove their case or any such weakness or deficiency in their case in proving a particular fact or facts as they project in support of their competing claim with the Plaintiffs and thus obtain a decree.

Indicating about the status of the Plaintiffs, it has been pleaded in the plaint that Sachidananda had sold the suit land orally to the husband of the Plaintiff, namely, Kalumohan. It was for a consideration of Rs.20/- followed by delivery of possession. It has been next pleaded that said Sachidananda, out of grid, had instituted a suit against the husband of the Plaintiff, vide T.S. No.39 of 1944 in the Court of the A.J.O., Dhenkanal State (as was then), which was for declaration of title and recovery of possession. The husband of the Plaintiff had contested the suit. Sachidananda having died during pendency of the suit, his widow Tillotama got substituted. When the matter stood thus, the suit being found to be not maintainable in the form as laid and for the reliefs claimed, it had been withdrawn and an order to that effect is said to have been passed on 17.10.2014. Thus, it is said that since then, the husband of the Plaintiff possessed the suit land till his death in the year 1962 and thereafter, the Plaintiff is continuing to possess the same.

12. Both the Courts below have concurrently held that the Plaintiff has failed to prove that her husband had orally purchased the suit land from Sachidananda. The conclusion arrived at by the Courts below are found to be on detail discussion of evidence on record and no such perversity is noticed therein when they are found to have said so assigning very good reasons in concluding that the evidence on that score of sale and purchase by Sachidananda is not acceptable. Above being the the position before this Court, it is only to be seen as to whether the Plaintiff can be said to have acquired title over the suit land by way of adverse possession from the time of her husband.

First of all, it be stated here that the Plaintiff's claim being that she has the title over the suit land having succeeded to the same from her husband who had purchased the land from Sachidananda, the claim/case of acquisition of title over that very same property by way of adverse possession directly runs in opposition and is self-contradictory. When one claims to have the title over the land by way of purchase and as such to have acquired the ownership; he does not enter into the possession of the property of the vendor denying the title of the said vendor, but it is on the claim that by such transaction the land comes to the hands of the possessor. So, there exhibition of hostile animus that too more importantly to have come to possess in a wrongful way does not come in. Therefore, such possession for any length of time, as it may have been, cannot go to establish the claim of acquisition of title by way of adverse possession as there being no wrong that is not to mature as right. The intention with which a purchaser possesses the land is as of rightful owner and with the status as its lawful owner. In such a case where the sale is not proved, the purchaser without coming up with a case that only after having

come to know that the ownership of the vendor was still continuing, he, since a particular time thereafter denied the title of the vendor and claiming the same unto himself began to possess asserting ownership to the knowledge of the vendor for upward of the prescribed period. This is not said anywhere in the plaint, in the alternative.

Leaving aside the above aspect, even the pleadings of the plaint do not narrate those required facts touching upon all those ingredients for establishment of a case of acquisition of title by adverse possession and no such evidence has also been let in to prove those. The very claim of the Plaintiff that her husband possessed the suit land for a quite long length of time thus when even accepted and it is taken that the Plaintiff possessed the same as such after her husband, there being complete absence of the factum of denial of title of the original owner Sachidananda in possessing the same, the suit, as laid, for the reliefs claimed is bound to fail.

13. For all those aforesaid, the submission of the learned counsel for the Appellants that the Appeal merits admission to answer any substantial question of law cannot be countenanced with.

14. In the result, The Appeals stand dismissed. There shall, however, be no order as to cost.

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

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