

HIGH COURT OF ORISSA : CUTTACK
RSA NO.144 of 2017

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Sambalpur in RFA No.15 of 2015 in confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Sambalpur in Title Suit No.175/50-99/2011.

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Niharbala Ghosh (since deleted) & Others :::: Appellants.

-:: VERSUS ::-

Mohini Bohidar & Others :::: Respondents.
**Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.**

For Appellants

... M/s.P.K. Satpathy,
P.S. Nayak & K.C. Panda
(Advocates)

For Respondents

... M/s. Amitabh Pradhan &
D.K. Sahu (Advocates)

**CORAM :
MR. JUSTICE D.DASH**

Date of Hearing: 17.11.2022 :: Date of Judgment: 25.11.2022

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 and decree passed by the learned District Judge, Sambalpur in R.F.A. No.15 of 2015. By the same, the Appeal filed by the present Appellants as the unsuccessful Plaintiffs in Title Suit No.175/50-99/2011 of the court of the learned Civil Judge (Junior Division). Sambalpur under section 96 of the Code has been dismissed. The suit

filed by the Appellants as the Plaintiffs having been dismissed by the Trial Court, the same has been upheld in the First 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 Trial Court.

3. The Appellants as the Plaintiffs had filed the suit for declaration of their right, title and interest over the suit land in stating that they are in possession of the same in further seeking a decree for permanent injunction against the Defendants. The suit has been disposed of by the following order:-

“The suit be and the same is decreed partly on contest against the defendants but in the circumstances without any cost. No declaration of right, title and interest can be given in favour of the Plaintiffs. As no dispossession has been proved hence no relief of recovery of possession is given. At the same time, the defendants are enjoined from interfering in the possession of the Plaintiffs in respect of M.S. Plots bearing No.278,297,299,359,699,700 and 886 vide suit M.S. khata No.462 of Mouza Sambalpur town, Unit No.15, Ainthapli, Sambalpur without due process of law.”

The Plaintiffs having preferred the First Appeal, the First Appellate Court being not in agreement with the finding of the Trial Court that the Plaintiffs are in possession of land under Plot No.278, 297,299,359,699,700 and 886 has simply dismissed the suit even saying that the Trial court ought not to have enjoined the Defendants from interfering in the possession of the Plaintiffs in respect of those plots of land without due process of law.

4. The Plaintiffs case is that one Sadhu Charan Bohidar has sold the suit land in the year 1966 for a consideration of Rs.500/- by executing a

plain paper document and delivering the possession of the suit land in their favour. It is stated that in the year 1968, the Defendant Nos.1,3,5 and 8 as well as the father of Defendant Nos.3,5,8 and 9 initiated LR. Case No.50 of 1968 under section 58 of the Orissa Land Reforms Act, 1960 against the Plaintiff No.1 alleging that the Plaintiff No.1 was cultivating the suit land on lease basis for 22 Khandis of paddy per year and that was denied by the Plaintiff No.1 with specific pleading that he has purchased the suit land from the father of the Defendant No.1 and is in possession of the same with his brothers as of their right, title and interest. The case was dismissed by the Assistant Collector/ Additional Tahasildar, Sambalpur on 25.02.1996. The Defendant No.1 and one Purnamasi Bohidar w/o Sadhu Charan Bohidar filed L.R. Appeal No.43 of 1969 before the Additional District Magistrate, Sambalpur. That was also dismissed.

The Plaintiffs thus claimed to be in open, peaceful and continuous possession of the suit land as of their own right with the knowledge of all concerned including the Defendants by paying rent to the State and they state to have perfected their title over the suit land by way of adverse possession. It is further stated that during the Major Settlement Operation, they could not trace out that unregistered deed of the year 1966 for which the note of forcible possession has been maintained in the remarks column of the record of right in respect of the suit land published in the year 1981. They claim to be in possession of the suit land.

On 15.12.1999 the Civil Court Amin had gone to the suit land and on inquiry the Plaintiffs learnt that Defendant No.1 has filed Title Suit No.30 of 1986 against the other Defendants for partition and that suit is at the stage of final decree. They inquired and thus finding the final decree proceeding to be in progress, having apprehended dispossession

from the hands of the Defendants, they filed the suit for declaration of their right, title, interest and confirmation of possession in the alternative for recovery of possession if found to have been dispossessed during pendency of the suit with further relief of injunction.

5. The Defendants in their written statement while traversing the plaint averments have denied the factum of sale of the suit land and any deed to have been executed on plain paper by that Sadhu Charan Bohidar the father of Defendant No.1 in favour of the Plaintiffs in selling the suit land. It is also stated that the Plaintiffs have never been in possession of the suit land and the note of possession as shown in the Major Settlement Record of Right in its remark column is wholly erroneous and that cannot counter any right, title and interest in respect of the suit land in favour of the Plaintiffs. They state that the partition suit, i.e., Title Suit No.30/1986 have been filed and therefore, these Plaintiffs could have filed a petition in the said suit at the final decree stage claiming their right, title and interest over the same on the basis of their purchase from co-sharers Sadhu Charan Bohidar after it was known to the Plaintiffs that such a suit is pending. It is further stated that even if for the sake argument the purchase of the suit land by the Plaintiffs is accepted, then also in this suit the reliefs as prayed for cannot be granted.

6. On the above rival pleadings, the Trial Court framed as many as seven issues. Upon examination of evidence and their evaluation, the Trial Court's finding is that the Plaintiffs have no right, title and interest over the suit land. However, coming to a conclusion that they are in possession of the suit land, while dismissing the suit for the main reliefs; injunction has been issued against the Defendants that they cannot forcibly dispossess the Plaintiffs from the suit land without due process of law.

7. The Plaintiffs being aggrieved by the said judgment and decree passed by the Trial Court having carried the First Appeal, the First Appellate Court has dismissed the suit in entirety by giving a finding that the Plaintiffs are not in possession of those plots of lands which are already indicated in the forgoing paragraph and, therefore, the First Appellate Court has simply dismissed the suit as a whole.

8. Learned counsel for the Appellants submitted that the First Appellate Court is not justified to disbelieve the factum of possession of the suit land by the Plaintiffs when in the remarks column of the record of right and the order-sheet of the OLR case (Ext.3 and 4) as well as the rent receipt (Ext.2) establish the Plaintiffs possession over the suit land. He further submitted that the First Appellate Court is not justified in not granting the relief of injunction even after holding that the Plaintiffs claim over the suit land as to have acquired right, title and interest by way of adverse possession has not been established. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

9. Learned counsel for the Respondent Nos.6 and 7 having entered appearance by filing the caveat in assisting the Court in the matter of admission hearing submitted that when the claim of the Plaintiffs as to have acquired right, title and interest over the suit land by way of adverse possession has been held to be having no leg to stand, the suit in its entirety has been rightly dismissed. According to him, the First Appellate Court has rightly found the Plaintiffs to be not in possession of those plots of lands by reassessment of the evidence at its level in an independent manner. He further submitted that such disagreement of the First Appellate Court is with all the reasons which appear to be just and proper.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

11. In the given case, both the Courts below have held the Plaintiffs to have not been able to prove their ownership over the land on the strength of purchase of the same as asserted to be by a plain paper document. The Plaintiffs have not proved that plain paper document in the Courts below. Even if that document would have been filed would have been of no value in the eye of law in support of the case of the Plaintiffs that the title in respect of the suit land had passed to them on the basis of the same. True it is that in the record right of the major settlement in the remark column, note of possession of the said suit land in favour of the Plaintiffs finds place. But that having been taken into account with other evidence let in by the parties when the Courts below have concurrently found that the Plaintiffs have failed to prove their case of having the title over the suit land and as no such infirmity is noticed therein much less to say perversity; no interference is warranted in this Second Appeal.

It be further stated that when the Plaintiffs have based claim of their title upon an unregistered deed evidencing the sale of the suit land in their favour in support of the purchase of the suit land for a consideration of Rs.500/-; they claimed ownership over the suit land as the purchaser. That sale having not been proved and when nothing is pleaded and proved that from which date again by denying the title of the true owner they have been in possession of the suit land and when they also do not plead to prove all other requirements to establish the claim of title by way of adverse possession; the suit in the form which has been laid for the reliefs claimed; in my considered view is liable to be dismissed in entirety. Therefore, this Court thus is not in a position to accept the submission of the learned counsel for the Appellants that

there arises the substantial question of law as pointed out to be answered, meriting admission of this Appeal.

12. Accordingly, the Appeal stands dismissed. No order as to cost.

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

Himansu

