

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.176 OF 1995

In the matter of an Appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned Sub-Judge, Puri in Title Appeal No.15/66 of 1992/1990 by confirming the judgment and decree passed by the learned Munsif, Khurda in Title Suit No.119 of 1986.

***Rama Chandra Sahu (Since Dead) ::: Appellants
Through his LRs***

-versus-

***Krushna Chandra Sahu (Since ::: Respondents
Dead) through his LRs. & Others***

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

***For Appellants ::: M/s.S.P. Misra, Sr. Advocate,
Soumy Mishra, B.S. Panigrahi,
S.K. Sahoo, S.K. Samantaray,
Advocates.
(A-1/a to A-1/e)***

***For Respondents ::: M/s. G.Mukherjee, Sr. Advocate,
P. Mukherjee, A.C. Panda,
S.D. Ray, S. Panigrahi &
S. Barik, Advocates,
{R(a), R(b), R(d) & R(e)}.***

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

DATE OF HEARING::07.09.2022, DATE OF JUDGMENT::26.09.2022

D.Dash, J. The Appellants in this Appeal, under Section-100 of the Code of Civil Procedure 1908 (for short, ‘the Code’) assail the judgment and decree passed by the learned Sub-Judge, Puri in Title Appeal No.15/66 of 1992/1990.

By the same, the Appeal filed by the predecessor in interest of these Appellants namely Ram Chandra Sahu with his two other brothers being the aggrieved Defendants has been dismissed and thereby, the judgment and decree passed by the learned Munsif, Khurda in Title Suit No.119 of 1986 have been confirmed.

It be stated here that present Second Appeal had been filed by that Ram Chandra Sahu (Defendant No.1) alone and on his death, his legal representatives are pursuing this Appeal as the Appellants.

The Respondent No.1 namely, Krushna Chandra Sahu who was the Plaintiff in the Trial Court being dead, his legal representatives have been substituted in his place as Respondent No.1(a) to 1(e).

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 land measuring Ac.0.55 decimals from the southern portion of the Gharabari plot on land under Plot No.409, Khata No.118 of mouza: Kodabereni in total measuring Ac.0.110 decimals; the land measuring Ac.0.057 ^{1/2} decimals from south out of Ac.0.115 decimals of Gharabari on plot of land under Plot No.407, Khata No.247 of that mouza described in Lot-1 of the property described in Lot-2 of the plaint are the subject matter of the suit with the Lot-2 property is the land measuring Ac.0.227 ^{1/2}

decimals out of Ac.555 decimals of Sarada-III kism under Plot No.1568 under Khata No.162 of mouza Thanapalli.

The Plaintiff claims to be the owner of the suit property and it is stated that he is in possession of the same having his right, title and interest. The land is recorded in the name of the Plaintiff and Jagatananda Sahu who happens to be his uncle. In a family partition, the suit properties are said to have fallen to the share of the Plaintiff and accordingly, the Plaintiff claims to be the exclusive owner in possession of the same. It is stated that that registered deed of partition dated 09.03.1968 (Ext.2) is there to the above affect. Mouza Kodabereni and Thanapalli are situated at a distance of 12 to 13 kms. from the village of the Plaintiff. For this reason, the Plaintiff for the purpose of farming etc by having a Farm House over the land under Plot No.409 in Mouza: Kodabereni was having a separate establishment. He was keeping his agriculture implements, buffalos in that Farm House. He was also preserving the raised crops in that area. The Defendants who happen to his relations provided assistance to the Plaintiffs in those affairs. The Plaintiff also entrusted them to make payment of the rent for the lands to the Revenue Inspector. It is stated that the Defendants had their residential house over Plot No.408 which is very close to the homestead land under Lot No.1. The Defendants as such became interested to purchase the suit plot from the Plaintiff. But the Plaintiff did not agree. In the year, 1985, the mud walled house over the

suit land was damaged due to rain and water. So, the Plaintiff collected some materials there to make alteration and addition to the existing house. For these developments, the Defendants lost all their hopes of acquiring the suit house from the Plaintiff and turned hostile. On 23.01.1986, the Defendants dug some foundation in order to put up construction over the suit land by showing force and then they occupied the suit house. So, the Plaintiff filed an application before the Executive Magistrate initiating a proceeding under Section-144 of the Code of Criminal Procedure. The Defendants there in advanced the claim of their possession over the suit property. So the proceeding was converted to one under Section-145 of the Cr.P.C. The Defendants were threatening to possess the suit land in Lot-2. It is stated that the Defendants had no right, title and interest over the suit land and they are not entitled to raise any construction. For the above action of the Defendants, finally the suit has come to be filed.

4. The Defendants in the written statement have stated to have been in cultivating possession of some lands of the Plaintiff and his uncle in mouza Kodabereni and as they have small extent of homestead land, it is stated that they had purchased the entire suit plot in Lot-1 from Jagatananda Sahu, who was then the Karta of the joint family of which the Plaintiff was a member. It is stated that the consideration involved in the said sale was Rs.90/- Pursuant to the sale, the Defendants took over

possession of the land from Jagatananda and they immediately constructed house over there; wherein they are residing. The Defendant No.2 is said to have constructed his residential house over the suit Plot No.409 and Defendant Nos. 1 & 3 have constructed their house over Plot No.407 and 408 and they are living separately. It is said that they have the title over the suit plot under the Lot-1 and in the alternative, the Defendants have also projected a case of acquisition of title over that land in Lot-1 by way of adverse possession having remained in physical possession of the same openly, peacefully without any interruption from any quarter and that too continuously as its owner. Thus, it is stated that by virtue of the same, the Plaintiff's right, title and interest over the suit land and his right to possess the same have been extinguished.

5. On the above rival pleadings, the Trial Court framed in total nine (9) issues. Rightly proceeding to find out the answer issue nos. 2, 5, 7 and 8, together, the Trial Court has said that the Plaintiff has the right, title and interest over the suit land and as such they have right to possess whereas the Defendants have neither acquired title over the suit property by virtue of the oral purchase nor have acquired title over the same by way of adverse possession. The suit thus stood decreed.

6. The Defendants being aggrieved by said judgment and decree passed by the Trial Court having carried the First Appeal have been unsuccessful.

7. The present Appeal has been admitted to answer the following substantial questions of law as indicated in grounds A, B, D, E and F of the Memorandum of Appeal. Those read as under:-

- (A) Payment of rent having been admittedly made by the defendant in respect of the suit property, if the learned courts below are correct in not finding prima facie possession in favour of the Defendants?
- (B) Payment of rent by the Defendants in respect of the suit property not having been sufficiently explained by the Plaintiff and the said insufficiency having been accepted by the learned Courts below if the learned Courts below are correct in ignoring the law laid down in 1989 (67) CLT 65 so far as the proof of possession is concerned?
- (D) In presence of the rent receipts filed by the Defendants, Ext.A to Ext.A/31 and voter's list Ext.B, if the learned Trial Court is correct in coming to a conclusion that there was no documentary evidence to show that actually the Defendants are in possession since 35 years?
- (E) The principle of "taking of possession" being an important ingredient of computation of the period of adverse possession, if the learned Courts below are correct in overlooking the fact of possession of "Shadeva", the predecessor of the Defendants and coming to a conclusion that the possession of the Defendants is only for 11 years and hence not adverse?

- (F) The possession in the instant case being an ancient one, if the learned Courts below are correct in disbelieving the possession of the Defendant on the ground of non-mention of any starting point of adverse possession.”

A carefully reading of the above formulated substantial questions of law leads to say that all those concern with the rival claim of right, title and interest over the suit land as advanced by the parties.

When the Plaintiff claims to be having right, title and interest over the suit and as such the right to possess the same, the Defendant claims to have purchased it from Jagatananda and an alternative case is projected that if the transaction is held to be void then by virtue of long possession, there has been perfection of title over the suit by way of adverse possession which has extinguished the right, title and interest of the Plaintiff over said land.

8. Learned Counsel for the Appellants submitted that on the face of the overwhelming oral evidence receiving much support from the documents admitted in evidence from the side of the Defendants, the Courts below ought to have held that the Defendants have acquired title over the suit land by way of adverse possession having remained in physical possession much more than the statutory period in open, peaceful manner and that too continuously without interruption from any quarter as its owner as to have

purchased the same orally from Jagatananda which is under declared status as owner.

9. Learned Counsel for the Respondent on the other hand submitted all in favour of the findings of the Courts below. According to him, even accepting the evidence on record as sufficient to say that the Defendants have been in possession of the property for quite some time, when the very factum of purchase of the suit has not been proved, the question of possessing the suit land as its owner is not inferable and therefore mere long possession on the part of the Defendants is of no legal significance and that cannot deprive the lawful owner of his property. He also submitted that the evidence of record do not satisfy the legal requirements as to establishment of a case of acquisition of title over the suit property by the Defendants by way of adverse possession.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. I have perused the evidence both oral and documentary.

11. The Defendants claim to have purchased the property under Lot-1 from Jagatananda Sahu and he is none other than the uncle of the Plaintiff. It is stated that Jagatananda had sold the property as the Karta of the joint family and the sale was made orally followed by delivery of possession after payment of consideration. It is stated that said sale had taken place 31

years before the suit. Even though such transaction is said to have taken place, no such subsequent document in support of the same is forthcoming even to the extent that the Defendants on the basis of the same had at any place staked their claim over the suit property and dealt the property as such.

Admittedly the disputed land in Lot-1 are the ancestral properties of the Plaintiff and Jagatananda. The Defendants are not completely unknown to the Plaintiff but are distant relations. Both the Courts have concurrently found that there was a valid partition between the Plaintiff and Jagatananda by registered deed dated 09.03.1963. Such evidence let in by the Plaintiffs has also not been countered. The suit has been filed in the year 1986 and the partitions are about 22 to 23 years before that. The Defendants claim to have purchased the suit property about 31 years prior to the suit, the old record of rights under Exts. 3 & 4 show that the grandfather of the Plaintiff was the recorded tenant. It no doubt reveals from the evidence of Plaintiff's witnesses that the Defendants are now in possession of the Lot-1 property but most of them have stated that the possession of the Defendant to be from the year 1986 onwards.

12. With such state of affairs in the evidence from the side of the Plaintiff, the Defendants evidence being found to be unsatisfactory by the Courts below in establishing the case of oral purchase, even it being accepted that the Defendants have been in possession of the property in

question for a long period, in the absence of any evidence either oral or documentary in showing that such possession was in exercise of the right of ownership and as such exhibiting hostile title to the true owner, the said possession will not enure to the benefit of the Defendants as to have led to acquisition of title by adverse possession. Merely proving some rent receipts that too when the record of right does not stand in the name of the Defendants, their claim that they were possessing the suit land exercising rights of ownership in denial of the title of the true owner cannot be accepted and such payment of rent being for and on behalf of the recorded owner are not enough to term the nature of such possession as hostile to the true owner. Thus when even though it is taken that the Defendants have been in possession of the land in suit for quite a long period, there stands no reason and justification in the eye of law for accepting the claim of the Defendants that there has been acquisition of title over the suit land by adverse possession. Therefore, the Courts below are right in holding the Plaintiff to be having the right, title and interest over the suit and as such the right to possess the same and that has not been extinguished for such possession of the suit land by the Defendants as they have failed to prove their case of acquisition of title over the suit land by way of adverse possession. The substantial questions of law being answered accordingly; this Appeal sans merit and thus does not merit acceptance.

13. The aforesaid discussion and reasons provide the answers to the substantial questions of law running in favour of confirmation of the judgment and decree passed by the Courts below.

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

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

Narayan

