

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. NO.103 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 Civil Judge (Senior Division), Jeypore in Title Appeal No.05 of 1990 by dismissing the judgment and decree passed by the learned Munsif, Jeypore in Title Suit No.32 of 1978.

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Sushil Bagh & Others

Appellants

-versus-

Aluo Khora & Others

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Respondents

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

For Appellants

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M/s.A. Sarangi, P. Sarangi,
B.R. Dash, K. Panda,
Advocates.

For Respondents

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M/s. M.K. Mohanty, B. Khara,
S. Mohanty, N.R. Rout,
Advocate.

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING::21.06.2022, DATE OF JUDGMENT::04.07.2022

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 Civil Judge (Senior Division), Jeypore in Title Appeal No.05 of 1990.

By the same, the Appeal filed by the original Respondent No.1 under Section-96 of the Code has been allowed and thereby, the

judgment and decree passed by the learned Munsif, Jeypore in Title Suit No.32 of 1978, dismissing the suit filed by the Respondent No.1(dead) as the Plaintiff has been set aside and his right, title and interest over the suit land has been declared and he has been found entitled to recover the possession of the suit house from the Appellants (Defendant Nos.1 to 3).

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. Plaintiff's case is that he had a thatched house comprising of three rooms over the suit land under Plot No.183 appertaining Khata No. 286 measuring Ac.0.09 decimals. It stands recorded in his name. Originally, the said land belong to one Jisudas Nag. It is said that he had sold the same to the Plaintiff for consideration of Rs.36/-. The house is covered under Municipal Holding No.140. Plaintiff stated to have been residing in the western most room of the said house with his family. According to him, the middle room was given on rent to one person named Samson, a teacher. The eastern most room was leased out to the father of the Defendant Nos. 1 to 3 on monthly rent of Rs.5/- and that is stated to be 8 years before the institution of the suit i.e. in or around 1970 and then the father of the Defendant Nos.1 to 3 were alive. The father of the Defendant Nos.1 to 3 had stayed in the house for six years and thereafter left for Umerkote with his wife; whereafter Defendant No. 1 resided in

the house. After the death of the father of Defendant No.1, the Defendant No.1 did not pay any rent to the Plaintiff. So the Plaintiff filed an application under the provision of Orissa House Rent Control Act for eviction of the Defendant No.1. The proceeding was disposed of on 13.09.1978. In the said House Rent Control proceeding, the Defendants contested the suit on the ground that they having purchased the suit land from one Sauda Dongri, the Defendant No.4 for consideration of Rs.120/- by unregistered sale-deed dated 12.01.1972 are in possession of the same. It is the case of the Plaintiff that Sauda Dongri was a tenant under the Plaintiff in respect of the suit house for couple of years prior to the induction of the father of the Defendant Nos. 1 to 3 as tenants therein. It is the further case of the Plaintiff that Sauda Dongri had no manner of right, title and possession over the suit house.

Said House Rent Proceeding was however dismissed and that dismissal order was confirmed by the Appellate Forum. So the Plaintiff filed the suit for declaration of his right, title and interest over the suit for recovery of possession of the same from Defendant Nos. 1 to 3 who are rank trespassers.

4. The Defendant Nos. 1 and 2 contested the suit. It is stated that the suit land does not belong to the Plaintiff and also did not belong to Jisudas Nag. There was no sale of the suit land by Jisudas Nag to the Plaintiff as alleged. It is their case that the suit property consists of two

rooms; the eastern portion is their ancestral property and they are staying in it since the time of their father and they had purchased the western portion from one Sauda Dongri on 17.11.1972 and have remodeled the house. So, it is stated that they have in possession of the suit land for quite a long period and the right, title and interest of the Plaintiff over the suit even if was there, the same has been extinguished since long.

5. The Defendant No.4 had supported the case of the Defendant Nos. 1 to 3.

6. On the above rival pleadings, the Trial Court having framed seven issues; upon examination of evidence and their evaluation dismissed the suit. The Plaintiff being non-suited and unsuccessful before the Trial Court having filed the Appeal has been successful therein in obtaining a decree of declaration of his right, title and interest over the suit property and his entitlement to possession thereof as also for recovery of the suit land with the house standing thereon from the Defendant Nos.1 to 3.

7. The Appeal has been admitted to answer the following substantial questions of law:-

- (A) In absence of any deed of transfer exhibited from the side of the Plaintiff and there is no proof of delivery of possession as required under section-54 of the T.P. Act, the Appellate Court was justified in reversing the judgment of the trial Court?

- (B) Whether the Plaintiff-Respondent has proved anterior title of his vendor?
- (C) Whether there is any discrepancy in the finding of the Appellate Court regarding the description of the suit property i.e. whether the suit property is in Ward No.1 or Ward No.2?
- (D) Whether the Appellate Court has assessed the materials on record in its proper perspective?"

8. Learned Counsel for the Appellants submitted that the First Appellate Court without proper appreciation of evidence and without assigning any such justifiable reason has committed grave error in upsetting the findings recorded by the Trial Court as against the Plaintiff. It was submitted that the Trial Court has rightly rejected the record of right without attaching any presumption as to correctness of the same in the absence of any acceptable evidence on delivery of possession of the suit property by the vendor to the Plaintiff.

9. Learned Counsel who had appeared on behalf of the Respondent No.1 assisting the Court in searching out the answers to the substantial questions of law submitted all in favour of the conclusion arrived at by the First Appellate Court. According to him, on a threadbare discussion of the evidence on record, the First Appellate Court has rightly accepted the case/claim of the Plaintiff.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the pleadings as well as the evidence on record.

11. The case projected by the Plaintiff in the plaint is that one Jisudas Nag was the original owners of the suit property and he had sold the same to the Plaintiff for consideration of Rs.36/-. It is further stated there were three rooms over the suit land and the eastern most room was leased out to the father of the Defendant Nos. 1 & 2 and husband of the Defendant No.3 on a monthly rent of Rs.5/-. The father of the Defendant Nos. 1 & 2 stayed in the suit house for about six years and he with his wife then left for Umerkote; whereafter Defendant No.1 resided in the suit house. On the other hand, the specific case of the Defendant No.4 is that, the suit property consists of two portions of which eastern portion as ancestral property of Defendant No.1 and 2 and Defendants are staying there since long. Whereas Western portion is his ancestral property, he stated to have sold the said land by un-registered sale-deed to the Defendants on 17.11.1972 and Defendant Nos. 1 to 3 are in possession of the same. It is the case of the Defendant Nos. 1 to 3 that the Western portion of the suit property was purchased by them on 17.11.1972 or Defendant No.4 and sons then they are in possession of the same and have also perfected title by way of adverse possession.

12. The record of right relating to the suit land is Ext.1. This stands in the name of the Plaintiff in so far as the suit land is concerned. The Plaintiff has proved the Municipal Pass Book, Ext.3 which shows that the suit land stands in his name under Holding No.140. The entries in the DCB Register, Ext.2/1 reveals that Plot No.139 was assessed in the name of Jisudas Nag. Ext.4/1 is the relevant assessment list which reflects that Holding No.143 stands in the name of the Plaintiff. The Plaintiff was issued with several notices admitted in evidence marked Ext.5 series by the Municipality which were in respect of Holding No.140. The tax receipts having been admitted in evidence marked Exts.7 & 8, which show that Plaintiff had paid the tax for the Holding No.140. The Municipal Pass Book admitted in evidence Ext.17 shows that the same was granted to the Plaintiff for Holding No.143. This clearly goes to show that the land of the Defendants are quite distinct from the suit land. The First Appellate Court has made an elaborate discussion of evidence on record and has come to a conclusion that the Defendants examined as D.W.1 has clearly admitted in evidence that he has purchased the Government land and he has nothing to do with or over the land of the Plaintiff. In that view of the matter, on the face of the record of right, Ext.1, containing the entries concerning the suit land, the First Appellate Court does not appear to have committed any error in attaching presumption of correctness to that Ext.1 in construing it to be a

document of title when the evidence of Commissioner examined as C.W.1 provide further support to the case of the possession of the land by the Plaintiff and encroachment from the side of the Defendants.

13. The aforesaid discussion and reasons provide the answers to the substantial questions of law for confirmation of the judgment and decree passed by the First Appellate Court.

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

Narayan



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