

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.12 of 2017

In the matter of an Appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 11.08.2016 and 25.08.2016 respectively passed by the learned Additional District Judge, Padampur in R.F.A. No.04 of 2015 setting aside the judgment and decree dated 29.11.2014 and 06.12.2014 respectively passed by the learned Civil Judge, Senior Division, Padampur in Civil Suit No.25 of 2012.

Gahala Biswal & Another ***Appellants***

-versus-

Dileswar Bhua & Another ***Respondents***

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

For Appellants - Mr.J. Sahu
(Advocate)

For Respondents - Mr.S.R. Mohanty
(Advocate for R.1)

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

Date of Hearing : 12.12.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellants, in filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 11.08.2016 and 25.08.2016 respectively passed by the learned Additional District Judge, Padampur in R.F.A. No.04 of 2015.

By the same, the Appeal filed by the Respondent No.1 (Defendant No.1) under section 96 of Code, has been allowed and thereby the judgment and preliminary decree dated 29.11.2014 and 06.12.2014 respectively passed by the learned Civil Judge, Senior Division, Padampur in Civil Suit No.25 of 2012 filed by these Appellants, as the Plaintiffs, have been set aside and they have been non-suited.

These Appellants, as the Plaintiffs, had filed the suit for partition and allotment of their share over the property of one Karna Bhue, the paternal grandfather of the Plaintiff No.2 and maternal great grandfather of the Plaintiff No.1. The suit, having been preliminarily decreed holding the Appellants (Plaintiffs) to be having half share over the property in the suit land entitling these Respondents (Defendants) to half share; the Respondents (Defendants), being aggrieved by the same, had carried the First Appeal, which has been allowed. The Appellants (Plaintiffs) thus, having been non-suited, are now on Appeal before this Court.

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. Plaintiffs' Case:-

Karna Bhue is the owner of the properties in suit had six sons. Four sons of Karna, namely, Kapila, Negi, Kado and Kanhu are issueless. The other two sons are Ranga and Dhubei @ Reba. Ranga is survived by Defendants 1 & 2, who are his sons and Dhubei @ Reba died leaving behind his two daughters Laibani & Saibani. Out of them, Laibani is alive and she is the Plaintiff No.2 whereas Saibani, being

dead, her son Gahala is Plaintiff No.1. The Plaintiffs' claim their right over the property of Karna and seek allotment of their half share, being the son's daughter son (Plaintiff No.1) and son's daughter (Plaintiff No.2) of Karna, the original land holder.

It is stated that after the death of Karna, his six sons possessed the land and all of them got the land mutated in their names under Mutation Case No.331 of 1980 and they, having got the record of right as such were paying rent jointly. It is next stated that Ranga, during his life time, shifted to his father's village and stayed there in his father-in-law's house as illatom son-in-law and settled there. However, after the death of Kapila, Negi, Kado and Kanhu, the two sons of Ranga again shifted to the suit village and possessed all the suit land except those lands which were under the possession of the Plaintiffs.

It is stated that before shifting of the Defendants, the Plaintiffs were possessing the entire property and when the Defendants shifted to the village, they forcibly possessed the land. The Plaintiff, therefore, sought for a partition.

4. The Defendant No.1, in his written statement, has stated that his father Ranga had two sons, i.e., the Defendants 1 and 2. The Defendant No.2 has gone on adoption to another family as domesticated son-in-law and has settled there. So, it is said that Defendant No.1 is the only legal heir of Karna. It has been pleaded that Plaintiff No.1 is the paternal grandson of Dhubei, who had two daughters, namely, Laibani and Saibani. So, the Plaintiff No.1, being the son of Saibani, has no connection with the family of Karna and as such, it is said that he or the other Plaintiff, i.e., his aunt (mother's sister) have no right over the property of Karna and as such, are not entitled to claim partition.

5. The Trial Court, on the above rival pleadings, having framed four issues, had decreed the suit preliminarily allotting half share over the land to the Plaintiffs and rest half to the Defendants.

6. The Defendants, being aggrieved by the said judgment and preliminary decree passed by the Trial Court, having carried the First Appeal, have been unsuccessful in getting the suit dismissed.

7. Mr.Sahu, learned counsel for the Appellants submitted that the First Appellate Court has erred in law by holding that the Plaintiffs have not succeeded to the properties in suit and the First Appellate Court ought not to have ventured to overturn the preliminary decree passed by the Trial Court. He further submitted that the Plaintiffs, being the daughter and daughter's son of Dhubei, who is the son of Karna, under no circumstance, can be deprived of succeeding to the interest of Dhubei. He therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

8. Mr.Mohanty, learned counsel for the Respondent No.1, in assisting the Court in the matter of admission, submitted that in presence of the Defendants, who are the two grandsons of Karna through his son Ranga are to succeed to the property of Karna in entirety and the Plaintiffs, in the absence of any severance of status of the joint family, Ranga and Dhubei have no right over the property of Karna so as to be claimed by them through Dhubei.

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

10. Admittedly, the parties are members of the Scheduled Tribe Community. They are guided by the Mitakshara School of Hindu

Law in respect of inheritance and succession and are not governed by the provision of Hindu Succession Act, 1956.

It is also not in dispute that the property originally belonged to Karna, who died leaving behind his six sons. As per the case of the Plaintiffs, the properties stood jointly recorded in the names of the sons of Karna after his death and they were paying the rent jointly. The record of right of the suit land has been admitted in evidence and marked Ext.1. Plaintiff No.2 is the granddaughter (sons' daughter) of Karna and Karna's son's daughter's son is Plaintiff No.1.

The Plaintiffs have neither pleaded nor proved that after the death of Karna or even after his four sons, namely, Kapila, Negi, Kado and Kanhu died issueless, there had been a severance of the status of joint family either amongst the sons of Karna or subsequently between Ranga and Dhubei and each were in possession of separate portions of land by way of division pursuant to said severance. In that view of the matter, the Plaintiffs, being the daughter's son of Dhubei @ Reba and daughter of Dhubei, in presence of the two male heirs, i.e., the sons of Ranga have no right of succession in respect of the Dhubei @ Reba which he had over the property of his father Karna. The Defendants 1 and 2, being the grandsons of Karna through his son Ranga, in the absence of any male heir being left by Dhubei, are to succeed to the property of Karna. Therefore, this Court is of the view that the Plaintiffs have rightly been non-suited.

The submission of the learned counsel for the Appellants (Plaintiffs) thus stands repelled and this Court finds that no such substantial question of law arises for being answered, meriting the admission of the Appeal.

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

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

Basu

