

IN THE HIGH COURT OF ORISSA AT CUTTACK
R.S.A. No.438 of 2017

In the matter of an Appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 31.08.2017 and 19.09.2017 respectively passed by the learned Additional District Judge, Parlakhemundi, Gajapati in R.F.A. No.13 of 2014(T) confirming the judgment and decree dated 25.08.2014 and 06.09.2014 respectively passed by the learned Senior Civil Judge, Paralakhemundi in Civil Suit No.36 of 2012.

Smt. Bevara Saraswati (Since Dead) by her LRs ***Appellants***

-versus-

Ejjiapurapu Appanna & Others ***Respondents***

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

For Appellants - Mr.S.K. Dash
(Advocate)

For Respondents -

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 02.12.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellant, in filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 31.08.2017 and 19.09.2017 respectively passed by the learned Additional District Judge, Parlakhemundi, Gajapati in R.F.A. No.13 of 2014(T).

By the same, the Appeal filed by the Appellant (Plaintiff) under section 96 of Code, has been dismissed and thereby the judgment and decree dated 25.08.2014 and 06.09.2014 respectively passed by the

learned Senior Civil Judge, Paralakhemundi in Civil Suit No.36 of 2012 have been confirmed.

It may be stated here that during pendency of the Second Appeal, the sole Appellant, who was the Plaintiff in the suit, having died, the legal representative, being substituted, are on record as the Appellants.

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's case is that on 13.04.1977, he with the Defendants purchased Ac.0.59 cents of land from Sabik Khata No.236, Survey No.9/7 of Mouza-Relli Sahi under a registered sale deed dated bearing No.760 of 1977 executed by Ejjiapurapu Lachhana and Ejjiapurapu Apparao, both sons of late Ejjiapurapu Appana. The vendors along with their brothers partitioned their property under Khata No.263 among them and the suit land was sold by those two vendors from out of their shares. It is stated that the other brothers also sold their respective shares to different purchasers from out of the said suit holding in the year 1974. The Plaintiff along with the co-owner says to have been in continuous possession of the suit land from the time of her purchase in the year 1993. The co-owner (Ejjiapurapu Annapurna) died in the year 1993 having no issue and she had executed a Will on 17.03.1990 bequeathing her share in the suit land in favour of the son of the Plaintiff. So, the Plaintiff and her son became the joint owners of the suit land.

It is stated that the record of right of the suit land, however, stood in the name of her vendor and their brothers. The Plaintiff and her son applied for mutation of the above purchased land. The same was, however, dropped as the sale deed was of the period prior to the Settlement. The vendor filed C.S. No.11 of 2012 for permanent injunction against the husband of the Plaintiff, which was withdrawn after the Plaintiff's husband filed the written statement. It is stated that thereafter the Defendants played mischief and threatened the Plaintiff to trespass over the land and they created all sorts of trouble in the enjoyment of the said property by the Plaintiff and her family members. This led the Plaintiff to file the suit for declaration of right, title, interest and possession as well as permanent injunction.

4. The Defendants 1 and 2, in their written statement, have stated that the Plaintiff has not purchased the land from new Khata No.122 of Mouza-Relli Sahi from Ejjiapurapu Lachanna and Ejjiapurapu Apparao vide registered sale deed dated 13.04.1977. The said registered sale deed is stated to be in connection with the land under Plot No.9/7. They state that there was never any partition in respect of the land under Sabik Khata No.122. Some plots of that Khata No.122 had been sold by the recorded owner Ejjiapurapu Paidiga and his sons under Plot Nos.1362, 1363, 1323 and 1324 in total measuring Ac.0.283 with the knowledge of all the brothers. They state that the suit land is having no nexus with the Sabik Khata No.263, Plot No.9/7. It is also stated that late Ejjiapurapu Appanna, who is the grandfather of the Defendants is the original owner of Ac.1.32 cents of land which he had purchased by registered sale deed dated 27.04.1940 from Parichha family vide Certificate No.9/7, Patta No.263. The land sold from Sabik Plot No.9/7 as alleged by the Plaintiff is stated to be having no nexus with new

Khata No.122. The Plaintiff and his co-purchaser are said to have never filed any petition before the Settlement Authority to get their purchased land recorded in their land in the record of right. They state that as per the Settlement Amin's report, the land under Plot Nos.1356 to 1365 is to be recorded under the kism as 'Sarba Sadharan', which include the suit land and thus it is said that the suit schedule land can never be claimed by the Plaintiff. The Defendants' claim that they are in possession and enjoyment over all the plots of Khata No.122. They have also denied the execution of any Will by the co-purchaser of the Plaintiff in favour of the son of the Plaintiff. It is stated that when the Plaintiff's husband started dispute with the Defendants for the suit land, the Plaintiff filed the suit vide C.S. No.11 of 2012, which was withdrawn.

5. The Trial Court, on the above rival pleadings, framed as many as seven issues. Upon examination of the evidence and their evaluation, the conclusion has been that with the available evidence, it cannot be specifically declared that the purchased land of the Plaintiff corresponds to the land under Hal plots as indicated in the schedule. It has also been said that in the absence of that finding, the right, title and interest of the Plaintiff over the specific plots cannot be declared without partition of Hal Holding Number No.122 in metes and bounds. Having said as above, the Trial Court dismissed the suit holding the Plaintiff to be not entitled to the relief claimed.

The Plaintiff being thus non-suited, having carried the First Appeal, has again suffered with the same decision.

The First Appellate Court, upon re-appreciation of evidence, in addressing the rival contention, has concurred with the view taken by the Trial Court.

6. Leaned counsel for the Appellant submitted that the Courts below have grossly erred in dismissing the suit when the Plaintiff's case of purchase and possession are not in dispute. He further submitted that the Courts below have not properly appreciated the evidence both oral and documentary and the finding against the Plaintiff that she has not been able to establish the nexus between her purchase land and the land as described in the schedule as per the Hal records is the outcome of perverse appreciation of evidence and as such cannot sustain. He thus urged for admission of this Appeal to answer the above as the substantial questions of law.

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

8. The Plaintiff has claimed title over six Hal plots under Hal Holding No.122 and the basis of her claim is Ext.1. the Plaintiff having proved the Amin report (Ext.3) and the draft ROR (Ext.7), it is seen therefrom that old Survey No.9/7 and Khata No.263 correspond to fourteen plots of Hal Holding No.122. All these plots have been jointly recorded in the name of all the four brothers, which include the two vendors of the Plaintiff. The sale deed (Ext.1) being perused, it is seen that the Plaintiff's purchased land was on the northern side of Survey No.9/7. The Plaintiff has purchased a portion out of the large plot but no evidence is there on record that the land purchased by the Plaintiff on the northern side of old Survey No.9/7 corresponding to the six numbers of Hal Plots as now indicated.

Therefore, when it is incumbent upon the Plaintiff to establish this fact by proving documents, that is highly wanting. The Plaintiff, in order to get a decree in the suit, when carries the burden of proving the fact that her purchased land is the land under those six Hal plots which are the subject matter of the present suit, the same appears to have not been discharged so as to shift the onus of proof upon the Defendant to prove their case. Thus, in my considered view, the Courts below have committed no such wrong in holding that the Plaintiff is not entitled to the reliefs as claimed in the present suit as laid.

9. 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.

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

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