

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.246 of 2015

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 21.03.2015 and 02.04.2015 respectively passed by the learned Additional District Judge, Jharsuguda in R.F.A. No.9 of 2014 setting aside the judgment and decree dated 26.12.2013 and 08.01.2014 respectively passed by the learned Civil Judge, Junior Division, Jharsuguda in Civil Suit No.18 of 2012.

***Dharam Singh Mahananda @
Ganda (Since Dead) by his LRs*** ***Appellants***

-versus-

Ketan Pradhan & Others ***Respondents***

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

For Appellants - Mr.A.P.Bose
(Advocate)

For Respondents - Mr.S.Udgata
(Advocate)

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

Date of Hearing : 13.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), assail the judgment and decree dated 21.03.2015 and 02.04.2015 respectively passed by the learned Additional District Judge, Jharsuguda in R.F.A. No.9 of 2014.

By the same, the Appeal filed by the original Appellant, namely, Dharam Singh Mahananda @ Ganda, as the unsuccessful Plaintiff in C.S. No.18 of 2012 in the Court of the learned Civil Judge, Junior Division, Jharsuguda under section 96 of the Code, has been allowed in part.

The original Appellant, having died during pendency of the Appeal, his legal representatives, having come on record, are pursuing the present Second Appeal.

The original Appellant (Plaintiff) had filed the suit for declaration of his right, title, interest and confirmation of possession along with one Narsingha Ganda (arraigned in the suit as Defendant No.10); further seeking issuance of permanent injunction against the Respondents 1 to 8 from creating any disturbance in their peaceful possession of the suit land. The Trial Court, having dismissed the suit, the First Appellate Court has passed the following order:-

“In the result, the appeal is allowed in part on contest against D.1 to 9. The impugned judgment and decree passed by the learned trial court dismissing the suit in respect of the relief of right, title, interest and permanent injunction are hereby confirmed. The suit of the plaintiff is decreed in part and his possession over the suit land is confirmed subject to eviction in due process of law.”

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 Plaintiff's case is that he is the owner in possession of the suit land whose erstwhile owners were Charan Padhan and others. It is stated that said erstwhile owners of the suit land had transferred the suit land to the Plaintiff-Ananda Ganda and Narasingha Ganda by an unregistered

sale deed dated 06.07.1949 for a consideration of Rs.70/-. Since then, it is stated that the suit land has remained in possession of the Plaintiff and others as its owners. It is further stated that the Plaintiff and Defendant No.10 are possessing the suit land and paying the rent revenue. During the Settlement Operation, the Plaintiff had produced that document, i.e., unregistered sale deed dated 06.07.1949 before the Settlement Authority and accordingly the Settlement Authority made a note of possession in respect of the suit land in favour of the Plaintiff-Ananda Ganda and Defendant No.10. It is stated that the said unregistered sale deed was later on destroyed by white ants. The Plaintiff and Defendant No.10 are thus in possession of the suit land on their own right, title and interest since 06.07.1949. It is stated that said possession was open, peaceful and continuous without any interference from any quarter and it was to the knowledge of the true owners. So, it is said that the Plaintiff and Defendant No.10 have perfected their title by way of adverse possession. Alleging that some time in the month of December, 2021, the Defendants except the Defendant No.10, being emboldened by the record of right entries as to the recorded tenant in respect of the suit land, created disturbances in the peaceful possession of the Plaintiff and Defendant No.10, the present suit came to be filed when those Defendants further declared that they would dispossess the Plaintiff and Defendant No.10 from the suit land.

4. The Defendants 1 to 9, in their written statement, denied the right, title and interest of the Plaintiff and Defendant No.10 over the suit land. It is stated that Charan Padhan and others had never sold the suit land to Plaintiff and Defendant No.10 and had not executed any unregistered sale deed dated 06.07.1949. They state that said unregistered sale deed was never produced before the Settlement Authority and the Plaintiff

has somehow managed to get the note of possession in respect of the suit land recorded in the record of right. It is also stated that the Plaintiff and Defendant No.10 are not in possession of the suit land and they have not acquired title over the suit land by way of adverse possession. These Defendants with others claim to be in possession of the suit land and they have denied the possession of the suit land by the Plaintiff.

5. The Defendant No.10, in his written statement, has supported the Plaintiff's case. He has, however, stated that after the death of Ananda, there was an amicable settlement between the Plaintiff and Defendant No.10 and as per such settlement, the Plaintiff has got Ac.0.700 decimals of land whereas the Defendant No.10 has got Ac.0.920 decimals of land. It is stated that both are possessing the suit land in so far as their above allotted portions are concerned. This Defendant No.10 then denied the fact that the unregistered sale deed was destroyed by white ants while in custody of the Plaintiff. He stated that said sale deed with other documents had been kept by him in the wooden box, which have been destroyed by the termites and some are still untraced.

6. The Trial Court, on the above rival pleadings, in total has framed ten issues. Taking up issue nos.2, 3, 4 and 9, which are interlinked concerning the right, title, interest of the Plaintiff over the suit land, as claimed, which includes the claim of the Plaintiff as the owner on the basis of the unregistered sale deed as also his alternative case of acquisition of title over the suit land by way of adverse possession; upon examination of the evidence and their evaluation, the answer has been returned against the Plaintiff. In that exercise, the Trial Court has found the Plaintiff to have also proved that he with Defendant No.10 are in possession of the suit land.

7. With all these findings, the suit, being dismissed, in the First Appeal filed by the unsuccessful Plaintiff, he has been able to get a decree that his possession over the suit land would continue as such until evicted in due process of law. In other words, the First Appellate Court having found the Plaintiff to be having no right, title, interest over the suit land either under that unregistered sale deed or to have perfected title over the same by way of adverse possession having simply found him to be in physical possession of the suit land, has provided such a limited protection as to said possession till eviction following due process of law.

8. The present Appeal has been admitted to answer the following substantial question of law, which reads as under:-

“i. Whether the Courts below having found the Plaintiff to be in possession of the property for long carrying all those features as has been discussed in the judgments have erred in not declaring the right, title and interest of the Plaintiff over the suit land as to have been perfected by way of adverse possession?”

It be stated at the cost of repetition that the Plaintiff being aggrieved by the refusal of the Courts below to declare his right, title and interest over the suit land along with that of the Defendant No.10, has preferred this Appeal when the Defendants 1 to 9 have not questioned the limited protection of the possession of the Plaintiff over the suit land based on the finding of the Plaintiff's physical possession by filing any separate Appeal or advancing Cross-Appeal or Cross-Objection.

9. Learned counsel for the Appellants submitted that basing upon the overwhelming evidence of long possession of the Plaintiff and

Defendant No.10 since the time of their ancestors with effect from 06.07.1949, the Courts below ought to have held that they have perfected their title over the suit land by way of adverse possession and thereby the right, title and interest of the Defendants 1 to 9 has stood extinguished since long. He further submitted that the First Appellate Court when has recorded the categorical finding that the document (Ext.A-1), which is the document by which the sale transaction has taken place, which is the case of the Plaintiff and also other documentary evidence such as the rent receipts (Ext.2 & Ext.2/A) as well as the categorical admission of Charan Padhan and Bholeswar Padhan, son of Tribar Pradhan in Ext.D that the Plaintiff, as regards the possession of the suit land, ought to have found that all such required ingredients for the purpose of making out a case of acquisition of title over the suit land by way of adverse possession have been well made out.

10. Learned counsel for the Respondents supported all the findings returned by the First Appellate Court. He, however, did not dispute the position that here in the present Appeal, the Defendants 1 to 9 have not filed any Cross-Objection or Cross-Appeal challenging the finding of the First Appellate Court that the Plaintiff and Defendant No.10 are in physical possession of the suit land which has formed the basis for granting the limited protection as to the possession of the suit land by Plaintiff and Defendant No.10 till their eviction following during process of law. He submitted that even accepting the factum of physical possession of the Plaintiff and Defendant No.10 for quite a long length of time in the absence of specific evidence that the possession was open, peaceful and continuous without any interference from any quarter and more importantly, in denial of the title of the true owners by exercising

all such rights of ownership over there, there cannot a finding that there has been perfection of title over the suit land by the Plaintiff and Defendant No.10. He submitted that in the present case, when the Plaintiff and Defendant No.10 claimed the suit land as to have been purchased by their ancestors and that having been not been established, as the said plea has not been renounced, the alternative case of acquisition of title over the suit land by way of adverse possession, is not legally visible.

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

12. It is the settled principles of law that a possessor, in order to establish his claim of right, title and interest and the possession of the land by way of adverse possession, carries the burden to prove that his possession is adequate in continuity, in publicity and in extent to show that it is the possession adverse to the competitor, which are the classic requirements, i.e., '*nec vi*', '*nec clam*' and '*nec precario*'. The possessor, for the purpose, therefore has to admit the title of his adversary. It is one more important aspect in law that from whom the possession of the property has been taken as it is said in the present case that the person must have the alienable right so as to say that the title is capable of being acquired by the possessor. The law has been settled in the case of *Amrendra Pratap Singh vs Tej Bahadur Prajapati*; (2004) 10 SCC 65 that the right in the property ought to be one which is the alienable and is capable of being acquired by the competitor. Adverse possession operates on a alienable right stands alienated by operation of

law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant.

The provision of Central Provinces Tenancy Act, 1899 (in short, 'the CPT Act') were in force in the area where the suit land is situated, which is now within the jurisdiction of the Jharsuguda District which was a part of the undivided Sambalpur District. As per sub-section 3 of section 46 of the CPT Act, the suit land was not alienable by the occupancy tenant to a person, who is not a successor or co-sharers of the occupancy tenant and as per the proviso, the transfer can only be effected by the occupancy tenant to any person (Page 16 of First Appellate Court's judgment). Admittedly, the Plaintiff's predecessor were neither the successors nor co-sharers of the occupancy tenants, namely, Charan Padhan and others. So, they had no right to get the suit land upon the death of the occupancy tenant and thus, those occupancy tenants had no alienable right. This finding recorded by the First Appellate Court is well in order.

13. Further, coming to the factum of physical possession of the suit land by the Plaintiff, the First Appellate Court is seen to have made a detail discussion at paragraph-14 of its judgment. It has taken note of the documentary evidence (Ext.3), which is the certified copy of Yadast, which has also been proved by the Defendants as Ext.B-1 as well as the certified copy of Amin Report (Ext.C-1) and Munsarin's Mistake List (Ext.D-1), which have been proved by the Defendants. All these documents show that the Plaintiff and Defendant No.10 were in possession of the suit property from the year 1966 to 1975. Therefore, in the absence of any evidence to the contrary let in by the Defendants that the Plaintiff and Defendant No.10 have been dispossessed thereafter, the

First Appellate Court's view that coupled with the note of possession of the suit land in favour of the Plaintiff and Defendant No.10 in the record of right (Ext.1) and the rent receipts proved vide Ext.2 and 2/A, a finding of physical possession of the suit property by Plaintiff and Defendant No.10 is warranted is seen to be just and proper that too when it further finds support from the document (Ext.D and D-1) containing the admission of Charan and Bholeswar as regards the possession of the suit land by the Plaintiff. Such finding has rightly been taken by the First Appellate Court in protecting the Plaintiff's possession over the suit land till eviction as per law.

In that view of the matter, the answer to the substantial question of law is returned against the Plaintiff, which leads this court to confirm the judgment and decree, as have been passed by the First Appellate Court.

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

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

Basu