

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.92 Of 2020
(Through video conferencing mode)

Baidu Majhi

...

Appellant

Mr. B.Das, Advocate

-versus-

Kade Majhi and another

...

Respondents

CORAM: JUSTICE ARINDAM SINHA

ORDER
02.02.2022

Order No.

- 02.**
- 1.** Mr. Das, learned advocate appears on behalf of appellant, who was defendant in the suit. He submits, the suit was for declaration and recovery of possession. Trial Court dismissed the suit but the lower appellate Court reversed the judgment and decreed it.
 - 2.** He draws attention to paragraphs 10 to 12 in judgment of the first appellate Court to submit, three very important questions of law are involved in the appeal, for its admission. First question is whether a suit, inter alia, for declaration of title can be decreed in absence of any title document, relying upon record in ROR. Second question is regarding plaintiffs' burden to prove their title, when they had fraudulently got themselves recorded in the ROR. Third question

involved is regarding nonjoinder of State, who is a necessary and proper party.

3. It appears that the Courts below had as evidence, entries in the ROR. Plaintiffs claimed declaration, and recovery of possession based on the entries. Plaintiffs could not produce document of title. In absence of document of title, plaintiff had sought the declaration in respect thereof. Both Courts below went into the evidence that was laid and the first appellate Court found that appellant (defendant) could not substantiate his contention that the entries were fraudulently made by plaintiffs. Judgment law on evidentiary value of entries in the RORs and consequent presumption of title in absence of title document, was relied upon by the first appellate Court. It came to the conclusion in favour of plaintiffs for declaration of title in their favour.

4. The second contention is that a question arises on appreciation of evidence. This second contention is related to the first contention inasmuch as plaintiffs laid evidence for founding their claim on title by relying on the entries in the ROR. Defendant having disputed the entries, had the burden of proving that those were caused by practicing fraud. Law is well settled that fraud must be pleaded and proved. The first appellate Court did not find satisfaction in appellant (defendant) having pleaded or proved fraud on its contention of the entries relied

upon by plaintiffs. The second contention also does not merit formulation of a question for admission of the appeal.

5. The third contention for a question to be formulated is that State was not made party. This contention of nonjoinder was dealt with by the appellate Court in paragraph 12 of its judgment. There is nothing wrong in the reasons given therein as they are founded in law. No question arises on this contention as well.

6. The appeal is dismissed.

(Arindam Sinha)
Judge

Prasant

