

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**R.S.A. No.161 of 2002**

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 16.07.2002 and 22.07.2002 respectively passed by the learned Additional District Judge (FTC), Bargarh in Title Appeal No.36/38 of 1995-01 confirming the judgment and decree dated 19.03.1991 and 26.03.1991 respectively passed by the learned Munsif, Bargarh in T.S. No.7 of 1990.

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*Saukilal Chhuria (Since Dead) by* .... *Appellants*  
*his LRs*

-versus-

*Ram Gopal Meher & Another* .... *Respondents*

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

*For Appellants* - Mr.Budhiram Das  
(Advocate)

*For Respondents* - M/s.S.N.Mohapatra  
S.Ghosh and S. Mishra  
(Advocates)

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

**Date of Hearing : 03.08.2022 : Date of Judgment:08.08.2022**

*D.Dash,J.* The Appellants, by filing this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 16.07.2002 and 22.07.2002 respectively passed by the learned Additional District Judge (FTC), Bargarh in Title Appeal No.36/38 of 1995-01.

By the same, the Appeal filed by the original Appellant under section 96 of the Code has been dismissed and thereby the judgment and decree dated 19.03.1991 and 26.03.1991 respectively passed by the learned Munsif, Bargarh in T.S. No.7 of 1990 have been confirmed. The suit filed by the Respondents, as the Plaintiffs, has been decreed issuing permanent injunction against the Appellant (Defendant) from obstructing the passage running on Schedule-B land in any manner and also to remove the obstruction caused by him by fixing the one leafed door thereon.

The original Appellant (Defendant) having died during pendency of this Appeal, his legal representatives are now pursuing this Appeal on being substituted.

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 Plaintiffs' case is that they being the husband and wife, had purchased Ac.0.05<sup>3</sup>/<sub>4</sub> decimals of land under registered sale deed dated 5.8.1987. It is stated that the suit passage is the only passage available for them to approach their said purchased land from the Municipal road to the west. The Plaintiffs purchased the land from the wife of Gunanidhi Naik by registered sale deed dated 14.4.1976 whereby she had sold 2<sup>1</sup>/<sub>2</sub> decimals of land in favour of the Defendant. The suit passage is said to be of 7 feet width towards north and it is stated that the same had been left for use of the Defendant as well as the vendor. After the death of Gunanidhi, the Plaintiffs purchased the land as described in Schedule-A of the plaint and were using the suit passage to come over the Municipal road. It is further stated that on 14.10.1989, the

Defendant fitted an one leafed temporary door made of tin on the said suit passage near the municipal road on the west. This caused obstruction of the passage and the same was thus closed for the Plaintiffs as to approach their land. Protest being made by the Plaintiffs, the Defendant did not pay any heed to that. So, the suit came to be filed.

4. The Defendant claims to have purchased his land from the original owner Gunanidhi by registered sale deed 16.04.1976. It is stated that Gunanidhi transferred the suit passage of seven feet width to the Defendant, who since the date of his purchase is in possession of the suit land as well as the passage by constructing house and putting boundary over the same. It is denied that the vendor had left the suit passage for use of the Defendant. It is rather the specific case of the Defendant that the vendor had transferred the passage to the Defendant for his use and occupation by way of sale. On the very day of execution of the sale deed, Gunanidhi entered into an agreement with the Defendant to sell and delivered possession of entire Ac.0.06 decimals of land to the Defendant, who is accordingly continuing to possess the same. It is further stated that after the death of Gunanidhi, his wife and daughters had full knowledge regarding the agreement as they had the notice to that effect. The Defendant thus alternatively claims to have perfected his title by way of adverse possession.

5. The Trial Court, on the above rival claims, in total has framed five issues. The Trial Court, upon examination of evidence and their evaluation, has said that Schedule-B land used as passage is the only passage from Schedule-A land to the Municipal road. It is further stated that the Defendant has put obstruction and, therefore, the Plaintiffs are

entitled to the relief of injunction while at the same time, the claim of adverse possession as advanced by the Defendant has been rejected.

6. The First Appellate Court, having taken up the exercise of re-appreciation of evidence as the final Court of fact, has found no such justification/reason to tinker with the findings of the Courts below and so also to reverse the decree of permanent injunction as passed by the Trial Court.

7. The Appeal has been admitted on 8.5.2003 to answer the substantial questions of law as indicated in Ground Nos.1, 3 and 4 of the Memorandum of Appeal, which read as under:-

“A. Whether the judgment and decree of the lower Appellate Court is vitiated by rejecting the application under Order 41 Rule 27 to admit the agreement to sale execute by the common vendor of both the parties and existence of which was very much pleaded in the written statement filed by the defendant as well as evidence was lead to that effect coupled with the fact that said piece of evidence would certainly directed for adjudication of the real dispute between the parties?;

B. Whether the finding of both the Courts below to the effect that the agreement to sale confers no title or possession upon the defendant till finalization of the matter in a separate suit for specific performance of contract filed by the defendants is sustainable in the eye of law when the recital of the said agreement clearly shows that a portion of the suit land was sold to the defendant by virtue of a sale deed and rest portions were intended to be sold and consideration money was paid as well as possession of the entire land was delivered to the defendant in pursuance to those instruments?; and

C. Whether the suit for permanent injunction simpliciter is maintainable in the absence of any prayer for declaration of right, title and interest?”

8. Learned counsel for the Appellants submitted that the First Appellate Court has erred in law by not granting the leave to the Defendant to adduce additional evidence in terms of the provision under Order 41 Rule 27 of the code. According to him, the Judgment and decree passed by it are liable to be set aside when the document sought to be proved through additional evidence were to enable the First Appellate Court to pronounce the judgment in ruling upon the consensus issue as the denial to admit additional evidence and consequently its non-consideration has impacted the finding on the crucial issue. He further submitted that the Courts below, without any justification and by not providing any reason, have erroneously rejected the claim of the Defendant that he has perfected title by way of adverse possession.

9. Learned counsel for the Respondents submitted that all in favour of the judgments and decrees passed by the Courts below. According to him, when the Defendant's suit for specific performance of contract, i.e., agreement for sale is still pending and that would decide the fate of the title of the Plaintiffs over the suit land now when their case is based on possession of the property in question on the strength of the registered sale deed, the Courts below have rightly issued the permanent injunction as against the Defendant.

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

11. It reveals that the sale deed admitted in evidence and marked Ext.A from the side of the Defendant is wholly silent with regard to sale of road to the Defendant when the northern boundary of the land purchased by the Defendant is stated to be road even the agreement for sale which is an unregistered one of the year 1976 does not mention

anything about the sale of passage to the Defendant. The agreement thus reveals simply leaving of a road which too is not specific. In view of the above, the First Appellate Court is found to be right in saying that even accepting that the said road, i.e, is the suit passage till a decree for specific performance in the suit at the instance of the Defendant is passed, the Plaintiffs being the purchaser, their right of enjoyment of said property cannot be denied and the Defendant cannot claim any benefit thereunder. On the admitted factual settings of the case and in the absence of drawal of any presumption as to delivery of possession of that land which is to be thrashed out in the other suit; the above view being found to be absolutely correct; the prayer of the Defendant to admit the agreement for sale as additional evidence is held to have been rightly rejected as that would have served no better purpose for the Plaintiff.

The Defendant, in his evidence, has stated that the suit passage is the only approach to his land, which he purchased from the Plaintiff to come over the Municipal road. The sketch map appended to the sale deed standing in favour of the Defendant clearly shows the extent of passage from his purchased land towards further east. These features which are glaring in evidence nullify the claim of the Defendant as regards his purchase of the said passage, moreso then in that case a passage could not have been mentioned as to be running on the northern boundary of the sold land.

The aforesaid discussion and reasons accordingly provide answers to the substantial questions of law running against the case/claim of the Defendant, which in turn, leads to confirm the judgments and decrees passed by the Courts below.

12. Resultantly, the Appeal stands dismissed. There shall, however, be no order as to cost.

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



*Basu*