

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.125 of 2002

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 15.07.2002 and 23.07.2002 respectively passed by the learned Additional District Judge, Fast Track Court, Bhadrak in Title Appeal No.08 of 1992 setting aside the judgment and decree passed by the learned Additional Munsif, Bhadrak in O.S. No.331 of 1987-I.

Chintamani Nayak (Since Dead) ***Appellants***
through his L.Rs

-versus-

Sri Chitanya Charan Singh & ***Respondents***
Another

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

For Appellants - Mr.D.K. Mishra
For Respondents - Mr.Maheswar Mohanty
(For R.1)
Mr.Sangramjit Panda
(For R.2)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 09.03.2022 : Date of Judgment:29.03.2022

The original Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree dated 15.07.2002 and 23.07.2002 respectively passed by the learned Additional District Judge, Fast Track Court, Bhadrak in Title Appeal No.08 of 1992.

By the same, in the Appeal filed by Respondent No.2 (Defendant No.2) under section 96 of the Code has been allowed and thereby the judgment and decree passed by the learned Additional Munsif, Bhadrak in O.S. No.331 of 1987-I have been set aside. The original Appellant, who as the Plaintiff, had instituted the suit and obtained the decree of permanent injunction against the Respondents (Defendants), has thus been non-suited.

During pendency of the Appeal, the original Appellant (Plaintiff) having died, his legal representatives have come on record and are now pursuing the Appeal.

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 Suit.

3. Plaintiff case is that the suit land originally belonged to one Gangadhar Nayak, who had gifted the same to Defendant No.1. It is stated that Defendant No.1 since was a minor at the time of gift, he was represented by his father as the guardian. The deed of gift was executed by Gangadhar Nayak on 08.11.1958, which is in respect of the suit land. The Defendant No.1's father and after him, the Defendant No.1 was in peaceful possession of the same. It is stated that Defendant No.1 being in need of money, has sold the suit land by registered sale deed on 05.04.1976 to the Plaintiff for valuable consideration followed by delivery of possession. So, the Plaintiff asserts that he is in possession of the property in question from the year 1976 on the strength of his purchase as the owner. Alleging that on 09.11.1987, the Defendants, denying the title of the Plaintiff, threatened to demolish the ridge

running on the southern side of the land, the suit has come to be filed against the Defendants who are two brothers.

4. The Defendant No.2 contested the suit by filing the written statement. It is stated that his father had acquired the property in the name of his brother (Defendant No.1) who then was a minor. After the death of the father of the Defendants, the Defendant No.1, his mother and brother (Defendant No.2) jointly possessed the suit land being the owners of the same. It is his case that there is no way to go to the road from the residential house of the Defendants except the suit land, which is used by them as part of the homestead land. So, it is said that the Plaintiff is never in possession of the suit land when his house is at a distance of 3 to 4 miles. The sale deed said to have been standing in favour of the Plaintiff has been impeached by saying that as in the year 1976, the Defendant No.1 was insane; taking advantage of the insanity of Defendant No.1, the Plaintiff, who was looking after the family affairs of the Defendants, has managed to obtain the sale deed from Defendant No.1 falsely describing the suit land as 'Chas Land' for a meager consideration of Rs.1000/- and accordingly, has obtained the record in his name in the M.S. operation.

5. Faced with above rival pleadings, the Trial Court has framed in total twelve (12) issues. Coming to answer issue no.7 as to the genuineness of the gift deed dated 08.11.1958, upon examination of the evidence and their evaluation, the Trial Court has answered the same in favour of the Plaintiff.

Then proceeding to answer issue no.8 as to the validity of the sale deed dated 05.04.1976 executed by Defendant No.1 in favour of the

Plaintiff, the answer has been rendered against the Defendants. With all these answers, the suit filed by the Plaintiff being decreed, the Defendants were restrained by a decree of permanent injunction as prayed for.

6. The Defendant No.2 being aggrieved by the result in the suit, has carried the First Appeal.

The Appeal has been allowed only on the grounds that in the facts and circumstances and in view of the evidence on record, the suit, as laid for the relief claimed is incompetent and not maintainable. It is said that the Plaintiff being under legal obligation to seek declaration of his right, title, interest and possession over the suit land with the consequential relief of permanent injunction, since has filed the suit for permanent injunction simpliciter, he is to be non-suited. It is stated that the suit as laid is hit under the proviso-II to section 34 of the Specific Relief Act.

At this stage, it is pertinent to mention that when it was stated that the Respondent No.1 is mad, Mr.Maheswar Mohanty, learned counsel, Orissa High Court Bar Association has been appointed as his guardian.

7. The present Appeal has been admitted on the following substantial question of law-

“(a) Whether in absence of a declaration of right, title and interest, the relief of permanent injunction can be granted?;

(b) Whether Proviso-II to Section 34 of the Specific Relief Act, 1963 bars a suit for permanent injunction in absence of any declaration of right, title and interest?”

8. Mr.Prabhab Behera, learned counsel on behalf of Mr.D.K. Mishra, learned counsel appearing for the Appellants submitted that the

First Appellate Court, without examining the rival case projected in the pleading as also without going through the evidence touching all those factual aspects, has fallen in grave error by holding that the suit as laid for the relief claimed is not maintainable. He submitted that in the facts and circumstances of the case, when the parties have gone in seeking the decision on their right competing claim of title, interest over the suit property as also the possession and those have been answered by the Trial Court; it was no more permissible for the First Appellate Court to say that the Trial Court, without any prayer of declaration, should not have entered into that arena in adjudicating those issues. He further submitted that the First Appellate Court in ultimately holding the suit as not maintainable has not kept the settled position of law in mind and the proviso-ii of section 34 of the Specific Relief Act ought not to have been held to be standing against the maintainability of the present suit.

9. Mr.Sangramjit Panda, learned counsel for the Respondent No.2 submitted all in favour of the conclusion recorded by the First Appellate Court. According to him, when the right, title and interest of the Plaintiff is under challenge, the First Appellate Court did commit no mistake in holding the suit for permanent injunction simpliciter as not maintainable without the prayer for declaration of right, title and interest. He further submitted that the Plaintiff's claim of title basing on the settlement entry which does not create or extinguishes title is wholly untenable. He submitted that the First Appellate Court having duly applied its mind to the obtained facts and circumstances and examining the same keeping in view the settled law has rightly rectified the error committed by the Trial Court and for that reason, the judgment and

decree passed by the First Appellate Court in non-suiting the Plaintiff is unassailable.

Mr. Maheswar Mohanty, learned counsel, who has been appointed as the guardian of Respondent No.1, reiterates the above submission of Mr. Panda, learned counsel for the Respondent No.2.

10. Keeping in view the submissions made, I have carefully gone through the judgments passed by the Courts below. I have also read the plaint, written statement and have perused the evidence on record.

11. Before taking up the exercise of searching out the answer to the substantial questions of law in addressing the rival submission, it would be profitable to state the general principles as to when the very suit for permanent injunction will lie and when it is necessary to file a suit for declaration and/or possessing with injunction as a consequential relief.

The prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to have arisen over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown.

A prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. Thus, an action for declaration, is the remedy to remove the cloud on the title to the property.

It is the settled position of law that where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's

title, it does not amount to raising a cloud over the title of the plaintiff and it would not be necessary for the plaintiff to sue for declaration. The defendant/s when discloses/disclose in his/their defence, the details of the right or title claimed by him/them, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to seek the declaration either by amending the plaint in seeking the said relief or withdrawing the suit to file another duly constituted suit with permission of the court. It may even after dismissal of the suit for injunction simpliciter where the suit raised only the issue of possession and not any issue of title, file a fresh suit.

12. It is also the settled position of law that in a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession.

In the case of *Anathula Sudhakar v P. Buchi Reddy (Dead) By LRs*; (2008) 4 SCC 594, the position with regard to the suit permanent injunction simpliciter relating to immovable property has been summarized as under:-

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.;

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.;

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title either specific, or implied. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.; and

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

13. Adverting to the case on hand, it is here seen that the plaint contains the averments regarding the title of the property as resting on

the Plaintiff on the basis of the sale deed from the Defendant No.1. The Defendant No.1 although has not contested the suit, his brother, the Defendant No.2, contested the suit. He has gone to deny those averments and plead all those facts impeaching the said registered deed which the Plaintiff projects to be his triumph card. The Trial court has framed issues on all those scores, which are issue nos.8, 9 to 10 and then it has gone to investigate and examine the evidence let in by the parties in finally rendering a finding on the question of title. In taking up that exercise, it being duty bound has, however, not found that the matter does not involve complicated question of fact and law relating to title. The Trial Court has also not so expressed in finding the matter to be simple. It has straightway decided the issue regarding title even in the suit for injunction in ultimately taking a view that the Plaintiff having acquired title and possession; he is entitled to a decree for injunction as prayed for. When the Defendant No.2 has raised the issue of insanity of the Defendant No.1; the same has not been enquired into but merely for his absence, he being set ex parte, the suit has been decided. In so far as the vital aspect of possession of the suit land is concerned; the Trial Court has also not separately undertaken the discussion of evidence as to possession and has not recorded the answer that the Plaintiff is in possession of the property as on the suit in overruling the possibility that the Plaintiff's move in filing this suit for permanent injunction is in the garb of a suit for recovery of possession and avoid the declaration of title where he may face the risk in approaching the Court in a shortcut manner. Thus, this Court finds that the Trial Court has not used its discretion carefully in identifying the case to be an exception to the normal rule that question of title will not be decided in suits for

injunction. In that view of the matter, the suit filed by the Plaintiff seeking the relief of permanent injunction without asking for declaration of his right, title and interest over the immovable property is not maintainable. Although the First Appellate Court has not examined the matter from proper angles and assigned the required reasons yet for all what have been stated above; the conclusion of the First Appellate Court is not liable to be disturbed.

14. Aforesaid discussion thus provide the answer to the substantial question of law against the Appellant (Plaintiff) which run to confirm the judgment and decree passed by the First Appellate Court.

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

