

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.72 of 1999

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 23.12.1998 & 07.01.1999 respectively passed by the learned District Judge, Sundergarh, in Title Appeal No.22 of 1993 confirming the judgment and decree dated 07.05.1993 & 26.06.1993 respectively passed by the learned Munsif, Sundergarh in Title Suit No.18 of 1991.

Maheswar Patel & Others ***Appellants***

-versus-

Khatkuri Gond & Others ***Respondents***

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

For Appellants - Mr. Debasis Pattnaik
(Advocate)

For Respondents - M/s. N.C. Pati, S.K. Acharya,
A.K. Mohapatra & P.K. Khuntia,
(Advocates for R.1 to 6)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 12.07.2022 : Date of Judgment: 18.07.2022

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 23.12.1998 & 07.01.1999 respectively passed by the learned District Judge, Sundergarh, in Title Appeal No.22 of 1993.

By the same, the Appeal filed by the present Appellants, being the unsuccessful Plaintiffs under section 96 of the Code has been dismissed and thereby the judgment and decree dated 07.05.1993 & 26.06.1993 respectively passed by the learned Munsif, Sundergarh in Title Suit No.18 of 1991, have been confirmed

These Appellants (Plaintiffs) thus have been non-suited in the suit that they have filed against the Respondents (Defendants) filed the suit.

2. For the sake of convenience, in their 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 filed the suit in their representative character representing the villagers of Chitabhanga in the township of Sudnergarh for declaration of their right and title over the suit land seeking further prayer to direct the Defendants not to do any overt-act over the suit land. The suit land measures Ac.0.03½ decimals and stands recorded in the name of the ancestors of the Defendants in the record of the Sabik Settlement, which came to be subsequently recorded in the names of the fathers of the Defendants in the record of Hal Settlement. It is stated that when the fathers of the Defendants were continuing to exercise the right of their ownership over the suit land and as such possessing the same, in a village meeting convened sometime in the year 1948, one of the recorded tenants, namely, Hazaru Gond agreed to dedicate/endow the suit land in favour of the villagers of Village Chittabhanga represented by the Plaintiffs for the purpose of observance of religious festivals over the same and then he did so. It is asserted that since the year 1948, the villagers including the Plaintiffs have been using the suit land for the performance of religious festivities by holding

Astamprahari and Rahas etc. It is alleged that sometime in the year 1991, the Defendants openly declared that the suit land belong to them and so they would possess the same. The suit, therefore, came to be filed.

4. The Defendants contested the suit. In their written statement, they have asserted that the property is their ancestral property and neither Hazaru nor any of his heirs or they themselves have ever given or dedicated or endowed or set part the suit land for the purpose of holding religious festival over there by the villagers. It is their case that the suit land stood all along recorded in the name of their ancestors and that remained the possession the subsequent Settlement Operation. It is stated that they are in possession of the suit land and paying the rent to the State. It is further said that religious festivity like Astamprahari and Rahas are being held over the suit land for 3-4 days in an area and that has all along been with their permission.

5. On the above rival pleadings, the Trial Court has framed as many as eight issues. Coming to answer the crucial issue, i.e., issue no.4 as to the establishment/acceptance of the case of the Plaintiffs that one Hazaru Gond had given the suit land to the villagers for its use by them for observance of religious festivities, upon examination of the evidence and their analysis, the answer has been returned in the negative. This has practically led the Trial Court to dismiss the suit.

6. The Plaintiffs, having failed in the suit in getting the relief, as prayed for, have filed the First Appeal, which too has failed.

7. The present Appeal has been admitted on 30.03.1999 to answer the substantial questions of law, as indicated in Ground No.II(A) & (D), which read as under:-

“(A)Whether adverse inference can be drawn for non-examination of all the Plaintiffs?; and

(D) Whether Exts.1 & 2, that is Yadast and ROR read with the evidence conclusively prove that the disputed land was being used as Rahas Mandap/Bijesthali of Lord Radha & Krishna?”

8. Learned counsel for the Appellants submitted that the Courts below, assigning some flimsy reasons, have declined to accept the claim of the Plaintiffs-villagers over the suit land for its use by them for holding religious festivities all through from the year 1948 onwards. Inviting the attention of the Court to the relevant paragraphs of the judgments of the Court below, it was submitted that when one of the Plaintiffs has been examined, the Courts below have unnecessarily drawn adverse inference for non-examination of the other Plaintiffs. He further submitted that the documentary evidence (Exts.1 & 2) have not been taken into account in their proper perspective and viewed as such with the other evidence available on record. According to him, although the evidence on record clearly establish that the Plaintiffs-villagers have been possessing the suit land by using the same for holding religious festivities, the Courts below have erroneously held in the negative, which according to him, is the outcome of perverse appreciation of evidence.

9. Learned counsel for the Respondents submitted that on the basis of the evidence on record, the Courts below are absolutely right in concluding the Courts below are absolutely right in concluding that the Plaintiffs’ claim over the suit land seeking the reliefs, as advanced in the

suit, has no leg to stand. According to him, merely for the reason that for some period once in a year or so, some religious festivities have take place over the suit land, that cannot make the Plaintiffs-villagers entitled to seek a decree for declaring their right and title over the same in restraining the Defendants-true owner from exercising their right over the suit land in any manner as they like. He submitted that in the absence of any such documentary evidence to support the claim and when also no such contemporaneous document is available in support of such long and continuous holding of the religious festivities over the suit land in particular, the Courts below are right in dismissing the suit.

10. Keeping in view the above submission, I have carefully read the judgments passed by the Courts below. I have also gone through the pleadings and the evidence on record.

11. In the given case, the Plaintiffs, in order to establish their case/claim over the property in question, have proved two documents, which are Ext.1 & 2. Those are; (a) the entries in the Yadast (Ext.1), which is to the effect that the villagers are using the land for Rahas Mandap; and (b) the khatian (Ext.2), which concerns with the suit land and shows that the land is being used as Bijesthali of Radha & Krishna Deity.

Admittedly, the suit land is the ancestral property of Defendants. Hazaru Gond was not the sole owner of the land. The evidence on record is not at all sufficient to show that Hazaru for and on behalf of all the owners of the suit land, had any such authority and that in exercise of that authority he had parted with that land permanently for the use of the villagers in holding religious festivities over there in binding all the owners.

Admittedly, not a scrap of paper has been filed in support of the fact that Hazaru had ever parted with the land for the purpose, as aforesaid. When it is said in the evidence that there was a meeting wherein that Hazaru so declared for parting the suit land, no other details with regard to the manner of holding of the meeting as such as who presided over the same and if any other conditions had been imposed for the purpose are forthcoming. The oral evidence let in by the Plaintiffs has been discussed in extensio by the Courts below. The Defendants are paying the rent of the suit land to the State and the Plaintiffs have let in evidence that except performing Rahas once a year, they do not use the land for any other purpose for the rest of the year. In such state of affair in the evidence, the Trial court having said that the suit land was never given to the Plaintiffs for observance of the religious festivities by the villager thereon is probable and believable, this Court finds no such justifiable reason to accord any disapproval to it and the First Appellate Court when has so held on re-appreciation of evidence at its level, with which no such perversity is noticed; the same is not liable to be disturbed.

The above discussion accordingly provides answer to the substantial questions of law, which run in favour of confirmation of the judgments and decrees passed by the Courts below.

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

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

Basu