

HIGH COURT OF ORISSA : CUTTACK

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 08.07.98 and 23.07.1998 respectively passed by the learned Civil Judge (Senior Division), Dhenkanal in TA No.14 of 1995 in confirming the judgment and decree dated 06.04.1995 and 10.04.1995 respectively passed by the learned Civil Judge (Junior Division), Dhenkanal in Title Suit No.36/93.

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Ujala Sahoo & Others

::: *Appellants.*

-:: VERSUS ::-

Satyananda Sahoo & Another

::: *Respondents.*

Advocate(s) who appeared in this case by hybrid arrangement (virtual/physical) mode.

For Appellants

... M/s.G. Mukherjee, Sr. Advocate
& P. Mukherjee.

For Respondents

... M/s. B.C. Panda,
S. Mishra & A.K. Mishra,
(Advocates) (R.1)
Mr. M.K. Mazumdar, Advocate
(R.2).

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

Date of Hearing: 20.10.2022 :: Date of Judgment:23.12.2022

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 passed by the learned Civil Judge (Sr. Division), Dhenkanal in Title Appeal No.14/8 of 1995-97. By the same, the Appeal filed by the

present Appellants being the unsuccessful Plaintiffs in Title Suit No.36 of 1993 of the Court of the learned Civil Judge (Jr. Division), Dhenkanal under section 96 of the Code has been dismissed.

These Appellants being the Plaintiffs before the Trial Court had filed the suit for declaration that the recording of the name of the Respondent No.1(Defendant No.1) in the Hal Settlement Patta in respect of the property described in schedule 'B' of the plaint as wrong with further prayer for confirmation of possession and in case of dispossession for recovery of possession. The present Respondent No.1 had been arraigned in the said suit as the Defendant No.1 and the Respondent No.2, who happens to be the brother of the Appellant Nos.2 to 6 and son of Appellant No.1 had been arraigned as Defendant No.2. The suit having been dismissed by the Trial Court, these Appellants as the unsuccessful Plaintiffs had carried the First Appeal, which too has been dismissed and thus they have been non-suited.

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 case of the Plaintiffs is that Dukhabandhu Sahoo and Kunja Sahoo were two brothers. Dukhabandhu died leaving behind his only son Chandra whereas Kunja died in the year 1950 leaving behind his widow Sampari. On the death of Chandra in the year 1982, the Plaintiff No.1 as

his widow and Plaintiff Nos.2,3 and Defendant No.2 as his sons and Plaintiff Nos.4 to 7 as his daughters came to succeed his properties as his legal heirs.

It is stated that Kunja and Sampari were in joint mess and estate and Sampari died while in jointness with Dukhabandhu and his son Chandra. The properties described in schedule 'B' of the plaint is as per Hal record and those correspond to the property described in schedule 'A' which is as per the old record. After the death of Kunja, his wife Sampari became the owner of the suit property and she sold the same to Lambodar Sahoo, Sambhu Sahoo, Punia Sahoo, Sambhu @ Banambar Sahoo and Krushna Sahoo. Challenging the said sale, Chandra the husband of Plaintiff No.1 and father of the other Plaintiffs and Defendant No.2 had filed Title Suit No.37 of 1953 in the Court of the Munsif, Dhenkanal for declaration of his title in respect of the suit property and for confirmation of possession with further prayer to declare the said sale deed executed by Sampari in favour of Lambodar and others as illegal, invalid and not binding on him. The suit was dismissed by the Trial Court. The First Appeal being preferred by the unsuccessful Plaintiffs, the same was allowed by holding that the alienation of the suit property by Sampari under the registered sale deed is not binding on the Plaintiff after the death of Sampari. That judgment and decree in the First Appeal being again questioned in the Second Appeal before this Court in S.A. No.25 of 1957, that was dismissed. The order

attained finality in that suit to the effect that the alienation of the suit property by Sampari in favour of Lambodar and others is not binding on the Plaintiff, i.e., the husband of the Plaintiff No.1 and father of the Plaintiff Nos.2 to 6 and Defendant No.2 after the death of Sampari.

The Plaintiffs further assert that in the month of December, 1965 Chandra became the absolute owner of the suit property described in schedule 'A' of the plaint in view of death of Sampari and as such he came to possess the same till his death in the year 1982. The Plaintiffs and the Defendant No.2 being his heirs continued with the possession of the said land. However, in the settlement operation, the suit land has been erroneously recorded in the name of Defendant No.1, who is a stranger to the family. It is stated that Defendant No.1 is neither the natural nor the adopted son of Kunja and Sampari. Such recording since came to cast cloud over the title and possession of the suit land by the Plaintiffs and Defendant No.2, the suit came to be filed.

4. The Defendant No.1 contested the suit by filing the written statement. It is stated that he is the adopted son of Kunja and Sampari and thus it is not correct to say that the branch of Kunja stood extinguished. He states that Kunja and Dukhabandhu were living in joint family and Kunja died during the jointness. It is, however, stated that after the death of Kunja, Sampari filed Title Suit No.5 of 1959 in the Court of the Subordinate Judge, Dhenkanal against Chandra, the husband of the

Plaintiff No.1 and the father of Plaintiff Nos.2 and 6 and Defendant No.2. The suit was for partition of the joint family property and for allotment of the share. The suit came to be decreed on 08.08.1960 and in the final decree proceeding, the share of Sampari was carved out and she was given the delivery of possession of those lands in an execution proceeding. It is stated that after the death of Sampari, Chandra did not succeed to the properties of Kunaj and he did not possess the said land till his death in the year 1982 as stated by the Plaintiff.

The Defendant No.1's specific case is that Sampari had adopted him as her son observing all the formalities including the performance of giving and taking ceremony on the Sreepanchami day of the year 1964 and since then he has been staying with Sampari in their house. Sampari having died in the year 1965, the Defendant No.1 claims to be the absolute owner of the suit property along with other properties which Sampari had got in the partition suit. When Chandra created disturbance in the peaceful possession of the land, Title Suit No.41/1971 had been filed by the Defendant No.1 to declare him as the adopted son of Sampari with further prayer that he in that capacity be declared to have inherited all the properties left by Sampari. The said suit was decreed on contest against Chandra and the Defendant No.1 was declared as the adopted son of Sampari. Chandra having preferred First Appeal under section 96 of the Code, i.e., Title Appeal No.15/1973, that stood dismissed. He thus claims to be the owner

in possession of the property in suit. He has also set up an alternative plea of acquisition of title by way of adverse possession over the suit land in again asserting that the suit land has been correctly recorded in his name being the adopted son of Sampari.

5. The Trial Court, on the above rival pleadings having framed eight issues has rightly taken up Issue Nos.3 and 4 first for decision. On consideration of evidence and their evaluation, the findings on these two issues have been returned against the Plaintiffs by holding that the Defendant No.1 being the adopted son of Late Sampari is entitled to succeed to all their properties and not the Plaintiffs and Defendant No.2 as claimed.

Thereafter going to decide the other issues, i.e., Issue Nos.5 and 6 which are interlinked as to the possession of the suit land by the Plaintiffs, those again on examination of evidence and their analysis have been answered against the Plaintiffs. Having returned the findings on the issues as aforesaid, the Trial Court has dismissed the suit.

6. The Plaintiffs being aggrieved by the said order of dismissal of their suit having carried the First Appeal have been unsuccessful. Hence, this Second Appeal.

7. The Appeal has been admitted to answer the substantial questions of law as mentioned in paragraph 7 of the Memorandum of Appeal, which read as under:-

“(a) Whether Defendant No.1 who was adopted by Sampari in 1964 can claim any interest in the proerpty of Kunja which had already been alienated by the limited owner Sampari in 1953?

(b) Whether the Reversionary Right already decided in S.A. No.25 of 1957 in favour of the predecessor in interest of the Plaintiffs be set at naught by subsequent adoption of Defendant No.1 by the Limited owner?

(c) Whether provisions of Section 14 of the Hindu Succession Act will enure to the benefit of Defendant No.1 when Sampari was admittedly not in possession of the property on the date the said Act came into force?

(d) Whether the Defendant No.1 can divest the Plaintiffs of the Reversionary interest which had vested in them prior to the date of his adoption?

(e) Whether the decision in S.A. No.25/1957 will be res judicata against the plea set up by the Defendant No.1 in the present suit?

8. Learned Senior Counsel for the Appellants submitted that even if accepting for a moment that Defendant No.1 was the adopted by Sampari in the year 1964, the Courts below ought not to have held that he has a claim over the interest of the property of Kunja which had already been alienated by Sampari in the year 1953 when she was having the limited ownership. He further submitted that the reversionary right of Chandra, who happens to be the husband of Plaintiff No.1 and father of Plaintiff Nos.2 to 7 and Defendant No.2 having been declared by this Court finally in Second Appeal No.25/1957 and the adoption of Defendant No.1 by Sampari having taken thereafter; the said right of Chandra as the reversioner could not have been set at naught and it does not get nullified. According to him, the Trial Court has failed to attach right importance to the finality of the order passed in the Second Appeal No.25/1957. It was

also submitted that when Sampari was not in possession of the suit property as on the date when the provisions of Hindu Succession Act, 1956 came into force; the provision of section 14 of the Hindu Succession Act, 1956 should not have been held to have come into play to clothe the absolute right over the said property sold by Sampari upon her.

9. Learned counsel for the Respondent no.1 submitted that in this suit the effect of judgment rendered in the Second Appeal No.25 of 1957 is not nullified and giving all respect to the said decision in the changed circumstances, the Courts below have rightly found the Plaintiffs' claim over the property in the suit as untenable and that of the Defendant No.1 has been rightly accepted. He submitted that in the year 1957 there being a conclusive finding that the property sold by Sampari was not for legal necessity and it had been said that Chandra being the then reversioner that sale would have no effect after the death of Sampari and as such not binding on Chandra. But thereafter Sampari having adopted the Defendant No.1 which status of Defendant No.1 has been declared by the competent Civil Court in presence of Chandra, the present claim of these Plaintiffs as the legal heirs of Chandra has no basis at all. According to him, the Courts below have rightly dismissed the suit.

10. Learned counsel for the Respondent No.2 supported the submission of the learned Senior Counsel for the Appellants.

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

12. It is not in dispute that Chandra had filed Title Suit No.37/1953 questioning the sale of land made by Sampari in favour of Lambodar and other. The matter having come to this Court in Second Appeal No.25/1957, it had been held that Chandra's right as reversioner would not be affected after the death of Sampari. The sale made by Sampari although was held to be not for legal necessity, it was undoubtedly conferred limited right of ownership and enjoyment upon Lambodar and others, the purchaser during the lifetime of Sampari and was to continue as such till her death.

Sampari in the year 1964 has adopted Defendant No.1. That adoption having been the subject matter of a later suit, i.e., Title Suit No.41/1971, the status of the Defendant No.1 as the adopted son of Sampari and Kunja has been declared and that has attained finality being not set aside in Appeal preferred by Chandra. The said judgment is a judgment 'in rem' and binds the whole world. It not only was binding upon Chandra but also against his legal representative who are claiming through him. Sampari died in the year 1965. Samapri had sold some lands to Lambodar and others in the year 1953 when she was the limited owner and, therefore, those purchasers were having the limited right over the properties. When Hindu Succession Act, 1956 came into force, the limited right concept stood abrogated and therefore, though that property in the

hands of Lambodar and others remained with the limited ownership, on the death of Sampari, it has to come to her heir through her husband. So by then, the Defendant No.1 having been adopted as the son as on the death of Sampari, the Defendant No.1 being the heir of Sampari and Kunja succeeded to their properties and Chandra was no more the reversioner and his reversionary right was stood extinguished. Now, therefore, on the death of the Sampari, Defendant No.1 as her adopted son is entitled to the properties of Sampari both her separate as well as in respect of her interest in her husband's property, which she had got in that partition suit that she had filed against Chandra. The right of reversioner comes into play on the death of the limited owner and therefore, that finding which had been rendered in the Second Appeal, i.e., S.A. No.25 of 1957 had been rendered by considering the factual setting as it was prevailing on that day. The person, who would be the reversioner is decided as on the death of the limited owner and by legal fiction, the death of the last male owner is deemed to have taken place as on the death of the limited owner as to who are the legal heirs of that male owner as them; are taken to be the reversioners. The death of last male owner thus remain under suspension till the death of the limited owner. So, in the facts and circumstances as obtained, Chandra had absolutely no right over the property which Sampari got in partition as also over the property which she had sold when she was the limited owner.

13. Law has also been well settled in case of *V. Tulasamma & Ors. vs V. Sesha Reddi (Dead) By L. Rs.*, AIR 1977 SC 1944, followed in and series of other cases of the Apex Court as well as our own High Court that the word 'possessed' as finds mention in section 14 of the Hindu Succession Act, 1956; is not only referable to the physical possession but it encompasses within itself even the right to possess.

For the forgoing discussions and reasons, the substantial questions of law stand answered against the Appellants (Plaintiffs). This in turn goes to confirm the order of dismissal of the suit filed by the Appellants (Plaintiffs) as have been passed by the Courts below.

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

(D. Dash),
Judge.

Himansu