

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.35 of 2014

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment dated 28.11.2013 passed by the learned Additional District Judge, Patnagarh in RFA No.130/24 of 2007-13 confirming the judgment dated 22.09.2007 passed by the learned Civil Judge, Senior Division, Patnagarh in Title Suit No.36 of 2001.

Suratha Putel (Since Dead) by his Appellants
LRs

-versus-

Sudhir Kumar Mehar & Others Respondents

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

For Appellants - Mr.S.Mishra,
(Advocate)

For Respondents - Mr.B.Sahoo
(Advocate for R.1)

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 13.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree passed by the learned Additional District Judge, Patnagarh in RFA No.130/24 of 2007-13.

By the same, the Appeal filed by the present Appellant as the aggrieved Defendant under Section 96 of the Code has been dismissed and thereby the judgment and decree passed by the learned Civil Judge,

Senior Division, Patnagarh in Title Suit No.36 of 2001 in decreeing the suit filed by the present Respondent No.1, as the Plaintiff, declaring his right, title and interest over the suit property with a direction to the Appellant and Respondents other than Respondent No.1(Defendant) to deliver the possession of the suit land to the Respondents No.1 (Plaintiff) have been confirmed.

It may be stated here that during pendency of this Appeal, the original Appellant (Defendant No.1), having died, his legal representatives, being substituted, are pursuing this 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 Trial Court.

3. The Plaintiff's case is that the suit land described in the schedule of the plaint is his ancestral property. One Akula Putel, the father of Defendant No.1, during the year 1965 to 1970, had approached Gurubar Meher, who happens to be the grandfather of the Plaintiff with a request to provide a part of the suit land to enable him to reside therein by constructing a temporary Kuchha house over thereon. Gurubar, acceding to the request, had allowed him to occupy a part of the suit land with the condition that he would so vacate the same as and when required. It is stated that being so permitted to occupy, Akula raised a mud walled house over there in the year 1970 and resided thereon with his family. After the death of Akula, the Defendant No.1 and his mother (Defendant No.2) stayed there. The Defendant No.3, who had migrated from Patnagarh to Tendapadar in the year 1980, was working as a filed servant. On his request, he was allowed to reside over the remaining vacant portion of the suit land with the same condition as to deliver the

possession as and when so required. It is stated that the Defendant No.3, with his son (Defendant No.4) have been residing over there by constructing a temporary residential house. The joint family properties of the Plaintiff was partitioned in the year 1980 and the suit land with other undisputed land fell to the share of the Plaintiff, which he got mutated in his favour as per the order passed in Mutation Case No.4/759 of 1984 and Mutation Case No.4/340 of 1998. The Plaintiff then asked the Defendants to vacate the suit land. However, they flatly refused. So, the suit came to be filed.

4. The Defendant No.1 contested the suit by filing written statement. His specific stand is that the possession of the suit land by his father and thereafter by him is not at all permissive as pleaded in the plaint and rather it is as of right. It is stated that his father Akula had purchased the suit land from Gurubaru on 19.09.1946 in exchange of a pair of young bullocks. On the same day, Gurubaru delivered the properties and executed a plain paper unregistered deed of sale in presence of the witnesses. Consequent upon the same, Akula possessed the property on that very day being the original owner having the right, title and interest, which continued all through till his death in the year 1982. Akula was residing with his family by constructing a house over there. During his life time, in the year 1980, Akula is said to have given a portion of the suit land to Defendants 3 and 4 to reside over there with a condition that they would vacate the same as and when required and accordingly, they occupied the said portion of the suit land by putting up a dwelling house over there. Similarly, it is said that he had also sold a portion of the suit land to one Hari Chand Rai Agrawal in the same year and possessed the remaining area of the suit land to the extent of Ac.0.68 decimals exclusively. After the death of Akula, the Plaintiff and his mother

(Defendant No.2) continued to reside in the house standing over the suit land.

5. On the above rival pleadings, the Trial Court has framed seven issues. In order to answer the crucial issue, i.e., issue no.3 as to whether the Defendant No.1's father had purchased the suit property from Akula, the grandfather of the Plaintiff under the unregistered deed dated 19.09.1946, the evidence have been discussed. The Trial Court, having examined the evidence in great detail and their assessment, has finally answered that issue in the negative in saying that it has not been provide that the Defendant No.1's father purchased the suit property from the grandfather of the Plaintiff, namely, Akula under unregistered deed dated 19.09.1946. Then, coming to the question of acquisition of title by way of adverse possession, the claim of Defendant No.1, on that score, has been repelled. Practically, the answers to these issues, have laid the Trial Court to decree the suit by declaring the right, title and interest of the Plaintiff over the suit land and has right to possess.

6. The Defendant No.1, being aggrieved by the said judgment and decree passed by the Trial court, having preferred the Appeal, has not been able to test the success.

7. Learned counsel for the Appellants submitted that the Courts below are not justified in doubting the genuineness of Ext.A, which is the unregistered deed dated 19.09.1946 executed by Gurubaru and Akula. He submitted that the reasons assigned by the Courts below for the said purpose are wholly untenable. He further submitted that the Courts below are also not justified in discarding Ext.A and even declined to hold that Akula, being in possession of the suit land, on the basis of the same, from that date onwards, he having remained in open,

peaceful and continuous possession for all these years exercising all the rights of ownership and as its owner by denying the title of the true owners there has been perfection of title over the suit property by way of adverse possession by these Defendants 1 and 2. Accordingly, he urged for admission of the Appeal to answer the above as the substantial question of law.

8. Learned counsel for the Respondent No.1, in assisting the Court in the matter of admission of this appeal, has submitted all in support of the findings returned by the Courts below. According to him, on the admitted antecedent title of Gurubaru, when the Defendant No.1 has failed to establish the case of acquisition of title over the suit property by way of adverse possession through clear, cogent and acceptable evidence with regards to and satisfying all such required ingredients for the purpose, the suit has been rightly decreed. He further submitted that here the Defendant No.1, having claimed the right, title and interest over the property in the suit by virtue of that unregistered document (Ext.A) and he then having not renounced the same in establishing the case that thereafter from a particular date, he began to pose the suit land as its owner not pursuant to that Ext.A but otherwise, the plea of adverse possession itself is not legally entertainable.

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

10. It is a case where the Plaintiff has claimed the title over the property by virtue of the document Ext.A. Several doubtful features having been pointed out, the Courts below have directed themselves in conducting a microscopic examination of said document (Ext.A). The First Appellate Court, having expressed slightly different view, as taken

by the Trial Court, instead of completely agreeing with it has said that the genuineness of the document (Ext.A) is shrouded with suspicion, has gone to examine the evidence of the witnesses, who have come forward to prove the said document with reference to the entries/reflections in the papers/documents prepared during Current Settlement Operation, which have been admitted in evidence and marked Ext.2, Ext.2/A, Ext.3, Ext.4 and Ext.4/A. The discussion on that score has been made by the First Appellate Court as at Paragraph-11 of its judgment. By taking a note of the entries in Ext.2, Ext.2/A, Ext.3, Ext.4 and Ext.4/A, which show that there was the field enquiry, subsequent orders of the Revenue Authority relating to the status of the parties in so far as suit plot nos.2035 and 2036 are concerned, the conclusion arrived at that very Ext.A which is now tendered in evidence by the Defendant No.1 was not in existence at that point of time during the Hal Settlement Operation for which it was not produced there by the Defendant No.1 or his father; is wholly acceptable. Therefore, the First Appellate Court, having raised a doubt with regard to the genuineness of Ext.A, this Court finds no such reason or justification to express any disagreement with the above. Therefore, the case of Defendant No.1 that his father had given a part of the suit land to Sadhu Naik and Balaram Naik has rightly been disbelieved.

Now, coming to the case of acquisition of title over the suit land by the Defendant No.1 since the time of his father by way of adverse possession, it would be proper to take a look at the settled position of law holding the field.

11. The Hon'ble Supreme Court, in the case of Karnataka Board of Wakf –V- Government of India; (2004) 10 SCC 799 has held that in the eye of law, an owner would be deemed to be in possession of the

property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. It has been further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

In case of T. Anjanappa and Others –V- Somalingappa and another; (2006) 7 SCC 570, it has been held by the Hon'ble Supreme Court that it is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

12. On the anvil of the aforesaid principles of law set at rest; keeping in view the pleadings, as have already been stated in the foregoing paragraphs and the evidence tendered by the Defendant No.1 on whom the burden lies to prove the claim of acquisition of title by way of adverse possession by leading clear, cogent and acceptable evidence in fulfilling each of the ingredients, this Court finds that the Courts below committed no such error in holding that Defendant No.1 has failed to establish that he, has acquired perfected title over the suit land by way of adverse possession in extinguishment of the title of the true owner.

For all the aforesaid, this Court is not in a position to accept the submission of the learned counsel for the Appellants that the Appeal merits admission to answer any substantial question of law.

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

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

Basu