

**THE HIGH COURT OF ORISSA AT CUTTACK**

**SA No.203 of 2000**

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 05.05.2000 & 21.06.2000 respectively passed by the learned District Judge, Sambalpur, in Title Appeal No.18 of 1998 setting aside the judgment and decree passed by the learned Civil Judge, Junior Division, Sambalpur in Title Suit No.67 of 1996.

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***Suryanarayan Bariha & Others* .... *Appellants***

-versus-

***Gokul Chandra Pattnaik* .... *Respondent***

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

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

***For Respondent* - Mr.H.S. Mishra  
(Advocate)**

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

**Date of Hearing : 13.07.2022 : 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 05.05.2000 & 21.06.2000 respectively passed by the learned District Judge, Sambalpur, in Title Appeal No.18 of 1998.

By the same, the Appeal filed by the present Respondent, being the unsuccessful Plaintiff under section 96 of the Code has been allowed

and thereby the judgment and decree passed by the learned Civil Judge, Junior Division, Sambalpur in Title Suit No.67 of 1996 have been set aside and the suit filed by the Respondent, as the Plaintiff, against the Appellants arraigning them as the Defendants has been decreed.

It may be stated here that during pendency of the First Appeal, the present Respondent having died, his legal representatives have come on record and 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, which is a Basti plot, was in possession of his father, namely, Krupa Pattanaik during his life time. On his death, the Plaintiff continued to possess the same. It is stated that the Plaintiff and his father have thus been in possession of the suit land over a century. The suit land was not recorded in his name nor in the name of the father of the Plaintiff as it was a Basti land belonging to the State. It is asserted that the State Authorities, despite having knowledge of such constructive possession of the suit land since the time of his father, had never disturbed the same and there has been no interference from that side at any given point of time. It is stated that the Respondent, being a co-villager, on a fine morning, claimed to have purchased the suit land from one Nilabati Bebartta by a registered sale deed and on the basis of that, he attempted to disturb the possession of the suit land by the Plaintiff and his family members. In view of that, the suit came to be filed.

4. The Defendant, in his written statement, asserted to be the owner in possession of the suit land. It is stated that they have purchased the

suit land from Nilabati, daughter of Baji Patanaik. He has entered into the possession of the same being so delivered by the vendor and has been continuing to do so.

5. On the above rival pleadings, the Trial Court has framed as many as four issues. Coming to answer those issues, the Trial Court found that the suit land has been purchased by the Defendant by registered sale deed (Ext.A) and accordingly, it held that the Defendant has the right to possess the suit land which he has been possessing since 21.04.1972, i.e., from the date of purchase. Above finding being rendered on the basis of the evidence available on record, the Trial Court finally dismissed the suit.

The Plaintiff, being thus non-suited, having carried the First Appeal has been unsuccessful and, therefore, the Defendant, who has suffered from the judgment and decree passed by the First Appellate Court, has filed the present Second Appeal.

6. This Appeal has been admitted on 24.10.2000 to answer the substantial questions of law, as indicated in Ground No.1 to 4 of the Memorandum of Appeal, which read as under:-

“(1)Whether the plaintiff has got any right to question the execution of Ext.A?

(2) Whether the learned lower appellate court committed gross illegality in holding that due execution has not been proved without keeping in mind that the execution of the deed was as admitted fact by both the P.Ws and DWs and the said document was marked without objection in as much as the Plaintiff’s case was that Nilabati had no interest in the suit land?;

(3) Whether in view of the evidence of plaintiff that the suit properties was the ancestral properties of the plaintiff as well as Nilabati’s father, the learned Court below should have

come to a positive finding that the sale deed executed by Nilabati was valid?; and

(4) Whether the finding relating to possession in para-11 of lower appellate court judgment is perverse and based on no material?”

7. Learned counsel for the Appellants submitted that the First Appellate Court, without proper examination of the evidence and their analysis, has arrived at an erroneous finding that the Defendant has failed to prove the execution of the registered sale deed (Ext.A). He submitted that when the execution of the said sale deed is not denied and it is a registered one, the First Appellate Court, ought not to have pushed it beyond the arena of consideration in saying that the Defendant has failed to prove the same. He further submitted that on the basis of the evidence, the finding of the First Appellate Court ought to have been that the Plaintiff is not in possession of the suit land and it is the Defendant, who is possessing the same. He further submitted that merely for the failure of the Defendant and to establish his claim over the property by virtue of purchase, the First Appellate Court is not right in holding that the Plaintiff has the right to possess the suit land

8. None appeared on behalf of the Respondent despite opportunity.

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

10. Although it is said that the Defendant has purchased the suit land from one Nilabati, no such evidence has been let in to show that she was the owner in possession of the suit land nor at any given point of time, the suit land stood recorded in the name of her ancestor nor the

possession of her ancestor had ever been recognized at any quarter. In that view of matter, this Court finds that the Defendant's claim over the suit land on the strength of said Ext.A as such is not to be taken cognizance of and that has rightly been so held.

Now, the question arises for being answered is as to whether Nilabati was in possession of the suit land and she on executing the sale deed, has delivered the possession of the same to the Defendant.

For the purpose, it is first of all to be seen whether the claim of the Plaintiff to have been in possession of the suit land since the time of his father has been proved or not. Instead of taking much pain to go through the entire evidence, in this endeavour it would be suffice to refer the evidence of the Defendant himself. It is his statement that Baji Pattanaik was the father of his vendor and he is the brother of the grandfather of the Plaintiff. It has next been stated by him that the ancestors of the Plaintiff were in possession of the suit land. So, from that, it cannot be said that he thereby meant Baji Pattanaik only to be in possession of the suit land and not the grandfather of the Plaintiff. The evidence on record reveal that the Defendant for the first time in the year 1993, got the land demarcated. When the sale deed is of the year 1972, the later conduct on the part of the Defendant to get the purchased land demarcated in the year 1993 probablises case that either he was not in possession of the suit land or even if was in possession of the same, it was not in respect of the whole and he was not sure of the exact area and boundary in the field. This Defendant has, however, stated that as the Plaintiff did not vacate the suit land, he had initiated a criminal case. So, from that it becomes clear that the Defendant was not in possession of the suit land and he raised the dispute so as to dispossess the Plaintiff and take possession of the suit land on the basis of said sale deed. The

First Appellate Court has further discussed the evidence of the witnesses examined by the Plaintiff and the Defendant. It is seen that having made indepth analysis, the final conclusion has been that the Plaintiff has proved his case of possession of the suit land. This Court, finding no such perversity therein, finds no reason to accord any disagreement with the same.

11. At this stage, it is seen that when admittedly the property is belonging to the State, the First Appellate Court, however, has gone wrong in declaring the title of the Plaintiff over the suit land in the absence of the State being a party to the lis. Since the original owner-State is not a party to the suit, there cannot also be any decree in favour of the Plaintiff declaring his right to possess the suit land, which certainly would stand adverse to the interest of the true owner-State. However, on the basis of the evidence on record with regard to the possession of the suit land by the Plaintiff and as the Defendant's case/claim of possession of the suit land stands unacceptable; a decree of permanent injunction simpliciter restraining the Defendant from entering into the suit land and interfering with the possession of the suit land by the Plaintiff is permissible. The First Appellate Court's decree thus has to undergo modification to the extent as aforesaid.

12. In the result, the Appeal is allowed in part. The suit filed by the Plaintiff is decreed restraining the Defendant from entering upon the suit land interfering with the possession of the suit land by the Plaintiff. In the facts and circumstances, there shall, however, be no order as to cost.

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