

HIGH COURT OF ORISSA : CUTTACK
RSA NO.167 OF 2014

In the matter of appeal under Section-100 of the Code of Civil Procedure, challenging the judgment and decree passed by the learned Additional District Judge, Balasore in RFA No. 150/33 of 2004/11 in confirming the judgment and decree passed by the learned Additional Civil Judge (Sr. Division), Balasore in Title Suit No.103 of 1993-I.

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Mahendra Barik & Others :::: Appellants.

-:: VERSUS ::-

Padmavati Das & Others Respondents.

Advocate(s) who appeared in this case by video conferencing mode.

For Appellants ... M/s. Karunakr Rath, A. Sarmadia,
Advocates

For Respondents ... Ranjan Kumar Nayak,
F.R. Mohapatra,, M.K. Panda,
A.K. Saa, Advocates.

PRESENT:
THE HON'BLE MR. JUSTICE D.DASH

Date of Hearing: 17.02.2022 :: Date of Judgment: 22.02.2022

D.Dash,J. The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, ‘the Code’) have called in question the judgment and decree passed by the learned Additional District Judge, Balasore in RFA No. 150/33 of 2004-11.

By the same, while dismissing the First Appeal filed by these Appellants with the Respondent No.3 under section-96 of the Code; the First Appellate Court has confirmed the judgment and decree passed by the learned Additional Civil Judge (Sr. Division), Balasore in Title Suit No.103 of 1993-I in preliminarily decreeing the suit allotting half share over the suit land to the Plaintiff and rest half to the Defendant No.1. The Respondent No.1 as the Plaintiff had filed the suit for partition with further prayer for declaration that these Appellants (Defendant Nos.3 to 5), the Defendant No.2 and Defendant No.6 have no right, title and interest over the suit land.

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. Plaintiffs' case is that one Bhajan Das had two sons namely, Kashi and Shyam @ Dama. The land in suit stood recorded in the name of Kashi and Shyam @ Dama in the record of 1927 settlement. Later in the Major Settlement Operation of the year, 1967, the properties stood recorded in favour of the daughter of Kashi namely, Fukuli and Sarada, the widow of Shyam @ Dama. Fukuli died in the year 1970 leaving behind heirs, two daughters namely, Kaushalya and Padamabati. This Padmavati is the Plaintiff. Sarada died some time after the Major

Settlement Operation leaving behind her daughter namely, Nina, the Defendant No.1. It may be stated here that the Defendant No.1 having died during pendency of the suit in presence of her legal representatives, her name has been expunged as dead and exemption in that light has been provided.

It is stated that Kashi married Defendant No.2 and her husband was looking after the property affairs. Taking advantage of the same, he falsely got the land in question recorded in the Major Settlement Khata No.57 in favour of Kaushalya, falsely stating that it had been so gifted orally to her. It is stated that Fukuli and Sarada had never donated any land to Kaushalya, when said Kaushalya died on 08.03.1982.

It is the further case of the Plaintiff that upon Kaushalya's death, the interest that she was having over the property in question devolved upon her sister Padmavati. So, the Defendant No.2 did not acquire any interest in the said property. The Defendant No.1, namely, Mina sold certain property to Defendant No.2 and she as the successor of Kaushalya sold the land under Plot No.279 appertaining to Khata No.55 to the Defendant Nos. 3 to 5 by registered sale-deed dated 01.02.1989. It is stated that above alienations are beyond the interest of Mina, the Defendant No.1 over the property and as such the alienations made by the Defendant No.2 are invalid. The Plaintiff having demanded for

partition so as to be given her half share over the property that was not paid any heed to. She thus filed the suit for partition with further prayer as already stated. During the pendency of the suit, the Major Settlement Operation began. In that Settlement Operation, the land sold have been recorded in the name those Defendant Nos. 3 to 5. The Defendant No.6 purchased Ac.0.07 decimals of land from Plot No.56 under Khata No.55 from the Plaintiff by registered sale-deed dated 23.05.1988 and is in possession of the same.

4. The Defendant No.2 while traversing the plaint averments had stated that the Plaintiff has no manner of right, title, interest and possession over the suit land. It is said that Akhi, the husband of Fukuli had another wife called Suka and their son-Harekrushna and daughters namely, Saraswati and Laxmi were born to them. It is further claimed that Fukuli and Sarada being in possession and enjoyment of the property had donated property in favour of Kaushalya and she remained in possession from that time onward. In a subsequent registered deed of partition dated 20.05.1963, the suit land amongst other land fell to the exclusive share of Kaushalya. She thus, remained in exclusive possession and enjoyment of the said land. She died leaving behind her husband and a son namely, Laxmidhar as the successors. It is stated that in the said partition, the Plaintiff given certain properties which she

possessed with her mother and siblings, Harekrushna, Saraswati and Laxmi. After Kaushalya's death, the Defendant No.2 has been in possession and enjoyment of the property. So, it is said that the property being no longer the joint property, the suit is not maintainable. Defendant No.2 admits to have sold Ac.0.22 decimals of land under Khata No.55 to Defendant Nos. 3 to 5. During Major Settlement Operation after due enquiry in the field, the said alienated land had been recorded in favour of Defendant Nos. 3 to 5 who are in possession of the same.

The Defendant Nos. 3 to 5 in their written statement have practically reiterated the pleadings advanced in the written statement filed by the Defendant No.2. They state that the Plaintiff has no manner of right, title, interest and possession over the suit land. The Defendant No.6 has stated to have purchased Ac.0.07 decimals of land under Plot No.256 from the Plaintiff and therefore it is stated that the Plaintiff had no subsisting interest over the suit property which she has already sold.

5. On the above rival pleadings, the Trial Court framed six issues. The first important issue as to whether Kaushalya died issueless and her share therefore, devolved upon the Plaintiff; the answer has been given in favour of the Plaintiff that she inherited the property by virtue of the provisions contained under section-15(2) of the Hindu Succession Act,

1956 (for short, 'the H.S. Act'). It is next held that the Defendant No.2 has acquired no interest over the property and he could not have sold any land to Defendant Nos.3 to 5 under Ext.F. The suit has accordingly been decreed as aforesaid. The First Appeal carried by the aggrieved Defendant Nos. 2 to 5 has been dismissed. Hence, the present Appeal.

6. The Appeal has been admitted on the following substantial question of law:-

“1) Whether the Courts below are right in holding that the Defendant No.2 had no right over the property which was owned and possessed by his wife- Kaushalya having got under a registered sale-deed of partition vide Ext.A by correctly applying the provisions of section-15(2) of the Hindu Succession Act?”

7. Learned Counsel for the Appellant submitted that after partition, the suit properties became the exclusive property of Kaushalya as thereby altogether a new right got created in her favour. Banking upon the same, he submitted that on the death of Kaushalya, her husband succeeded to the properties to the exclusion of all others including the Plaintiff. So, it was contended that Ext.F is valid and binding.

8. Learned Counsel for the respondents submitted that Kaushalya inherited the property, which originally belonged to her father. The

registered partition deed, Ext.A did not create any new right in her favour and by that her interest over the property in question as to have been so inherited was merely recognised/ acknowledged. It was next submitted that Kaushalya when died issueless, by virtue of operation of the provision of section 15(2)(a) of the Hindu Succession Act, 1956, it would stand to be succeeded by the heirs of her father and not her husband, the Defendant No.2. So, the sale made by the Defendant No.2 under Ext.F in favour of Defendant Nos. 3 to 5 is not valid and thus cannot confer any right, title and interest on them. He therefore, submitted that the answer to the substantial question of law has to be rendered in the direction of affirmation of the findings recorded by the Courts below.

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

10. In the exercise of the search for the answer to the substantial questions of law, it is felt pertinent to mention some facts, which are not in dispute.

The property in question originally belong to Kashi and Shyam @ Dama and it was the ancestral property in their hands. In a partition, the suit land was allotted in the share of Kaushalya, who died issueless on 29.03.1982. It may be stated at this stage that the claim by these

Defendants that Kaushalya died leaving behind a son named Laxmidhar has been given a go bye.

It is stated that Kaushalya acquired an independent right over the property under deed of partition/ family settlement Ext.A. Admittedly, when she has right over the property, it has been so recognized in that deed of partition/ family settlement.

The provisions of sub-section-2 of section-15 of the Hindu Succession Act, *inter alia* provides that notwithstanding anything contained in sub-section1 of said section, any property inherited by female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, not upon other heirs referred to any sub-section-1 but upon the heirs of her father. So, here by application of said provision, on the death of Kaushalya, the property devolved upon her sister, Padmavati, the Plaintiff and the Defendant No.2, thus did not acquire any interest over the property. Therefore, any alienation made by him is wholly without any authority since to stand as the vendor he had no right, title and interest at all over the said land. So, by virtue of the registered sale-deed, Ext.F executed by Defendant No.2 in favour of Defendant Nos.3 to 5; the right, title and interest over the suit land described in the said land has not been conveyed. It is merely a transaction not even worth the paper written on. In view of the aforesaid,

the record of right created vide Exts. 5, 6 and 7 have no value in the eye of law. The Courts below are thus, found to have rightly held that the Defendant No.2 had no right over the property in question. The agreement dated 30.01.1991 between the Plaintiff and Defendant Nos. 3 to 5 vide Ext. H coming into being during pendency of the suit for very good reasons has been rightly eschewed from the arena of consideration in saying to be having no impact in the suit.

The aforesaid discussion and reasons, thus provide the answer to the substantial question of law in favour of the affirmation of the findings recorded by the Courts below leading to the passing of the preliminary decree declaring that the Plaintiff and the Defendant No.1 each have half share over the suit land.

11. In the result, the Appeal stands dismissed. The judgments and decrees passed by the Courts below are hereby confirmed. There shall however be no order as to cost.

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

Narayan