

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.37 of 2012

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the the judgment and decree dated 17.10.2011 and 21.10.2011 respectively passed by the learned Additional District Judge, Balasore in R.F.A. No.19/67 of 2007/2004 setting aside the judgment and decree dated 29.06.2004 and 12.07.2004 respectively passed by the learned Civil Judge (Junior Division), Balasore in T.S. No.722 of 1992.

Sri Maheswar Panda

....

Appellant

-versus-

***Braja Kishore Mohapatra &
Others***

....

Respondents

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

For Appellant - M/s.Abhaya Kumar Mahakud
N.K.Das

For Respondents - M/s.D.P. Mohanty, P.K. Nayak
T.K. Mohanty, P.K. Swain
M.Pal, R. Mohanty &
U.K. Mohapatra

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

Date of Hearing : 07.02.2022 : Date of Judgment: 14.02.2022

The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree dated 17.10.2011 and 21.10.2011 respectively passed by the learned Additional District Judge, Balasore in RFA No.19/67 of 2007/2004.

The Appellant, as the Plaintiff, had filed T.S. No.722 of 1992 in the Court of the learned Civil Judge, Junior Division, Balasore. The Respondent being the Defendant therein coming to contest the suit by

filing the written statement, had lodged a counter claim. The Trial Court having decreed the suit had dismissed the counter claim, the Respondent (Defendant) being aggrieved by the same had preferred an Appeal under Section 96 of the Code wherein the result having gone in his favour, it is thus the unsuccessful Plaintiff has carried the present 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 Suit.

3. The Plaintiff's case, in short, is that the suit land stood recorded in the major settlement under khata no.136 assigned with plot no.557. The recorded tenants were namely, Biswanath Rout, Mani Bewa and the Plaintiff. It is stated that Biswanath had gifted his share of Ac.1.07 decimals by registered deed dated 18.06.1973 from out of the above recorded land in favour of the Plaintiff and the Plaintiff thus remained in possession of the said land over and above his own share of land measuring Ac.0.29 decimals. Mani Bewa was having Ac.0.62 decimals in her share and on her death, her daughter Sankiri possessed the same and she transferred the land to the Plaintiff which also came to be possessed by him. The Plaintiff claims to have mutated the said land in his name.

It is alleged that the Defendant who has his land to the adjacent south of the suit land had his eyes over the property and he had proposed to purchase the same. Since the Plaintiff did not agree, the Defendant created disturbances and threatened to dispossess the Plaintiff.

4. The Defendant denied the recording of the suit land in that major settlement as stated by the Plaintiff as well as the execution of the

registered deed of gift and transfer in favour of the Plaintiff. The possession of the Plaintiff over that land is also denied.

It is stated that in 1930 settlement, the suit land was recorded under Anabadi khata of the ex-landlord Samanta Radha Prasanna Das. On 14.04.1943, he executed one Amalnama in respect of the suit land and other undisputed land measuring Ac.1.98 decimals in favour of the father of the Defendant. It is further stated that since then, the father of the Defendant was possessing the same by reclaiming the said land and was paying the rent. During major settlement, the land measuring Ac.0.55 decimals under khata no.46 and plot no.529 has been in possession of the Defendant under one enclosure. It is said that the Plaintiff had never possessed the same at any point of time. By the time of abolition of estate, since the landlord claimed salami to file Rafa to the State but his father failed to pay the said amount. The Defendant thus claims to have been in continuous possession of the suit land to the knowledge of all concerned. The Defendant has also advanced a claim of acquisition of title by way of adverse possession.

The Plaintiff, in his written statement of the counter claim, has denied the facts stated by the Defendant as to grant of Amalnama etc. and has averred that the Defendants have absolutely no right, title and interest over the suit land.

5. On the above rival pleadings, the Trial Court having framed five issues, has answered all those in favour of the Plaintiff and accordingly, the suit filed by the Plaintiff for grant of permanent injunction restraining the Defendant from interfering in his peaceful possession of the suit land had been decreed and the counter claim was accordingly dismissed.

6. The First Appellate Court being moved by the aggrieved Defendant, who suffered from the decree passed by the Trial Court, has allowed the said Appeal in dismissing the suit for permanent injunction filed by the Plaintiff and decreed the counter claim.

7. Mr.A.K.Mahakud, learned counsel for the Appellant submitted that the view taken by the learned First Appellate Court that in the present suit for permanent injunction, the complicated question of title ought not to have been decided is wholly erroneous. According to him, when the parties have raised their rival pleadings asserting their competing claim of title over the suit land, the Trial Court had committed no mistake in deciding the same in finally decreeing the suit. He submitted that this erroneous view taken by the learned First Appellate Court is not tenable and, therefore, the judgment and decree passed by the learned first Appellate Court reversing the judgment and decree passed by the learned Trial Court are liable to be set aside. He thus urges for admission of the Appeal to answer the above substantial question of law.

8. Mr.D.P.Mohanty, learned counsel for the Respondent, in assisting the Court to search out the substantial question of law if any surfaces therein; placing the averments taken in the plaint as well as the written statement, submitted that the very claim of the Plaintiff based on that gift deed and sale deed have been disputed as also when the claim of possession of the suit land by the Defendant from the time of his father on the strength of that Amalnama granted by the Ex-landlord has been challenged by the Plaintiff, the learned First Appellate Court has rightly held that the Plaintiff's suit for permanent injunction simpliciter without the prayer for declaration of his right, title and interest over the suit land

is not maintainable. He thus contends that there arises no substantial question of law meriting admission of this Appeal.

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

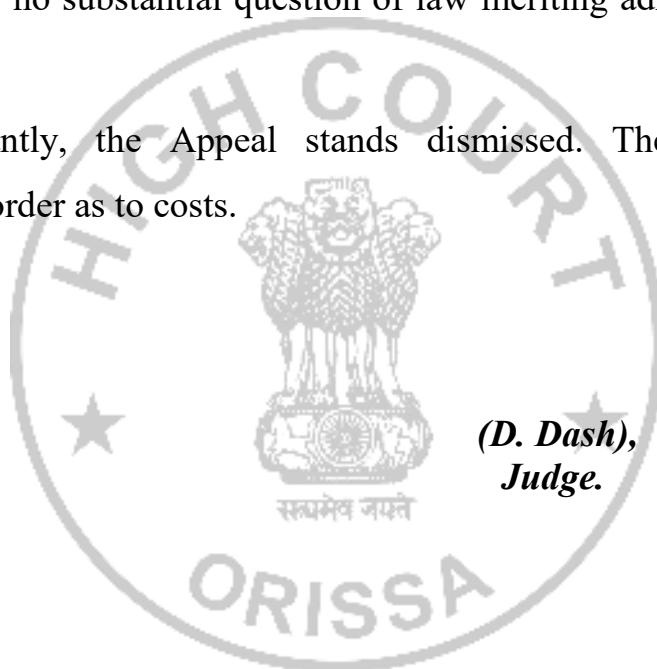
10. It appears from the judgment of the Trial Court that although issues relating to the competing claim of title in respect of the suit land have been framed, yet those have been answered by simply accepting the documents tendered in evidence by the Plaintiff ignoring the challenge to those as have been made by the Defendant and without holding that those have been duly proved in accordance with law so as to conclude that the title over the land in suit has passed on the to the Plaintiff.

In the present case, when the Plaintiff claims title over the suit land on the basis of the joint recording in the major settlement record as well as the deed of gift and sale deed coming from the other two recorded tenants; the Defendant has disputed those. Furthermore, when the Defendant, as advanced, his claim of long possession of the suit land from the time of his father, that has also been denied by the Plaintiff and more-so its basis and origin. Thus here in the present suit, the title over the suit property stands highly disputed and is the most crucial issue. The Plaintiff having not sought for a declaration of his right, title and interest over the suit land and when the Courts below, on analysis of evidence on record, have not been able to record any finding that the Plaintiff is in exclusive possession of the suit land thereby needing protection, in my considered view, the suit being not maintainable has been rightly dismissed by the First Appellate Court and by doing that, the grave error committed by the Trial Court has been rightly rectified.

However, while decreeing the counter claim, the First Appellate Court appears to have missed to indicate that the same is allowed to the extent of protecting the possession of the suit land by the Defendant till a decision in a regular suit claiming the title and other consequential reliefs is taken and the possession is so taken by following due process of law. Thus that decree passed in respect of the counter claim has to be read to the above extent as aforesaid.

11. For the aforesaid discussion and reasons, this Court finds that there surfaces no substantial question of law meriting admission of this Appeal.

12. Resultantly, the Appeal stands dismissed. There shall be, however, no order as to costs.



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