

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.411 of 2015

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 27.07.2015 and 06.08.2015 respectively passed by the learned Additional District Judge, Jajpur in R.F.A. No.01 of 2014 confirming the judgment and decree dated 09.12.2013 and 19.12.2013 respectively passed by the learned Civil Judge, Senior Division, Jajpur in Civil Suit No.166 of 2012.

Madhabananda Mahapatra & Others ***Appellants***

-versus-

Fakir Charan Biswal & Others ***Respondents***

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

For Appellants - Mr.Ajit Kumar Tripathy,
(Advocate)

For Respondents - Mr.Ranjit Mohanty,
(Advocate)

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

Date of Hearing : 26.08.2022 : Date of Judgment:06.09.2022

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 27.07.2015 and 06.08.2015 respectively passed by the learned Additional District Judge, Jajpur in R.F.A. No.01 of 2014.

By the same, the Appeal filed by the present Appellants, being the unsuccessful Plaintiffs under section 96 of the Code, has been dismissed. Thereby, the judgment and decree dated 09.12.2013 and 19.12.2013 respectively passed by the learned Civil Judge, Senior Division, Jajpur in Civil Suit No.166 of 2012 have been confirmed and these Appellants 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 Plaintiffs' case is that the suit land originally belonged to Sananda Pradhan, Rama Pradhan and Laxman Pradhan. Sananda died leaving no heir. Rama had a son, namely, Maheswar and his sons are Defendants 6 to 9. Laxman died leaving behind his widow Janha and a daughter Indiri, who is the mother of Defendants 10 and 11. It is stated that Sananda, Rama and Laxman, during their lifetime, as the sabik recorded tenants, had partitioned the properties described in Lot No.1 corresponding to Sabik Plot No.133/208 measuring Ac.0.11 decimals amongst them. So, it is said that Sananda and Rama sold Ac.0.48 decimals from Sabik Plot No.133 in favour of Baraju, who having purchased the said land is stated to have got it separately recorded the same under Hal Plot No.210. Before 1940, Laxman is said to have sold western portion of Ac.0.49 decimals as at Lot No.1 appertaining to Sabik Plot No.133 in favour of Gopinath Mohapatra and put him in possession. Sananda, Rama and Laxman had also jointly transferred Ac.0.11 decimals of land appertaining to Sabik Plot No.132/208 in favour of Gopinath and had delivered the possession of the same to him. Gopinath, since the time of his purchase, possessed the suit land as its

owner and on his death, his two sons, namely, Udayanath and Rajkishore came to possess all his properties including the suit land. Dissention, having arisen between them, they partitioned their joint family properties including the suit land in the year 1968, which was evidenced by a registered deed of partition. In the said partition, the suit land is stated to have fallen to the share of Udayanath, who left behind his three sons, namely, Madhabananda (Plaintiff No.1), Krushna, the father of Plaintiff Nos.2 and 3 as also the father of Plaintiff No.4, namely, Mohan. The Plaintiffs are accordingly in possession of the suit properties as its owners. During Major Settlement Operation, their possession was found, but subsequently, the Settlement Authority recorded the property under Lot No.1 in the name of the predecessor of Defendants 1 to 5 under Hal Khata No.51 and predecessor of Defendants 6 to 11 under Hal Khata No.58, which are the Lot No.1 and Lot No.2 property respectively. The Plaintiffs further state that while Gopinath was possessing the suit land as its owner, one Dhani Biswal, the grandfather of Defendants 1 to 5 obtained the illegal sale deed from Janha, an illiterate lady, who happens to be the wife of Laxman by practicing fraud upon her and the deed is dated 02.09.1940. Though some properties of Mouza-Solara was to be sold, yet Dhani fraudulently included the suit land of Mouza-Jamujhara. As the vendor of the said deed subsequently protested the fraudulent character of the deed and Gopinath was in possession over the suit land, Dhani could not obtain the possession despite all attempts in that direction. When that failed, Dhani received a sum of Rs.50/- from Gopinath on 10.05.1941 and surrendered the registered sale deed dated 02.09.1940 in his favour in abandoning his claim over the suit land. In the year 1969, the Defendants 10 & 11 and then again in the year 1997, Defendants 6 to 11

had attempted to dispossess the Plaintiffs, which being resisted, did not get fulfilled. It is further stated that the possession of the Plaintiffs over the suit land being open, peaceful and continuous exhibiting hostile animus, they have perfected title over the suit land by way of adverse possession. Since the Defendants 1 to 5, taking advantage of the wrong recording of Lot No.1 property in their names, declared to transfer the suit land, the suit came to be filed.

4. The Defendants 1 to 5, in their written statement, stated that the suit land was recorded in the name of Sananda, Rama and Laxman. It is further stated that when Sananda and Rama together had half share, Laxman alone had half share over the suit land. It is stated that after the death of Laxman, his widow Janha sold Ac.0.60 decimals from C.S. Khata in favour of Dhani by registered sale deed dated 02.09.1940 and delivered possession of the said sold land to him, who continued to possess the same and after his death, the Defendants, being his successors, are in possession by paying the rent. It is stated that during Major Settlement, land measuring Ac.0.49 decimals has been recorded in their name instead of Ac.0.60 decimals. They state that Mouza-Solara was bifurcated and a new Mouza-Jamujhara had been created. It is alternatively stated that they have perfected title over the suit land by adverse possession.

5. The Defendants 6 to 9 have come up with a case that the suit land corresponding to R.S. Plot Nos.133 and 132/208 under R.S. Khata No.41 was recorded in the name of Sananda Pradhan, S/o-Brundaban Pradhan, Rama Pradhan, S/o-Ananda Pradhan and Laxman Khatua S/o-Arta Khatua. Brundaban died prior to Revision Settlement Operation leaving behind his two sons, namely, Sananda and Ananda. Sananda

died issueless and Ananda died leaving behind two sons, namely, Ananda and Laxman. Laxman is said to have been adopted by Arta Khatua. So, it is said that the recording of the suit land in the name of Laxman in the R.S. record of right is wrong. As the suit land was the ancestral property of Sananda, Ananda and Laxman, Rama became exclusive owner in possession of the suit property after adoption of Laxman. Maheswar was the only son of Rama and the Defendants 6 to 9, who are the sons of Rama, are possessing the suit land as the owners thereof. They state that neither Sananda nor Rama had transferred the suit land in favour of Gopinath and as such, the M.S. record of right in respect of Lot No.1 property has been prepared in the name of Maheswar, Krushana and Keshab.

6. On the above rival pleadings, the Trial Court, in total, has framed nine issues. Rightly, first proceeding to answer issue no.III as to whether Gopinath had title over Lot No.1 property by virtue of his purchase and Lot No.2 property by virtue of the purchase as claimed; upon examination of evidence and their evaluation, the answer has been returned that Gopinath had no manner of right, title and interest over the suit land.

7. Next, coming to answer issue no.VII as to whether Laxman was the adopted son of Arta, on appreciation of evidence, it has been said that Laxman was not the natural born son of Ananda Pradhan but was the natural born son of Arta Khatua. Other issues, being taken together, the Trial Court has finally held that the Plaintiffs have failed to prove their case as to establishment of right, title, interest and possession over the suit land. Therefore, the suit has finally been dismissed.

8. The First Appellate Court, being moved by the unsuccessful Plaintiffs before the Trial Court, no such fruitful result has come for them.

9. The present Appeal has been admitted to answer the following substantial question of law:-

“Whether the courts below have erred both in fact and law having not bestowed due attention upon the oral and documentary evidence vis-à-vis the description of the land under Ext.2 in arriving at a conclusion that there exists no nexus between the suit land and the land covered under the sale deed Ext.2 and for the purpose, the courts below ought to have taken a cumulative view upon proper appreciation of evidence on record on that score?”

10. Learned counsel for the Appellants submitted that the Courts below have ignored the settled principle that the adjudication of the dispute is required to be confined within the pleadings of the parties. He submitted that when the contesting Defendants specifically pleaded that their predecessor had purchased the land of Mouza-Solara and there is nothing wrong in the description in Ext.2, the Courts below having found that plea to be wholly wrong, should not have dismissed the suit. He further submitted that the Courts below should not have read the pleadings in the manner so as to give different meaning altogether. He next submitted that in view of Ext.2, the dispute being settled since the year 1941 and the controversy between Gopinath and Dhani coming to rest; said Dhani having surrendered the property vide Ext.2 to Gopinath, that ought to have been held to have the final say over the matter and, therefore, as in the partition under the registered deed of partition (Ext.3), the suit land stood allotted to the Plaintiffs and the documents Exts.4 to 8 proved the possession of the Plaintiffs as the successors of

Gopinath; the Courts below should have accordingly, granted the decree. He further submitted that the Courts below have completely gone wrong in saying that the Plaintiffs have projected a case of adverse possession against all the Defendants when the plaint averments reveal that it was claimed against Defendants 6 to 11 and not Defendants 1 to 5. He next submitted that the Courts below have not properly appreciated Ext.2 along with Exts.3 to 8 and reached at an erroneous conclusion with regard to the right, title and interest over the land under Ext.2.

11. Learned counsel for the Respondents, on the other hand, submitted all in favour of the findings of the courts below. According to him, the concurrent finding on facts, being rendered by both the forums, upon detail discussion of evidence and their evaluation in different ways, is not found to be the outcome of perverse appreciation; the same are not liable to be interfered with in seisin of the Second Appeal.

12. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statements and perused the evidence both oral and documentary.

13. The Plaintiffs claim title over the suit land and the alternative case has also been set up in the plaint as to acquisition of title over the land by adverse possession. The title is claimed on the basis of the registered sale deed. It is stated that Laxman executed the sale deed in respect of Lot No.1 property and other three persons executed the sale deed in so far as the property under Lot No.2 are concerned. The registered sale deeds have not been filed and proved in the case and the explanation is to the effect that those have been lost somewhere and are not traceable.

But then even no such particulars of the sale deeds have been disclosed either in plaint or evidence. It being said by the Plaintiff himself examined as P.W.1 that those sale deeds were destroyed in the cyclone prior to the year 1980 and then after the super cyclone in the year 1999, he having made the attempt to get the certified copy of the sale deed, has failed, it appears that he is not certain as to when those documents were lost/destroyed. No rent receipts for the pre Hal Settlement Operation period have also been filed to somehow even provide remote support to the claim. When P.W.1 has stated in his evidence that the rent receipts (Ext.4) disclose that zamanbandies had been opened in the name of Sananda and others, those rent receipts of the period 1992-1993 reveal that this P.W.1 has merely tendered the rent on behalf of Sananda and others. Next, banking upon the registered deed of partition of the year 1968, which has been admitted in evidence and marked as Ext.3, attempt is made by the Plaintiffs to establish their title. This document, even when accepted, cannot affect the right, title and interest of other Defendants over the suit property in any manner. When it is stated by P.W.1 that widow of Laxman, namely, Janha had sold the suit land to Dhani and that the tenancy ledger had not been opened in the name of his grandfather or in their names and that he had no document to show that they were paying rent for the suit land during the period 1950-1990, the Defendants 1 to 5 have produced the certified copy of registered sale deed (Ext.A/1) in showing that the land has been purchased by Dhani on 02.09.1940 from Janha. The dispute has been raised by the Plaintiffs in saying that the sale deeds under Ext.A/1 are of Mouza-Solara whereas the suit properties are in Mouza-Jamujhara. Admitted position stands that both the Mouzas adjoin each other. About Janha's selling the land to Dhani, P.W.1 has so stated. Except the indication as to the name of

Mouza, the other particulars are not said to be incorrect. The Plaintiffs had not challenged in saying that the boundary of the properties, do not tally. In the above state of affairs, no such fault is found with the findings of the Courts below on the antecedent title of the suit properties in Lot No.1 to be resting with Dhani, Lot No.2 resting with Rama and Laxman and those ultimately coming to the hands of Defendants 1 to 5 as the successors of Dhani and Defendants 6 to 9 being the successors of Rama as well as Defendants 10 and 11 being the successors of Laxman.

14. Coming to the alternative case of the Plaintiffs as to acquisition of title over the suit land by way of adverse possession, it is not their case that such possession over Lot No.1 property was adverse to Dhani or Defendants 1 to 5 and that such possession over Lot No.2 was adverse to Rama and Laxman or against Defendants 6 to 11. Be that as it may, even accepting the submission of the leaned counsel for the Appellants that such specific pleading is not to be insisted upon when as the general pleadings are there, which are enough for the purpose; they cannot escape from discharging the burden of proof lying upon them to establish that they have perfected title over the suit properties by way of adverse possession and that in order to discharge the same, they are to specifically plead and prove all the required ingredients.

It is the settled position of law that mere possession of the properties for any length of time by the possessor does not enure to a case of acquisition of tile over that property by way of adverse possession. The possession has to be open, peaceful and continuous by exhibiting hostile animus and denying the title of the true owner to his knowledge. The possession must have started with wrongful dispossession of a rightful owner and actual visible, exclusive, hostile and continuous possession must then be there for over the prescribed

period. The Trial Court, on an elaborate discussion of evidence, as at paragraphs 22 to 32, appears to have let no such relevant evidence on record untouched and then has found the claim of the Plaintiffs to have not been established. Said discussions, being given a close reading, it is seen that the Trial court has done much more than what was required for the purpose. This Court finds the discussion, on the above score, to be in great detail and the conclusions arrived at, to be perfectly alright. Those having been confirmed by the First Appellate Court on reappraisal of evidence, this Court finds no such justification to interfere with the same.

The substantial question of law being thus accordingly answered against the case/claim of the Plaintiffs; it is held that the Appeal is liable to be dismissed.

15. Resultantly, the Appeal stands dismissed. There shall, however, be no order as to cost.

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

Basu