

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.111 of 2013

AND

R.S.A. No.112 of 2013

In the matter of appeals under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.12.2012 and 26.12.2012 respectively passed by the learned District Judge, Bhadrak in R.F.A. No.62 of 2009 confirming the judgment and decree dated 28.08.2009 and 10.09.2009 respectively passed by the learned Civil Judge, Junior Division, Chandbali in C.S. No.46/93 of 2009/04-I.

In R.S.A. Nos.111 & 112 of 2013

Srustidhar Biswal & Another* *Appellants

-versus-

Maheswar Bal & Others* *Respondents

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

***For Appellants* - Mr.Ayusman Mohanta,
(Advocate in both RSAs)**

***For Respondents* - Mr.S.S. Rao
(Advocate for R.2, 3 & 5
in both RSAs)**

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 10.10.2022 : Date of Judgment:20.10.2022

D.Dash,J. Since both these Appeals arise out of the common judgment followed by decrees passed by the learned District Judge, Bhadrak in R.F.A. Nos.62 of 2009 & R.F.A. No.73 of 2009; those had been taken

up together for hearing for their disposal by this common judgment followed by the decrees.

The Appellants, by filing these Appeals under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the common judgment followed by the decrees passed by the learned District Judge, Bhadrak in the above noted First Appeals. The First Appeal bearing R.F.A. No.62 of 2009 had been filed by the Respondents 1 and 2 being the aggrieved Defendants 1 and 2 in C.S. No.46/93 of 2009/04 of the Court of the learned Civil Judge, Junior Division, Chandbali. The other First Appeal, i.e., R.F.A. No.73 of 2009 had been filed by the Respondents 3 to 5 being the aggrieved Defendants 3 to 5 of the very same suit.

These Appellants, as the Plaintiffs, had filed the above noted suit for permanent injunction arraigning the Respondents as the Defendants for restraining them from interfering in their peaceful possession over the suit land. The suit having been decreed by the Trial Court, the Respondents 1 and 2 (Defendants 1 and 2) had filed the Appeal under Section 96 of the Code coming to be numbered as R.F.A. No.62 of 2009. The other Appeal, i.e., R.F.A. No.73 of 2009 under section 96 of the Code had been filed by Respondents 3 to 5 (Defendants 3 to 5). The Trial court, having decreed the suit, both the First Appeals have been allowed and thereby the judgment and decree passed by the Trial Court in the suit, have been set aside and these Appellants, being the Plaintiffs 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 they had purchased the suit land from Gayadhar Bal, S/o-Ghanashyam Bal by registered sale deed dated 05.06.2002 for valuable consideration. It is further stated that Ghanashyam Bal, the father of Gayadhar Bal had purchased that land from Nabaghana Ba and Narottam Bal, both sons of Uchhab Bal by registered sale deed dated 15.07.1971. It is further stated that Nabaghana is the husband of Defendant No.5 and Narootam is the father of Defendants 3 and 4. The Defendants 1 and 2 are their family members. Ghanashyam was the recorded tenant of the suit land which had been mutated in his name and after his death, his son Gayadhar was in possession of the same by paying rent to the State. The Plaintiffs, having purchased the suit land from Gayadhar by registered sale deed dated 05.06.2002, had also mutated the same in their name. The Plaintiffs' thus claimed to be the owners in possession of the suit land. It has been alleged that some time in the year 2006, the Defendants trespassed over the suit land by bringing some labourers with them and removed the paddy crops, causing wrongful loss to the Plaintiffs. They also threatened to dispossess the Plaintiffs from the suit property. So, the Plaintiffs filed the suit for permanent injunction against the Defendants.

4. The Defendants, in their written statement, have provided a genealogy that their common ancestor Uchhab Bal had five sons, namely, Nabaghana, Krushna, Narottam, Pandab and Nilamani. They state that the Defendants 1 and 2 are the sons of Krushna whereas the Defendants 3 and 4 are the sons of Narottam and Defendant No.5 is the widow of Nabaghana. It is their case that the suit land originally stood recorded in the name of Uchhab Bal and it was then recorded under Plot No.398 corresponding to M.S. Plot No.455 (P) for an area of Ac.0.78 decimals under M.S. Khata No.104 of Village-Farsibindha in the name

of Purna Ch. Bal, Ananda Bal, Binod Bal, Narottam Bal, Pandab, Krushna and Nilamani Bal. After the death of Uchhab, it is stated that Nabaghana, Krushna, Narottam and Pandab being the legal representatives are in possession of the suit land. It is further stated that there has been no partition of the properties of the family at any point of time in metes and bounds. They also state that they are in possession of land under M.S. Plot No.455/835, which is the suit land by an amicable arrangement. The vendors of the Plaintiff are stated to have no right, title, interest and possession over the suit land and, therefore, it is said that the Plaintiffs have not derived any right, title, interest and possession over the suit land by virtue of their purchase. They have made the counter allegation that on 09.03.2004, the Plaintiffs came over the suit land and threatened the Defendants to dispossess form the same. In view of that, going for an enquiry, they disclosed that Ghanashyam purchased the suit land from Nabaghana and Narottam. The Defendants, therefore, made further enquiry and obtained the certified copy of the M.S. Record of Right as well as mutated Record of Right. They also obtained the certified copy of the registered sale deed dated 15.07.1971. It could then be ascertained the land under mutated Plot No.455/835 corresponds to western portion of C.S. Plot No.398. It was further learnt that the mutation was allowed by the Tahasildar after publication of the M.S. Record of Right when the sale deed in question was much before the settlement operation. Thus, it is said that the order of mutation is illegal. It is also stated that said deed dated 15.07.1971 was not a sale deed but a deed of security executed by Ghanashyam and Nabaghana.

5. On the above rival pleadings, the Trial Court, in total, has framed as many as nine issues. Upon examination of the evidence and their evaluation, the Trial Court recorded the finding that the Plaintiffs had

the right, title, interest and possession over the suit land. Accordingly, the suit filed by them was decreed and the Defendants were permanently enjoined from interfering in the possession of the Plaintiffs over the suit land.

One First Appeal, being filed by Defendants 1 and 2, the First Appeal was filed by Defendants 3 to 5. Those being heard together, have been allowed and the judgment and decree passed by the Trial Court have been set aside.

6. Learned counsel for the Appellants submitted that the finding of the First Appellate Court on crucial issues, i.e., issue nos.4, 5, 7 and 8, which concern with the right, title, interest and possession of the Plaintiffs over the suit land, having been rightly returned; the First Appellate Court, on a flimsy ground, has turned down the same. According to him, the reason assigned by the First Appellate Court that in the facts and circumstances and in view of the evidence on record, the suit for permanent injunction simpliciter is not maintainable and, therefore, the Trial Court should not have passed the decree of permanent injunction does not stand to legal test the facts and circumstances and as such is untenable. He submitted that when the Plaintiffs have proved their sale deed by virtue of which they purchased the suit land as also the sale deed by which their vendor had purchased the suit land and their possession can be seen from the evidence both oral and documentary, the suit should not have been dismissed. He, therefore, urged for admission of these Appeals to answer the above as the substantial questions of law.

7. Learned counsel for the Respondents, on the other hand, submitted that when indisputably the property had come from the hands

of Uchhab, the common ancestor of the parties, there being no partition of the property amongst the members of the family of Uchhab in metes and bounds, the sale deeds even if are held to be duly executed by the vendors, the Plaintiffs cannot claim right, title and interest over the specific properties covered under the sale deeds. He further submitted that by virtue of those purchases, the Plaintiffs are said to have stepped into the shoes of co-sharers, who are their vendors and they, by virtue of said purchase, cannot maintain a suit for permanent injunction against the other co-sharers. It was also submitted that when the claim of title of the Plaintiffs over the suit land is under challenge and the same cannot, in the facts and circumstances of the case, be said to be just for name sake and on that count, the suit is bound to fail.

8. 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 statement. The evidence both oral and documentary has been extensively travelled through.

9. The Plaintiffs claim to have purchased the suit land from Gayadhar, s/o-Ghanashyam by registered sale deed dated 05.06.2002, which has been admitted in evidence and marked Ext.3. Father of Gayadhar is said to have purchased the suit land from Nabaghana and Narottam, both sons of Uchhab by registered sale deed dated 15.07.1971, whose certified copy has been admitted in evidence and marked Ext.5. The Plaintiffs then have got the land mutated in their name as it was earlier also mutated in the name of Gayadhar. The Defendants have pleaded and proved that the property originally belonged to Uchhab and on this death, it was succeeded by Nabaghan, Narottam, Krushna, Pandab and Nilamani. That Nabaghana and

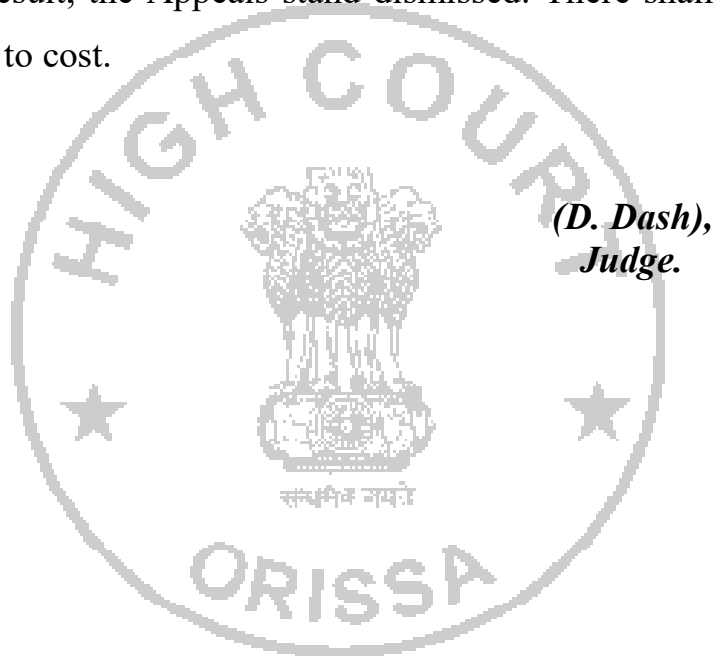
Narottam, who are the vendors of Ghanashyam, the father of Gayadhar are two of the five sons of Uchhab. There is no challenge that the suit land originally belonged to Uchhab and that it was earlier the C.S. Plot No.398 measuring Ac.0.83 decimals under C.S. Khata No.131, which is corresponding to M.S. Plot No.445 measuring Ac.0.78 decimals under M.S. Khata No.104 standing recorded in the name of Purna Chandra S/o-Nabaghana, Ananda and Binod sons of Narottam, Krushna, Pandab and Nilamani sons of Uchhab. The M.S. record of right, as above, has been published in April, 1982. In the above state of affair in the pleadings as well as in the evidence as obtained when the Plaintiffs are not stating that there was a partition of the properties amongst the members of the family of Uchhab at any given point of time in metes and bounds and in that partition, the suit land had fallen to the share of the vendors of the Plaintiffs, a suit for permanent injunction simpliciter, at the behest of the Plaintiffs, who are the ultimate purchasers from those co-sharers is not maintainable without further stating that even without any partition in metes and bounds by a full fledged arrangement amongsts the family members, this property in suit was being enjoyed by those two co-sharers, which has prevailed over for quite a long length of time and accordingly, the parties have done some such massive developments, which are wholly irreversible. Furthermore, in the present suit, the Defendants have questioned the validity of the said sale deed dated 15.07.1971 saying that it was not a deed of sale but a deed of security.

The Plaintiffs ideally could have brought a suit for partition and, therefore, they could have sought for a relief of carving out the share of those two co-sharers vendors seeking further adjustment of the extent of property purchased by them as far as practicable and possible towards

the share of those co-sharer-vendors, which within the scope and ambit of this suit is not possible to be done.

For all these above, the ultimate conclusion of the First Appellate Court that the suit for permanent injunction as laid by the Plaintiffs is not maintainable in the eye of law cannot be labeled to be faulty one. Thus, the submission of the learned counsel for the Appellants that there arises the substantial questions of law for being answered in these Appeals meriting their admission is not acceptable.

10. In the result, the Appeals stand dismissed. There shall, however, be no order as to cost.



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

Basu