

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.280 of 2013

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Puri in R.F.A. No.14 of 2011 confirming the judgment and decree dated 22.01.2011 and 05.02.2011 respectively passed by the learned Civil Judge, Junior Division, Puri in Civil Suit No.115 of 2008.

Arun Kumar Mishra

....

Appellant

-versus-

Rabinarayan Sahoo & Others

....

Respondents

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

For Appellant

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Mr.S.P. Mishra, Sr. Advocate
Mr.S. Mishra, B.S. Panigrahi,
S.K. Sahoo, S.K. Samantaray &
D. Priyanka
(Advocates)

For Respondents

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Mr.H.N. Mohapatra,
Mr.A.Samantaray
(Advocates for R.1)

Mr.S.K.Mishra, J. Pradhan,
P.P. Mohanty & S. Rout
(Advocates for Proforma R.2 to 4)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 21.04.2022 :: Date of Judgment:04.05.2022

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 26.03.2021 passed by the learned District Judge, Puri in R.F.A. No.14 of 2011.

By the same, the Appeal filed by this Appellant and Respondent No.8 under Section-96 of the Code questioning the judgment and decree dated 22.01.2011 and 05.02.2011 respectively passed by the learned Civil Judge, Junior Division, Puri in Civil Suit No.115 of 2018 has been dismissed and thus the impugned judgment and decree have been confirmed.

The Respondent No.1, as the Plaintiff, had filed the suit arraigning the Appellant and his elder brother as well as six other Respondents as the Defendants seeking a decree of permanent injunction against them from interfering with his peaceful possession over the suit land. The suit having been decreed injuncting the Respondents (Defendants) from interfering with the peaceful possession of the Plaintiff in respect of the suit land, this Appellant as well as his brothers had filed the First appeal. That having been dismissed, now this Appellant alone has come to challenge the judgments and decrees passed by both the Courts below and his elder brother, who was contesting the suit with the present Appellant and had together filed the written statement, having not joined in the challenge; he has been arraigned as Respondent No.8.

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 is that the suit land is a portion of vast area of land under Sabik Khata No.28. This land originally belonged to one Sunil Kanta Ghosh. The suit land being found to be ceiling surplus land in a ceiling proceeding initiated against Sunikanta under the provisions of Orissa Land Reforms Act, 1960 (for short, 'OLR Act') finally vested

with the State. The State settled that land in favour of the Plaintiff on acceptance of his application by an order passed in Lease Case, i.e. CSLS No.81 of 1987. It is stated that the Revenue Authorities as well as the Consolidation Authorities accordingly finding the Plaintiff to have been conferred with the absolute ownership in respect of the suit land, prepared the record of right in respect of the suit land in his favour. The Plaintiff, thus being in continuous possession, when has found the Defendants to be disturbing in his possession, he has come to file the suit. In fact, the Defendants 4 and 5 as well as 8 had initiated Consolidation Revision Proceeding vide R.C. Case No.15 of 2002 and 247 of 2005 in questioning the consolidation Record of Right in respect of the suit land granted to the Plaintiff.

According to the case of the Plaintiff, the Defendant No.1 although claims to have purchased the some properties from Defendants 3 and 8 appertaining to Consolidation Khata No.17, Plot Nos.168 & 176 of Mouza-Bhimapur, the same has no nexus with the suit land and he has no right whatsoever in so far as the suit land is concerned.

4. The Defendants 1 and 2 filed their written statement together and another set of written statement has been jointly filed by Defendants 3 to 5. The Defendant No.1 having filed the present Appeal and he having challenged the judgment and decree passed by the Trial court by carrying the First Appeal, his case, as stated in the written statement, is placed hereunder.

It is the case of Defendants 1 and 2 that Sunilkanta Ghosh, the original and erstwhile owner of the suit land had sold the property to one Bira Palei by registered sale deed dated 06.09.1982. The possession of the suit land being delivered to Bira Palei, he continued to possess the same as its owner exercising all the rights. Bira with Defendants 3 to 7

developed the land. By practicing fraud, the Plaintiff obtained the order of settlement in CSLS No.8 of 1987 and it is stated that the Authorities, throwing the provisions of law contained in the OLR Act as regards such settlement right from the beginning till the end to the winds have passed an order of settlement of the suit land on paper which has not seen the reality in the field.

5. Faced with the rival pleadings, the Trial Court has framed five issues. Rightly taking up issue no.3 as to the claim of the Plaintiff that he is in possession of the suit land on the basis of the settlement order passed by the Competent Authority in C.S. No.18 of 1987; on examination of the evidence and their indepth examination and analysis in great detail, the answer has been thrown in favour of the case/claim of the Plaintiff and this answer has led the Trial Court to decree the suit.

The Defendants 1 and 2 having gone to challenge those in an Appeal; the same was heard along with the Appeal filed by the Defendants 3 to 5 vide R.F.A. No.158 of 2011 and both the Appeals have been dismissed. The First Appellate Court having found the Plaintiff to have been duly settled with the suit land, which was the ceiling surplus land of the ceiling land holder, namely, Sunil Kanta Ghose and having found that the Defendants have absolutely no manner of claim over the suit land, has declined to interfere with the findings recorded by the Trial Court and thus the ultimate result rendered in the suit.

6. Mr.S.P.Mishra, learned Senior Advocate for the Appellant submitted that the Courts below have fallen in grave error by not holding the suit to be not maintainable. According to him, on the rival case projected by the parties, the Plaintiff's suit for permanent injunction

simpliciter ought to have been dismissed taking a view that here, he was under the legal obligation, to seek a prayer for declaration of his title over the suit land as that was under challenge. He further submitted that the suit ought to have been held to be not maintainable in view of the provisions of section 51 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short, 'OCH & PFL Act'). In support of the same, he has filed a decision of this Court in the case of Ghanashyam Meher –V- State of Orissa and Others; (SA No.37 of 1990 disposed of on 29.03.2017). It was also submitted that the Courts below have completely erred in law by holding that the sale deed held by the Defendants 1 and 2 is not valid and enforceable in law when it has not been proved by the Plaintiff that the suit land was not within the retained area of the ceiling surplus land holder Sunilkanta Ghosh as per the final publication made in that ceiling proceeding running against Sunilkanta Ghosh.

7. Mr.H.N.Mohapatra, learned counsel for the Respondent No.1 submitted all in favour of the conclusions arrived at by the Courts below. According to him, these Defendants 1 and 2 have come to purchase the land from the ceiling surplus land holder Sunilkanta Ghosh during pendency of the ceiling proceeding and that itself is void being not permissible in the eye of law. He further submitted that the sale of the suit land in favour of the Defendants 1 and 2 can sustain only when it is shown by them that the land was within the retained area of the ceiling surplus land holder Sunil Kanta Ghosh in that ceiling proceeding as per the final publication on closure of the ceiling proceeding. So, he submitted that the Defendants having failed to prove the same, the Plaintiff's suit for permanent injunction on the basis of the order of settlement, has rightly been decreed. He further submitted that these

Defendants have no right at all to challenge the order passed in that settlement proceeding settling the suit land in favour of the Plaintiff as in the absence of an proof that they have any title over the property by virtue of their purchase and that purchase being valid, they have no locus to raise that question.

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

9. Admittedly, Ceiling Case No.20 of 1974 had been initiated against that Sunil Kanta Ghosh, the ceiling surplus land holder. The Plaintiff's case is that the suit land in that ceiling proceeding having come to be vested with the State in CSLS No.18 of 1987 copy of whose order-sheet has been admitted in evidence and marked Ext.16; he has been settled with the land and thus has derived absolute title and being delivered with the possession, has come to possess the same. In such a situation, on the face of the order of settlement in the ceiling proceeding and the very fact that the sale deed which is projected by the Defendants 1 and 2 as the foundation of their case/claim being dated 06.09.1982, the entire burden, in my view lies upon the Defendants 1 and 2 to plead and prove in a clear manner that the suit land was within the retained area of the ceiling surplus land holder, namely, Sunilkanta Ghosh on culmination of Ceiling Proceeding. In that event, only the Courts would have been under the obligation to further look into the matter and rule out as to whether the land described in the sale deed dated 18.10.2006 (Ext.D) are those same land as has been settled in the name of the Plaintiff in saying that the same having not been vested with the State; the State had no such right to settle in favour of the Plaintiff in conferring the right, title, interest thereon and possession thereof. The

Defendants having neither pleaded nor led any evidence on the score, the challenge by them to the title of the Plaintiff over the suit land is not per se cognizable in the eye of law and in the absence of that, I hold that they have no locus standie to contest the claim of the Plaintiff in saying that he is not the rightful owner of the suit land even though has been settled with the same by State with which the land has come to be vested on culmination of the Ceiling Case No.20 of 1974, initiated against the vendor of Bira Palei, who is the vendor of Defendants 1 and 2. With such finding, the Plaintiff's possession of the suit land has to be protected from the hands of this Defendant. Therefore, the submission of the learned Senior Counsel for the Appellant that the Courts below ought to have dismissed the suit for permanent injunction without the prayer of declaration of title stands repelled.

Coming to the second submission with regard to the maintainability of the suit in view of the bar in section 51 of OCH & PFL Act, relying upon the decision in the case of Ghanashyam Meher (Supra), it may be stated here that the consolidation ROR in respect of the suit land having been prepared in favour of the Plaintiff, the result in one revision, i.e. Revision Case No.15 of 2002 has gone in favour of the Plaintiff. When the Plaintiff has established his claim over the suit land by virtue of the settlement order passed in CSLS Case No.8 of 1987 standing recognized during consolidation operation and having thus proved his possession over the suit property, the Defendant's claim is found to be wholly untenable and clearly appears to be with a view to nullify the effect of the final order passed in the ceiling proceeding and create a mess thereby showing utter disregard to the orders of the Competent Authority and the provision of law, which is required to be

dealt with stern hands. For the reason stated above, this submission of the learned Senior Counsel for the Appellant fails.

10. With the aforesaid discussion, this Court finds that their surfaces no substantial question of law meriting admission of this Appeal.

11. In the result, the Appeal stands dismissed and the Appellant is to bear the cost all throughout.

*(D. Dash),
Judge.*

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