IN THE HIGH COURT OF ORISSA : CUTTACK
RSA No.184 of 2004

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 24.01.2004 and 07.02.2004 respectively passed by the learned District Judge, Keonjhar in T.A. No.47 of 2001 in allowing the Appeal in part and modifying the judgment dated 28.9.2001 of the court of learned Civil Judge (Senior Division), Keonjhar in T.S. No. 8 of 1997.

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Pravakar Naik :::: ***Appellant.***

-:: VERSUS ::-

Kapileswar Naik & Others :::: ***Respondents.***

Advocate(s) who appeared in this case by hybrid arrangement (virtual/physical) mode.

For Appellant … M/s. B.H. Mohanty, R.K. Nayak, D.P. Mohanty, T.K. Mohanty and S. Barma, Advocates

For Respondents … None.

CORAM :
MR. JUSTICE D. DASH

Date of Hearing:05.01.2022 :: Date of Judgment:10.01.2022

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 24.01.2014 and 05.02.2014 respectively passed by the learned District Judge, Keonjhar in T.A. No.47 of 2001.

By the said judgment and decree, the First Appellate Court has partly allowed the Appeal filed by the Respondent No.1 (Defendant No.1) under section 96 of the Code. The Appellant with Respondent Nos. 2 and 3 had filed the suit for their declaration of right, title, interest and confirmation over the suit land described in the schedule appended to the plaint with further prayer to declare the registered sale deed dated 27.12.68 as null and void.

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. **Plaintiff's case:-**

Jagabandhu Naik is the common ancestor of the Plaintiffs and Defendant Nos. 2 to 4. Bimala is the wife of Jagabandhu. Jagabandhu had kept Pata, the sister of Bimala as concubine. Father of the Plaintiffs is the son of Jagabandhu through Bimala. Madan and Banu are his sons through Pata.

The Defendant Nos. 2 and 3 are the sons of late Madan and Defendant No. 4 is the widow of late Banu. It is stated that Jagabandhu died on 13.10.1965 when the jointness was continuing. Kailash, Madan and Banu jointly succeeded to the suit and other properties of Jagabandhu. Madan and Banu said to have relinquished their claim over the properties of Kailash and left the village in search of livelihood because the properties were not enough to sustain them all. The Plaintiffs father during his lifetime possessed the entire land of Jagabandhu. The Plaintiffs claim that after death of his father, he is in possession of the suit properties. The Defendant No. 1 is the son's son of Chitamani Naik who is known other than the brother of Bimala and Pata. It is alleged that Jagabandhu had executed the sale deed in favour

of Defendant No.1 on 27.12.1968. It is further stated that on the basis of that properties, the Defendant No.1 has managed to get his name reflected in the remark column of Hal settlement of Record of Right as to be in possession of the suit property. This land appertains to Hal Khata No. 45 under Hal Plot No. 699. In the Hal ROR under Khata No. 46 covering Plot No. 698, as against the name of recorded tenants, it has been indicated (PALATAK PASKHYE JABAR DAKHAL). It is alternatively pleaded that if execution of the sale deed Ext. A is held to be valid, the same is void as it was not bad by legal necessity as also on the ground that Jagabandhu being a co-parcener had no authority to sale land without consent of his major sons. It is stated that the Defendant No. 1 has got the suit land mutated in the name under Mutation Case No. 902 of 1994. The Plaintiff although had filed objection in the said mutation case, it was not duly considered. So the Plaintiffs have sought for declaration of their title over the suit land confirmation of their possession and in the alternative recovery of possession with further prayer to declare the sale deed dated 27.12.68 Ext. A as null and void and not binding on them and also to get permanent injunction against the Defendant No. 1 restraining him from interfering in the peaceful possession of the suit land by the Plaintiffs.

4. The Defendant No. 1 contested the suit. In his written statement, he has asserted that Jagabandhu has sold the land measuring Ac.0.20 decimals from Sabik Plot No. 223/1 appertaining to Sabik Khata No. 164 which corresponds to Hal Plot No. 699 under Hal Khata No. 46. The plaint under Hal Plot No. 699 measuring Ac.0.30 decimals and the Defendant No. 1 states that he having purchased the land measuring Ac.0.20 decimals from Jagabandhu in his possession of the same and has forcibly possession the left out the land measuring Ac.0.10 decimals of such plot. He thus also claims to have perfected the title over the that

Ac.0.10 decimals of land under Plot No. 698 appertaining to Khata No. 45 by adverse possession. So he claims to have the right, title, interest over Ac.0.20 decimals as the lawful purchaser and to have acquired title over rest Ac.0.20 decimals by way of adverse possession.

5. On the above rival pleadings, the Trial Court in all framed ten issues. Issue No. 8 appears to be the most crucial one which relates to the validity of the registered sale deed dated 27.12.1968 Ext.A. The Trial Court has answered this issue against the Defendant No. 1 holding it to be null and void basically for the reason that on the date of execution of the said sale deed Ext. A, Jagabandhu was not alive.

The Defendant No. 1 being aggrieved by the above judgment and decree passed by the Trial Court has carried the First Appeal. The First Appellate Court has allowed the Appeal in part protecting the Defendant No.1 in respect of his said purchase land of Ac.0.20 decimals under registered sale deed Ext.A and holding that the Plaintiffs have the right, title and interest over the land measuring Ac.0.10 decimals and as such are entitled to reliefs claim.

6. I have heard Mr. D.P. Mohanty, learned counsel for the Appellant.

He submitted that when the Plaintiffs have proved the Death Certificate issued by the Medical Officer, CHC, Bhanda Ext. 5 which clearly indicate the date of death of Jagabandhu. It is seen that the birth of Jagabandhu had taken place on 13.10.65 and therefore the Courts below have completely erred both on facts and law in holding that Ext. A said to have been executed by that Jagabandhu in favour of Defendant No. 1 as valid and operative. He submitted that if the above finding is given, then this Ext. A has to be held to have been obtained by practising fraud by impersonation. He submitted that under the

provision of Birth and Death Act, 1969 in the absence of any challenge to the said entry as to the death of the person before the Appropriate Authority, the Lower Appellate Court is not justified in discarding the same. He thus submitted that the above substantial question of law stands for being answered in this Appeal.

7. Keeping in view of the submission made, I have carefully gone through the judgments passed by the Courts below.

In order to address the above contention of the learned counsel for the Appellant in searching out the substantial question of law if so surfaces in the present case; it is seen that the Plaintiffs have relied on Ext. 5 which is the Death Certificate of Jagabandhu issued by the Medical Officer, CHC, Bhanda under the provisions of Registration of Birth and Death, Act 1969. When the Plaintiffs state that Jagabandhu died on 13.10.1965 the whole purpose of proving Ext.5 is to show that on the date of so-called sale deed and its registration i.e. 17.12.68, the executant was no more in the mortal one.

This certificate has been obtained shortly before the institution of the suit by the Plaintiffs. The suit which is of the year 1997 filed by the Plaintiffs. P.W. 1, the Plaintiff has stated to have made an application to the Executive Magistrate, Champua seeking issuance of the Death Certificate in the year 1996 and then by his order the certificate has been obtained. This registration of Birth and Death Act, 1969 admittedly came into force in Orissa w.e.f. 1.4.1970. So the First Appellate Court has rightly taken the view that the Executive Magistrate could not have taken any action in the matter under section 13 of the Act in directing the Medical Officer, CHC, Bhanda to enter the date of birth of Jagabandhu Naik in the register on a date when his death had taken place as per the case of the Plaintiffs five years before. The Plaintiffs

have also not let in evidence to show that the death was reported as required under sub-section 2 of section 66 of the Orissa Grama Panchayat Act. There is no report to the person appointed by the Grama Panchayat in informing the death of Jagabandhu. All these clearly indicate that Ext. 5 has been obtained with a view to produce the same in evidence in the present suit. Witness who is said to have stated about the date of death of Jagabandhu before the Executive Magistrate has come to the witness box. Thus, the Lower Appellate Court did commit no mistake in ignoring Ext. 5 to say in favour of the claim of the Plaintiffs that Jagabandhu died on 13.10.65.

In view of all these above, this Court finds that the Lower Appellate Court has rightly held that the death of Jagabandhu Naik had taken place in the year 1965 as claimed by the Plaintiffs has not been proved by leading clear, cogent and acceptable evidence.

In that view of the matter, the Lower Appellate Court did commit no mistake in holding the registered sale deed Ext. A to be valid in the eye of law when no such case of perpetration fraud other than the one which has already been negated has been shown.

In the wake of aforesaid, the submission of the learned counsel for the Appellant that the Appeal merits admission for answering the substantial question of law fails.

8. Accordingly, the Appeal stands dismissed. There shall, however, be no order as to cost.

9. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner

prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

(D. Dash),
Judge.

Aksethy

HIGH COURT
सत्यमेव जयते
ORISSA