

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.256 of 2015

In the matter of an Appeal under Section 100 of the Code of Civil Procedure assailing the judgment dated 30.03.2015 passed by the learned Additional District Judge, Nabarangpur in R.F.A. No.38 of 2014 confirming the judgment and decree dated 30.11.2013 and 11.12.2013 respectively passed by the learned Civil Judge, Senior Division, Nabarangpur in C.S. No.17 of 2011.

Phulamati Bhatra

....

Appellant

-versus-

Gobardhan Bhatra

....

Respondent

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

For Appellant

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Mr.Neelakantha Panda
(Advocate)

For Respondent

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Mr.P.K.Rath
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 21.10.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellant, in filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment dated 30.03.2015 passed by the learned Additional District Judge, Nabarangpur in R.F.A. No.38 of 2014.

By the same, the Appeal filed by the Appellant (Defendant) under section 96 of Code, has been dismissed and thereby the judgment and decree dated 30.11.2013 and 11.12.2013 respectively passed by the learned Civil Judge, Senior Division, Nabarangpur in C.S. No.17 of 2011 have been confirmed.

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:-**

The Plaintiff's case is that one Guru Bhatra was the owner in possession of Ac.4.654 cents and the land is under Khata No.14 in Mouza-Duglahandi in the district of Nabarangpur. In the First Settlement, the record of right was issued in his favour and after him, his sons, namely, Rupa, Daya, Khagu and Lakhamu enjoyed the property jointly. Rupa died forty year prior to the filing of the suit whereas Daya died twenty-five before the suit. It is stated that Lakhamu and Khagu also died thirty and twenty years respectively prior to the institution of the suit. According to the case of the Plaintiff, Rupa and Daya had left no heir of their own to succeed and Lakhamu died leaving behind her daughter Phulamati, the Defendant whereas Khagu leaving behind his only son Gobardhan, the Plaintiff. Khagu and Daya are said to be looking after the other members of the family till their death and they performed the obsequies of three other brothers of Khagu and their wives. They state to be in peaceful possession of the suit land though they use to reside at Village-Teliaguda but they come to cultivate the lands at Dugalhandi and stayed during that period. It is stated that after the death of the father of the Plaintiff, he used to cultivate the landed property for about three years and he being the sole male member of the family, failed to get any profit from cultivation. Further, the Defendant, as a distant relation, expressed her desire to cultivate and lookafter the house. She also agreed to pay the land revenue to the State to maintain the property and deliver vacant possession of the same, as and when would be required by the Plaintiff.

It is stated that during the harvesting season prior to the suit, the Plaintiff found that the Defendant was not taking proper care of the properties and he surprisingly learnt that the entire suit property has been recorded in the name of the father of the Defendant and then mutated in the name of the Defendant without the knowledge of the Plaintiff or his father. The Plaintiff states that the possession of the suit land by the Defendant was permissive and she has no right, title and interest over the suit property.

4. The Defendant, coming to contest the suit, stated that after the death of Guru Bhatra, his two sons had partitioned the entire property equally between them and it was a partition both in mess and estate when Guru, Rupa and Daya died without leaving any heir of their own. It is stated that on the death of Guru, Rupa and Daya, the Defendant and her father had performed the obsequies and as such, their shares have been acquired by Lakhamu and the Defendant possessed the same without any disturbances. It is further stated that during the Settlement Operation, the father of the Plaintiff had appeared before the Authority and the entire land had been recorded jointly in their names and the Plaintiff was a minor during then. It is also stated that the Defendant, with the knowledge and consent of the Plaintiff, had filed a case under section 19 of the Orissa Land Reforms Act, 1960 before the Tahasildar, which was numbered as Case No.16 of 2007. That has been allowed and accordingly, the record of right has been issued deleting the name of Khagu Bhatra. The Defendants claims to have thus the right, title and interest over the suit land and as such, in possession of the same.

5. The Trial Court, on the above rival pleadings, having framed as many as seven issues; upon examination of the evidence and their evaluation, has answered all those in favour of the Plaintiff.

The First Appellate Court, being moved by the aggrieved Defendant, has also confirmed the said decision of the Trial Court.

6. The Appeal has been admitted to answer the following substantial question of law:

“In view of the admitted position that the parties belong to Scheduled Tribe Community for which they are not governed Hindu Succession Act, 1956 and Mitaskhara School of the traditional Hindu Law apply to them; on face of the admitted relationship between the parties, whether the learned Courts below have committed illegality in decreeing the suit declaring plaintiff-Respondent’s exclusive right, title and interest over the suit land without deciding as to whether the defendant-appellant has got any interest in the suit land?”

7. Learned counsel for the Appellant submitted that the Courts below have committed illegality in decreeing the suit holding that the Plaintiff has the exclusive right, title and interest over the suit land without deciding the claim of the Plaintiff that she too has the right, title and interest over the suit land. It was submitted that the parties, being the members of the Scheduled Tribe Community when the provisions of Hindu Succession Act, 1956 in respect of inheritance and succession do not apply to them, the Courts below ought to have necessarily recorded a finding on the available evidence that there had been a severance of status of the joint family causing a disruption to the rule of succession of the property by way of survivorship before decreeing the suit or declaring the right, title and interest of the Plaintiff over the suit land.

8. Learned counsel for the Respondent, on the other hand, submitted that as per the admitted case, the property having come from the hands of the common ancestor Guru Bhatra and the Defendant, being the daughter of one of the sons of Guru, namely, Lakhamu, it was incumbent upon her to prove that there had been a severance of status disrupting the joint family status amongst the four sons of Guru or at least the two surviving sons of Guru, i.e., Khagu and Lakhamu so as to bring an end to the succession of the property by way of survivorship. In view of the above, he urged that the Courts below have rightly decreed the suit.

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

10. Admittedly, the property originally belonged to Guru Bhatra, who had four sons. The Plaintiff is the son of Khagu and the Defendant is the daughter of Lakhamu. The other two sons of Guru, namely, Rupa and Daya, are dead without any issue and it is also not stated that their wives are living. In such state of affair and in normal course of things, the Defendant, being the daughter of Lakhamu does not have the right to inherit the interest of her father in the said property, which he and his brother have succeeded from their father Guru since they are the members of the Scheduled Tribe and governed by Mitakshara School of Hindu Law to whom the provisions of Hindu Succession Act, 1956 do not apply in so far as inheritance and succession are concerned. Thus, the Defendant, in order to thwart the claim of the Plaintiff has to plead and prove that

there had been a severance of status of the jointness/joint family between her father and the father of the Plaintiff so as to bring an end to the application of the rule of succession by way of survivorship as in the absence of severance of the joint status between Lakhamu and Khagu on the death of Lakhamu, the property would be succeeded by the Plaintiff, who is the son of Khagu and the Defendant, being the daughter of Lakhamu would not come into the picture to succeed. The question of her succession to the interest of her father Lakhamu which he had in the properties inherited from Guru would arise only when the Court would satisfactorily find that there was a complete severance of status of jointness/joint family between Khagu and Lakhamu and thereby giving a go-bye to the rule of succession by way of survivorship. The Defendant having neither so pleaded in clear terms nor proved the said factum of severance of status between her father and the father of the Plaintiff by leading clear, cogent and acceptable evidence and when also it has not been proved that the land had been recorded in her name either with the consent from the side of Khagu or the Plaintiff, which in that event could have been taken to be a case of family arrangement; the substantial question of law, in my considered view, must receive its answer against the case/claim of the Defendant running to confirm the judgments and decrees passed by the Courts below.

11. In the result, The Appeal stands dismissed. There shall, however, be no order as to cost.

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