

IN THE HIGH COURT OF ORISSA : CUTTACK
RSA No.411 of 2013

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 16.09.2013 and 28.09.2013 respectively passed by the learned Additional District Judge, Bhadrak in T.A. No.46/13 (81/96) confirming the judgment and decree passed by the learned Additional Civil Judge (Junior Division), Basudevpur in T.S. No.9 of 1996-I.

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Gadadhar Mohanty & Another* :::: *Appellants.

-:: VERSUS ::-

Debendra Mishra & Others :::: *Respondents.*

Advocate(s) who appeared in this case through virtual mode.

For Appellants ... M/s. Akshaya Kumar Sahoo,
A. Khatun & J.K. Dehury, Advocates

For Respondents ... None.

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

Date of Hearing:10.01.2022 :: Date of Judgment:21.01.2022

The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure (for short, 'the Code') have assailed the judgment and decree dated 16.09.2013 and 28.09.2013 respectively passed by the learned Additional District Judge, Bhadrak in T.A. No.46/13 (81/96).

By the said judgment and decree, the Appeal filed by these Appellants as the Defendants under section 96 of the Code had been dismissed and the judgment and decree passed by the learned Additional Civil Judge (Junior Division), Basudevpur in T.S. No.9 of 1996-I

against the Appellants (Defendants) in decreeing the suit filed by the Respondents (Plaintiffs) 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. **Plaintiffs' case:-**

The Plaintiffs have filed the suit for permanent injunction with the prayer to restrain the Defendants from entering upon the suit land in causing disturbance in their peaceful possession over the same and for declaration that the registered sale deed dated 27.12.95 in respect of the suit land described schedule 'Kha' of the plaint as void and illegal.

It is stated that the suit land is a part of the land described in schedule 'Kha' of the plaint which the Defendants claim to have purchased from the Plaintiff No. 3 on 27.12.95. The 'Ka' schedule property is the joint family property of the father of the Plaintiffs and his other co-sharers. One Umakanta Mishra is the father of the Plaintiffs and Rabindra Mishra is the eldest brother of the Plaintiffs. It is stated that Rabindra Mishra has separated himself from the Plaintiffs after the death of their father. Plaintiffs have been in joint mess and estate. Plaintiff No. 1 is the 'Karta' of the family of the Plaintiffs. It is stated that there has been no partition of schedule 'Ka' in metes and bounds. The Plaintiff No. 3 being born on 22nd day of CHAITRA OF 1385 Odia SAL was prosecuting his study at Gobvindapur UGME School and thereafter at Nilakantheswar Toll and Maharsi Bidyapitha Noida, New Delhi. He finally returned from New Delhi in the year 1993 and joined politics. In the year 1995, voter list was prepared. Sarangadhar Mohanty, the brother of the Defendants was a teacher and he had been engaged as an

enumerator in the process of preparation of the voter list. It is stated that the Defendants with the help of their brother Sarangadhar by enhancing the age of the Plaintiff No. 3 had enrolled him as a voter in the voter list, when the facts remain that the Plaintiff No. 3 was depending on Defendant No. 1 for his need. So they stated that the Defendants have been able to get a sale deed created on 27.12.1995 from Plaintiff No. 3 in respect of schedule 'Kha' property. The Defendants are said to have not been consulted in the matter and they as before are possessing the said property jointly. When on 19.2.1996, the Defendants threatened the Plaintiffs to dispossess them from the said land, the suit has been filed.

4. The Defendants contesting the suit in their written statement have stated that the suit schedule Khata No. 288/52 has been recorded in the name of Narayan Mishra, Laxmikanta Mishra, Srikanta Mishra, Umakanta Mishra and Sapan Debya. It is stated that Sapan Dibya along his half share over said land under the khata and Umakanta had 1/8th share. It is further stated that Umakanta had partitioned the suit property before his death and delivered 1/32 share to each of his four sons namely, Rabindra, Debendra, Ganjendra and Rajendra who are accordingly possessing the respective lands. It is stated that the land under suit Khata Nos. 288/68 and 239 are jointly recorded in the name of Laxmikanta, Srikanta, Umakanta who have 1/3rd share each. After death of Umakanata, his four sons have 1/4th share each over the same and they are possessing separately. It is stated that the Plaintiff No.3 has sold the land measuring Ac.0.4 1/16 decimals from the land under Khata No. 288/52, Ac.0.2 1/4 decimals from khata No. 288/68 and an area of Ac.0.8 11/12 decimals from khata No. 239; those being total measuring Ac.0.15 11/48 decimals in favour of the Defendants on 27.12.1995 for consideration of Rs.2000/-. It is stated that the registered

sale deed has been executed and delivery of possession of the properties have been made pursuant to the said sale. Plaintiff No. 3's age is said to be 21 years by then.

5. On the above rival pleadings, the Trial Court has framed in total four issues. Rightly coming to answer the crucial issues Nos. 1 to 3 together, upon examination of evidence and their evaluation, it has categorically held that the Plaintiff No.3 was a minor at the time of execution of the sale deed in question. Finally, answer on all these issues Nos. 1 to 3 have been given in favour of the Plaintiffs. With said findings, the Trial Court has decreed the suit.

The Defendants being aggrieved by the judgment and decree passed by the Trial Court having moved the Lower Appellate Court have failed.

6. Mr. A.K. Sahoo, learned counsel for the Appellants submitted that the finding of the Trial Court as confirmed by the Lower Appellate Court that the Plaintiff No.3 was a minor at the time when the sale deed Ext. A came into being is the result of perverse appreciation of evidence. According to him, the evidence on record would clearly suggest to record a positive finding that the Plaintiff No. 3 was then major. He therefore urged for admission of this Appeal for answering the above substantial question of law.

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

8. The Plaintiff No. 3 has been shown as a major in the sale deed Ext.A. Ext.3 the certified copy of the voter list so discloses in support of his majority then. The Plaintiff No. 3 has been shown to be 21 years at

the time when Ext. A came into being i.e. as on 27.12.95 whereas the voter list reflected the age of Plaintiff No.3 as 19 years. So there is a variance in between two documents. Exts. 1 and 6 are the transfer certificate and school admission register of Plaintiff No. 3. The Plaintiff No.3 being admitted in Gobindapur M.E. School for the first time in Class-I, his date of birth has been reflected as 5.4.1978. Umakanta Mishra, the father of the Plaintiff is a signatory to the said Ext. 6. The transfer certificate would reveal the same date of birth of Plaintiff No.3. In that view of the matter, the document proved from the side of the Plaintiffs being of the time much prior to the document proved from the side of the Defendants coming into being; the Courts below in my considered view did commit no mistake in holding that the age of the Plaintiff No. 3 as indicated in the voter list and shown in the sale deed Ext. A are outweighed by the entries in Ext.6 and Ext. 1 coupled with the oral evidence tendered by the Plaintiffs.

In view of that, finally the Courts below having found from evidence that the possession of the suit land is with the Plaintiffs, no such perversity is seen in the said answer as recorded to the effect that the sale deed, Ext.A is void.

Accordingly, this Court is not in a position to accept the submission of the learned counsel for the Appellants (Defendants) that there arises the substantial question of law for being answered in this Appeal meriting its admission.

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

10. 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

