

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.504 of 2005

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 28.07.2005 and 11.08.2005 respectively passed by the learned Ad hoc Additional District Judge, Balasore in T.A. No.8/60 of 2004/2005 confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Balasore in T.S. No.611 of 1999-I.

Sri Trilochan Jena

....

Appellant

-versus-

Nizamuddin Khan & Others

....

Respondents

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

For Appellant - M/s.B.H.Mohanty, R.K. Nayak,
T.K. Mohanty, S. Burma &
D.P. Mohanty
Advocates

For Respondents -

CORAM:

MR. JUSTICE D.DASH

Date of Hearing & Judgment: 06.01.2022

D. Dash, J. The Appellant, by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree dated 28.07.2005 and 11.08.2005 respectively passed by the learned Ad hoc Additional District Judge, Balasore in T.A. No.8/60 of 2004/2005.

By the said judgment and decree, while dismissing the Appeal filed by the present Appellant-Defendant under Section 96 of the Code, the First Appellate Court has confirmed the judgment and decree

passed by the learned Civil Judge (Junior Division), Balasore in T.S. No.611 of 1990-I.

2. The suit filed by the present Respondents (Plaintiffs) against the Appellant (Defendant) has been decreed declaring their right, title, interest and possession over the suit land and holding the recording of the suit land in major settlement to be incorrect and directing that the same be recorded in their names. It has further been held that the Appellant (Defendant) has no manner of right, title and interest over the suit land and accordingly he has been permanently enjoined from interfering with the possession of the Plaintiff over the suit land in any manner.

3. 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.

4. The Plaintiffs' case is that the suit land of "Dhuli Bhaga" classification was recorded in the settlement record of the year 1930 in the name of Mohan Jena. Said Mohan died in the year 1936 leaving behind his sons Laxman and widow Amruti. Laxman ultimately succeeded to the property. When he was so possessing the property, the same stood vested with the State and as no rent was fixed, Laxman filed an application under Section 4 of O.L.R. Act before the Tahasildar under OLR Misc. Case No.149 of 1956. By order dated 30.10.1959, the Tahasildar declared Laxman as the Sthitiban tenant and fixed the rent. The rent schedule was accordingly issued. Laxman then possessed the suit land with other properties and went on paying the rent to the State obtaining rent receipts. He transferred some undisputed land in favour of the Defendant from out of khata no.69, plot no.181 measuring

Ac.0.08 decimals under registered sale deed dated 19.05.1975 and delivered possession of the same. Since, then he is in possession of the same. Laxman, while in possession of the suit land, sold the same to the Plaintiffs by registered sale deed dated 17.06.1974 and 31.12.1976 for a consideration of Rs.300/- and Rs.600/- respectively and since then, the possession of the suit land remained with the Plaintiffs and they continued to possess the same as its rightful owners. Laxman had two sons, namely, Trilochan, the Defendant and one Padmalochan. The Defendant was adopted by Maguni and he was residing in his house. After Laxman, before Major Settlement, the Defendant, in connivance with the settlement staff, got the suit land recorded in the name of Amruti illegally though the Plaintiffs had by then purchased the land. However, in the remarks column of the ROR, the note of forcible possession stood recorded in favour of the Plaintiffs. It is stated that Amruti had no right, title and interest over the suit land and such recording is illegal. They allege that the Defendant being interested to purchase the suit land from the Plaintiffs, when failed in that attempt, he obtained a deed of power of attorney from Amruti and on the basis of that, fraudulently created a sale deed on 11.07.1977 in respect of the suit land and other land in his favour. Being emboldened by that fraudulent sale deed when he threatened the Plaintiffs to dispossess them from the suit land, the suit has come to be filed.

5. The Defendant, in the written statement, has denied the fact that during 1930 settlement, the suit land was recorded as “Dhuli Bhaga” in the name of Mohan Jena, who died leaving behind his widow Amruti and son Laxman and that Laxman succeeded to the same as the successor had applied for its settlement, which stood recorded in his favour as Sthitiban tenant on 30.10.1968. The Defendant also denied

that Laxman to be the sole owner of the suit land. It is further denied that on 17.06.1974, Laxman had transferred the land for a consideration of Rs.300/- and on 11.02.1976 for a consideration of Rs.600/- to the Plaintiffs and delivered possession of the same. The Defendant also denied that during settlement, he had influenced the settlement authority in getting the land illegally recorded in the name of Amruti.

It is the case of the Defendant that he is the eldest son of Laxman and he is the foster son of Maguni. It is stated that Laxman is not the natural son of Mohan but son of one Kasi. Mohan is said to have died in the year 1934 leaving behind his widow Amruti and Laxman had participated in the rent camp and Laxman was looking after the other case. After his death, Amruti succeeded to the same and she was personally looking after the cultivation. As the suit land was recorded as Sthitiban after abolition of the estate, there was no occasion of vesting the same with the Government and after death of Mohan, Amruti possessed the same and for her requirement, she was selling the land. It is stated that Laxman had no right over the land of Mohan and as such had no authority to sell to the Plaintiffs. So, the said sales in favour of the Plaintiffs are said to be void and it said that the Plaintiffs never possessed the suit land. The Defendant stated that he had purchased the suit land from Amruti by registered sale deed for valuable consideration and he was delivered with the possession of the same and accordingly, he is possessing the same. It is further stated that Laxman is his natural father and the Defendant had faith and regard for him. When Laxman proposed to transfer some land in his favour, he on good faith, executed sale deeds in his favour, which he later on came to know that Laxman with ulterior motive has so executed it in respect of

Ac.0.06 decimals and thus from that, it cannot be accepted that he is the son of Mohan Jena.

6. On the above rival pleadings, the Trial Court framed four issues. Answering the crucial issues, i.e. issue nos.2 and 3 with regard to the claim of the Plaintiffs that they have the right, title and interest over the suit land as well as the validity of the sale deed executed by Amruti, the father of the Defendant; upon examination of the evidence on record and their evaluation, those have been answered in favour of the Plaintiffs. Said answers have practically provided the result in the suit in decreeing the same as aforesaid.

The unsuccessful Plaintiffs having carried the Appeal, have failed.

7. Heard learned counsel for the Appellant in the matter of admission of this Appeal. He submits that the Courts below are not correct in ignoring the impacts of the documents under Ext.D series while considering the question as to whether Laxman Jena is the son of Mohan Jena or not. It is submitted that appreciation of the evidence on that score is wholly perverse and the Courts below have thus erred in decreeing the suit. He, therefore, urges for admission of this Appeal on the above substantial question of law.

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

9. Ext.1 is the rent schedule, which describes Laxman Jena as the son of Mohan Jena. In a sale deed executed by Kasinath, Laxman and Maguni jointly on 17.04.1934 admitted in evidence and marked Ext.4 under which one Achyutananda Mohanty has purchased the land from

them also describes that Laxman Jena is the son of Mohan Jena. In the judgment passed in the original suit, i.e Suit No.64 of 1952 (Ext.8), Laxman has been stated to be the son of Mohan. Another sale deed dated 27.07.1975 also reflects the same description that Laxman is the son of Mohan. In that original suit No.64 of 1952, Laxman Jena has given his evidence and he has stated to be the son of Mohan. In order to counter all these above and show that Laxman is not the son of Mohan, but son of Kasi, the Defendant has only proved Ext.D, Ext.D/1 and Ext.D/4, which are the major settlement records of right, which are not that old origin but of the year 1982 and 1985. The Courts below, in view of the overwhelming documentary evidence on record, held that Laxman is the son of Mohan. In my considered view, in saying so the Courts below have not committed no error by discarding Ext.D series in finally saying those cannot out-weigh the evidence let in by the Plaintiffs.

The Defendant, in the present suit, has purchased a piece of land from none other than Laxman by that Ext.10. In that registered sale deed (Ext.10), he has purchased land from Laxman who had described himself to be the son of Mohan and not the son of Kasi, which the Defendant now asserts. The explanation on this score as tendered in evidence at such belated stage unacceptable. In that situation, lower Appellate Court having held that the Defendant is now stopped from saying otherwise and asserting that Laxman is the son of Kasi, has committed no mistake. When Mohan is survived by his son Laxman and Laxman succeeded to the properties of Mohan, it has been rightly said that Amruti had no right, title and interest over the property. Therefore, the sale deed executed by Amruti is void and nonest in the

eye of law as Amruti had no right, title and interest over the property to so alienate.

In above view of the matter, when it has been found that the Plaintiffs have duly proved the sale deeds in their favour, in arriving at the conclusion that the Plaintiffs have the right, title and interest over the suit property and as such are in possession of the same, the Courts below have committed no error. The Courts below having thus said that the Defendant being a purchaser from a person having no title over the property has nothing to do with the same, this Court finds no such infirmity therein.

10. For all these aforesaid, this Court is of the view that the submission of the learned counsel for the Appellant is liable to be repelled. It is thus held that there arises no substantial question of law for being answered in this Appeal meriting its admission.

11. In the result, the Appeal stands dismissed. The Judgments and decrees passed by the Courts below stand confirmed. There shall, however, be no order as to cost.

(D. Dash),
Judge.

Basu