

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.130 of 2022

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.12.2021 & 28.12.2021 passed by the learned Additional District Judge, Sundargarh, in R.F.A. No.43/22 of 2007-21 confirming the judgment and decree dated 07.07.2007 and 19.07.2007 respectively passed by the learned Civil Judge, Senior Division, Sundargarh in C.S. No.82 of 2003.

Subrat Acharya & Another* *Appellants

-versus-

Cathorina Khalkho & Others* *Respondents

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

***For Appellants* - Mr.Himanshu Bhusan Sutar
Advocate**

***For Respondents* - Mr.Biswajit Mohapatra
Advocate for R.1 through Caveat**

**CORAM:
JUSTICE D.DASH**

Date of Hearing :24.11.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellants, in this Appeal under Section 100 of the Code of Civil Procedure, 19008 (for short, 'the Code'), have assailed the judgment and decree dated 22.12.2021 & 28.12.2021 respectively passed by the learned Additional District Judge, Sundargarh, in R.F.A. No.43/22 of 2007-21.

By the same, the Appeal filed by the predecessor-in-interest of the present Appellants and Respondent Nos.2 & 3 under section 96 of Code, in challenging the judgment and decree dated 07.07.2007 and 19.07.2007 respectively passed by the learned Civil Judge, Senior Division, Sundargarh in C.S. No.82 of 2003, has been dismissed.

The judgment and decree passed by the Trial Court in the suit filed by the present Respondent No.1 with the prayer for declaration of his right, title and interest and confirming his possession with a declaration that the registered sale deed dated 16.08.1973 as valid, having been decreed by the Trial Court, the same has been confirmed in the First Appeal.

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 is that she is the owner of the land as described in Schedule-A of the plaint. It is her case that the suit land originally belonged to Nandakishore Acharya, who is the husband of Defendant No.1 and father of Defendant Nos.2 to 5. Said Nandakishore purchased the property by registered sale deed dated 09.07.1968 from the erstwhile owner and was in possession of the same. The Plaintiff, when agreed to purchase the said land, as proposed, Nandakishore sold the same by executing registered sale deed dated 16.08.1973 on receipt of valuable consideration of Rs.1000/- and delivered the possession of the same. It is further stated that the Plaintiff had also purchased the land measuring Ac.0.93 decimals from one Pankaj Narayan Acharya by registered

sale deed dated 18.06.1973. The Plaintiff then filed Mutation Case No.978 of 1977. The Mutation Officer, while allowing the mutation in respect of the land purchased from Nandakishore, refused to mutate the land which the Plaintiff had purchased from Nandakishore. The Plaintiff then again filed Mutation Case No.550 of 2002, which was objected to by the Defendants. They asserted that the sale deed dated 16.08.1976 said to have been executed by Nandakishore is a void document. The Mutation officer then dropped the proceeding as in the meantime, the Hal Record of Right was published in the name of Nandakishore. The Plaintiff was, therefore, directed to approach the Civil Court.

4. The Defendants 1 to 3, who are the wife and two sons of Nandakishore, contested the suit by filing the statement. They took the pleas that there is no cause of action to file the suit; the suit is not maintainable and that it is bad for non-joinder of necessary party. These Defendants, however, completely remained silent with regard to all other averments made in the plaint.

5. The Trial Court, faced with the above rival pleadings, has framed seven issues and upon examination of the evidence and their evaluation, has held that the sale deed dated 16.08.1973 (Ext.1) to be valid and has clothed the Plaintiff with the title in respect of the suit land. Practically, the answer to this issue has resulted the decree in the suit in favour of the Plaintiff.

6. The Defendant No.1, being aggrieved by the judgment and decree passed by the Trial Court, having filed the First Appeal under section 96 of the Code, which came to be pursued by the Defendant Nos.2 & 3 upon the death of Defendant No.1, the First

Appellate Court, upon examination of the evidence and their evaluation at its level, has affirmed the finding of the Trial Court and that has led to confirm the result in the suit running in favour of the Plaintiff.

7. Mr.H.B.Sutar, learned counsel for the Appellants submitted that the Courts below ought to have held that the sale deed (Ext.1) is invalid as the Plaintiff has failed to prove that there has been payment of consideration amount by him to the vendor, namely, Nandakishore. He also submitted that the Plaintiff having failed to prove that pursuant to the said sale deed Nandakishore (Vendor) had delivered the possession of the suit land to the Plaintiff, the Courts below ought not to have decreed the suit holding the sale deed to be valid and to have clothed the Plaintiff with the title in respect of the suit land. He submitted that the above two essential conditions as to payment of consideration and delivery of possession having not been established through clear, cogent and acceptable evidence from side of the Plaintiff, the judgment and decree passed by the Courts below are vulnerable. He, therefore, urged for admission of this Appeal to answer the above substantial question of law.

8. Mr.B.Mohapatra, learned counsel for the Respondent No.1 through caveat, in assisting the Court in the matter of admission of the Appeal, submitted all in favour of the findings returned by the Courts below. According to him, the sale deed dated 16.08.1973 (Ext.1) has been allowed to stand all through and it is only when the Plaintiff, who filed the suit as his land was not recorded in the Mutation Proceeding wherein the Defendants filed their objection

being instigated by some mischievous persons of the locality in view of the steep rise in the market price of the suit land, the challenge to the said sale deed was levied for the first time. He submitted that the Plaintiff having proved Ext.1, which is a registered one and as no such specific pleading has been made by the Defendants in impeaching the said sale deed when it was for them to establish that the same lacks of the established legal requirements, the Courts below are right in holding the sale deed to be valid. He further submitted that the Defendants, having failed in the above direction, the Courts below are absolutely right in decreeing the suit.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

10. The claim of the Plaintiff for declaration of her right, title and interest over the suit land and possession is based upon the registered sale deed dated 16.08.1973. The Defendants have never questioned the sale deed at any prior point of time except in the mutation proceeding instituted by the Plaintiff prior to filing of the suit, i.e. in the year 2002. The pleading of the Defendants does not narrate the required facts in questioning/impeaching said sale deed in consonance with the provision of Order 6 Rule 4 of the Code. It is also not stated as to how and for what reason, instead of questioning that registered sale deed of the year 1973; they could allow it to hold the field till the year 2002, when the grounds of impeachment as urged even being makes the sale deed voidable and not void and the Court has to so declare.

The Plaintiff has examined the scribe of the sale deed, who has proved that the same in saying that he had written the deed under the instruction of the vendor. The document being a registered one; it carries the presumption as to the factum of due execution by the vendor as here that is not at all challenged. The Defendants, simply while the cross-examining the witnesses of the Plaintiff and giving evidence, have taken a plea that the document is a forged one, but then no such supporting fundamental and supporting fact(s) find narrated in their written statement which is mandatory. When such is the state of affairs, the burden of proof lying on the Defendants to prove all those essential facts by holding clear, cogent and acceptable evidence in impeaching the said registered sale deed, has not been discharged. Merely saying that the Plaintiff, as the vendee, has not been proved the payment of consideration and its receipt by the vendor as also the factum of delivery of possession by the vendor to her would not suffice the purpose in returning a finding that the registered sale deed (Ext.1) is invalid and the Plaintiff has not been clothed with the title in respect of the suit land by virtue of that deed. On the face of the settled position of law that the record of right does not create or extinguish the title of the true owner, therefore, even though the suit land has been recorded in the name of vendor when the Plaintiff has proved to have validly purchased the suit land from his vendor, who, was the recorded owner prior to the sale; the Courts below did commit no mistake in decreeing the suit.

For all the aforesaid, this Court is not in a position to accept the submission of the learned counsel for the Appellants that there

arises any such substantial question of law for being answered in this Appeal, meriting its admission.

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

(D. Dash)
Judge

Basu

