

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.177 of 2015

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Civil Judge, Senior Division, Banki in R.F.A. No.02 of 2007 confirming the judgment and decree dated 30.11.2006 and 15.12.2006 respectively passed by the learned Civil Judge, Junior Division, Banki in C.S. No.18 of 2005.

Krushna Chandra Mohapatra ***Appellant***

-versus-

Bhagabat Prasad Mohapatra ***Respondent***

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

For Appellant - Mr.Biswajit Mohapatra,
(Advocate)

For Respondent - Mr.A.P. Bose,
Advocate for R.1
Mr.K.K.Mohapatra
Advocate for R.2

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 27.09.2022 : Date of Judgment:20.10.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree passed by the learned Civil Judge, Senior Division, Banki in R.F.A. No.02 of 2007.

By the same, the Appeal filed by the present Appellant being the aggrieved Defendant in Civil Suit No.18 of 2005 in the Court of the

learned Civil Judge, Junior Division, Banki under section 96 of the Code has been dismissed and thereby, the judgment and decree passed by the Trial Court in decreeing the suit filed by the Respondent, as the Plaintiff, declaring his right, title and interest over the the suit land and permanently injunction the Appellant (Defendant) from interfering in the peaceful possession of the Plaintiff over the same have been confirmed.

At this stage, it may be stated that on the prayer of the Respondent No.1 (Plaintiff), the Respondent No.2 has been impleaded as party to this Appeal for the reason that in the meantime, the Appellant has sold away the property in suit to that Respondent No.2 by executing a registered sale deed which is during pendency of this 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. The Plaintiff's case is that the Defendant, in the suit, is the son of his brother Chaitanya, who is dead. It is stated that during the life time of Chaitanya, the Plaintiff and his brother Chaitanya and their family were living in a joint family governed by Mitakshars School of Hindu Law.

Gopal Mohapatra was the Karta of the family as he is the father of the Plaintiff and grandfather of Defendant. It is next stated that by way of contribution made by all the family members of the family and also with the utilization of the common fund that the family had, Gopal had purchased some property. After the death of Gopal, Chaitanya became the Karta of the family. The suit property, which had been purchased in the name of Chaitanya, the elder brother of the Plaintiff was enjoyed by

both of them. The Plaintiff was a contractor and earning a lot of money. So, he says to have the major contribution for said purchase of the suit property. The suit property was purchased by registered sale deed dated 21.10.1975. However, the Plaintiff and Chaitanya, on 28.08.1993, partitioned all the purchased properties between them amicably. Accordingly, the land under Sarada Nala in Mouza-Kotadwar Biribila extending to Ac.0.41 decimals, under Mouza-Patapur a cowshed in Mouza-Ragadipatna and the homestead in Mouza-Srichandanpu fell to the share of the Plaintiff. The other land, as indicated in the 'Kacha Farda' (Allotment sheet) dated 28.08.1993 was allotted in the share of Chaitanya, the father of the Defendant. On 11.04.1997, in presence of village gentries, the settlement earlier made on 28.08.1993 was again reiterate and accordingly, the parties remained in possession of the land under their respective allotment. The Plaintiff and his brother Chaitanya also raised construction over their respective homestead and cultivated the agricultural land. The Plaintiff claims to have constructed a house over the suit land and lived there with his family. He used to pay holding tax to the Notified Area Council, Banki in respect of the house, which was assigned with Holding No.261 of Ward No.12. The brothers were peacefully possessing their respective shares since the time of allotment. When the matter stood thus, all of a sudden on 09.12.2005, the Defendant created disturbance to take over possession of the suit property for which ultimately, the suit has come to be filed.

4. The Defendant, while traversing the plaint averments, has asserted that there was no partition of the properties by metes and bounds. The possession of the parties in respect of the properties are said to be merely for convenience and nothing more. It is stated that after the death

of Chaitanya, the Defendant, being his son, has been continuing to possess the land under the possession of his father Chaitanya.

The suit land is specifically claimed to be the self-acquired property of Chaitanya. It is stated that Chaitanya had purchased the suit land from one Manorama Mishra by registered sale deed dated 21.10.1975 and subsequently, he raised construction over the suit land out of his own funds. The Plaintiff, being a contractor, with good relationship with Chaitanya, was engaged to look after the construction work. Being an literate and cunning person, after the death of Chaitanya, the Plaintiff is said to have managed to get his name entered in the NAC holding in respect of the house standing over the suit land. The Plaintiff is said to have created the fake document like the Karchha Farda etc and it is said that the signature of Chaitanya and the Defendant had been taken on blank papers, which have been subsequently utilized for creating the document and that the Chaitanya and Defendant had signed on some blank papers at the request of the Plaintiff in good faith and believing his word that those are required for the purpose for doing some official work concerning the family properties.

5. On the above rival pleadings, the Trial Court has framed as many as five issues. Issue No.3, which concerns with the partition between the parties and allotment of the suit property in the share of the Plaintiff as claimed has been rightly taken up by the Trial court first for decision. Upon examination of the evidence and their evaluation, the finding returned is that the Defendant's case that the suit land and the house constructed thereon is the exclusive property of his father, which he had purchased and then had constructed a house over it by spending money from his own purse is not believable and, therefore, it has said that the Defendant is the absolute owner of the said property. It has then been

said that in view of the partition taking place long back, the suit land was allotted in favour of the Plaintiff and he has constructed the house over it and as such, is the exclusive owner in possession of the same.

These answers have led the Trial Court to say that the Defendant has no right, title, interest and possession over the suit land. Having said all these, the Trial Court decreed the suit.

6. The First Appellate Court being moved by the aggrieved Defendant: all the above findings of the Trial court have been affirmed and thus the ultimate result of the suit, has been upheld.

7. Learned counsel for the Appellant submitted that the findings of the Courts below on Issue Nos.3 and 4 are wholly contrary to the weight of evidence on record. He submitted that the property in the suit was purchased by registered sale deed dated 21.10.1975 and the vendor of the same is Chaitanya, the father of the Defendant. By the said purchase, Chaitanya acquired the title over the suit property and, therefore, it has to be presumed to be his own property until the contrary is proved by the Plaintiff, which has not been so done here by leading clear, cogent and acceptable evidence. He further submitted that the evidence with regard to the blending of this property into the common stock by Chaitanya is not at all acceptable as there is no evidence that Chaitanya threw this property to the common stock at the time of partition by clearly intending to waive all his independent rights over the said properties in abandoning all his interest therein and made it available for partition with other joint family properties as amongst the members. He, therefore, submitted that the Courts below have committed the fault on this score in ultimately holding that the properties is the joint family property and that it had fallen to the share of the Plaintiff in the partition

between the Plaintiff and Chaitanya, the father of the Defendant. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

8. Learned counsel for the Respondent No.1 in assisting the Court in the matter of admission hearing submitted all in favour of the findings returned by the Courts below. According to him, the Courts below have concurrently held that in the partition made between the two brothers, i.e., the Plaintiff and Chaitanya, the suit property had been thrown to the common stock by said Chaitanya and he made it available for partition between himself and his brother, the Plaintiff and, therefore when the document has been proved and there is no reason to disbelieve the same, the Courts below are right in decreeing the suit.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. The evidence both oral and documentary has been extensively travelled through. More importantly, I have perused the registered sale deed in respect of the partition of the suit land in the name of Chaitanya, the father of the Defendant, which has been admitted in evidence and marked Ext.1. I have also perused Ext.2, the agreement dated 11.04.1997 and Ext.3, the unregistered deed of division dated 28.08.1993.

10. The position of law is no more res integra that the property standing in the name of one of the members of the joint family does not get attached with the presumption that it is the joint family property. The burden of proving that the particular item of property is the joint family property rests on the party, who pleads the same in order to get appropriate relief in respect of that property. It is also the settled

position of law that the member of the Hindu joint family can purchase the property in his name from out of his own funds for his own benefits and merely because the family is continuing to be joint, such property is not necessarily to be taken to be the joint family property unless it is shown that said property had been purchased with the aid of the income of the existing joint family property by way of utilization of the surplus of income.

11. The Plaintiff first claims that the property was purchased in the name of Chaitanya when they were then in a joint family and it is the Plaintiff, who had paid the consideration. It is also stated that besides the suit property, other properties had also been purchased by the parties similarly in the name of Chaitanya, which have been proved here through Exts.8 & 9. It is also stated that Chaitanya being the Karta, the properties had been purchased in his name. The Defendant claims that the suit property is the self-acquired property of Chaitanya.

Admittedly, the father of the Plaintiff and Chaitanya, namely, Gopal Mohapatra died in the year 1958 when this Plaintiff was a minor and a student. Evidence reveal that both Chaitanya and his son, the Defendant, are literate persons. The Plaintiff was a teacher and later on settled himself as a contractor. It is admitted by the parties especially the Defendant that the Plaintiff and his father were residing under common mess and estate till the year 1993 and thereafter, the Plaintiff, being ousted has been residing separately.

The Defendant, in his evidence, has admitted to have signed on Exts.2 & 3 as per the direction of his father. He has also admitted that as per the family settlement, he has been possessing the landed properties allotted to the share of his father Chaitanya. Besides the above, it has also been stated by him that he has sold some of the properties out of

said share and he has been exercising his exclusive right over said properties allotted to his father in the said family settlement.

Both the Courts below have found concurrently that this property with other similar purchased property in the name of Chaitanya was the subject matter of the amicable division between the Plaintiff and the father of the Defendant. The document of the year 1993 and 1997 admitted in evidence without objection reveal the said position. The evidence with regard to the conducts of the parties subsequent to the said creation of the documents run in favour of said family settlement arrived at between the Plaintiff and Chaitanya amicably. The case of the Defendant in setting up the blank paper theory as an attempt to explain as to under what circumstance, he and his father Chaitanya had signed on Exts.2 & 3 has not been established by leading evidence of that required degree for establishment of said pleaded fact.

In view of all the aforesaid, this Court finds absolutely no such infirmity with the findings of the Courts below on the crucial issues in finally decreeing the suit declaring the Plaintiff's right, title, interest and possession over the suit properties.

The submission of the learned counsel for the Appellant that there arises the substantial question of law for being answered meriting admission of this Appeal is thus not acceptable.

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

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

Basu