

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.234 of 2006

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.03.2006 and 31.03.2006 respectively passed by the learned District Judge, Keonjhar in R.F.A. No.23 of 2004 confirming the judgment and decree dated 31.01.2004 and 12.02.2004 respectively passed by the learned Civil Judge, Senior Division, Champua in Title Suit No.28 of 2001-I.

Ghasinath Das & Others

....

Appellants

-versus-

Brajakishore Das & Others

....

Respondents

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

For Appellants - M/s.A.K. Mishra, G.S. Panda,
T. Mishra, S. Mishra and
P. Chand

For Respondents - M/s.S.K. Mishra,
S.K. Samantaray, A. Kejirwal

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 14.03.2022 : Date of Judgment:16.03.2022

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 20.03.2006 and 31.03.2006 respectively passed by the learned District Judge, Keonjhar in R.F.A. No.23 of 2004.

By the said judgment and decree, the Appeal filed by the present Appellants (Defendants 1 to 4) under section 96 of the Code, being dismissed, the judgment and decree dated 31.01.2004 and 12.02.2004

respectively passed by the learned Civil Judge, Senior Division, Champua in Title Suit No.28 of 2001-I.

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 Suit.

3. The Plaintiffs' case is that one Surendra was the original owner of the suit land and the same stood recorded in his name, who is the father of the Plaintiffs and Defendant No.6. The Plaintiffs and Defendant No.6 inherited the property when Surendra died. It is stated that Plaintiff No.1 and Defendant No.6 used to reside outside the village for earning their livelihood and for that reasons, they had given the suit land to the Defendants 1 to 5 to possess on payment of annual rent in shape of either cash or paddy. It is stated that the Defendants, taking advantage of the absence of the Plaintiffs and Defendants 1 to 5, having influenced the Settlement Authorities, have been able to get their names incorporated in the remark column of record of right as forcible occupiers. Dispute having arisen between the parties, the suit has been filed.

4. The Defendant Nos.1 to 5, in the written statement, have said that one Siba Das died leaving behind his three sons, namely, Surendra, Haguru and Chema. They state that the Plaintiffs and Defendant No.6 are the grandchildren of Surendra through his son Nityananda whereas Defendants 1 to 4 are the sons of Chems who had also another daughter and Defendant No.5 is the only son of Haguru, who too had six daughters. It is their case that although the suit land originally stood recorded in the name of Surendra, yet the land was in possession of all

the three brothers and it has been all along taken and treated to be the joint family property. In the current settlement, the suit lands along with other lands were recorded in the name of Nityananda, the father of the Plaintiffs and Defendant No.6. It is stated that Defendants 1 to 5 are in possession of the suit land and paying land revenue to the State. Alternative case has been projected by them as to have acquired title over the suit land by way of adverse possession for their long possession satisfying all the required ingredients.

5. Faced with above rival pleadings, the Trial Court has framed as many as seven (7) issues. Answering the crucial issue as to if the suit land is a portion of the joint family property or the property of the Plaintiffs and dealing the alternative claim of the Defendants 1 to 5 as to acquisition of title over the said land by adverse possession, upon examination of the evidence and their evaluation, the answer has been recorded in favour of the Plaintiffs. With such answers, other issues have too received the answers in favour of the Plaintiffs. Thus, the suit has been decreed.

The Defendants 1 to 5 having suffered from the judgment and decree passed by the Trial Court although had carried the Appeal, they have been unsuccessful.

6. Mr.A.K. Mishra, learned counsel for the Appellants submitted that when as per the case of the Plaintiffs, the suit land had been given to the Defendants for cultivation on payment of annual rent, the Courts below ought to have held the suit to be not maintainable being barred under section 67 of the Odisha Land Reforms Act. He further submitted that the findings of the Courts below that the suit land is not the ancestral properties of the parties, but the self-acquired property of

Surendra suffers from the vice of perversity, as according to him, in arriving at such conclusion, the long standing dealing with the properties by the parties with their conduct as emerge in the evidence which is very much important have been completely overlooked. It was further submitted that the overwhelming evidence let in by the Defendants in establishing that they have been in possession of the suit property openly, peacefully and continuously without any interruption from any quarter as its owner exhibiting hostile animus to the knowledge of the Plaintiffs, the Courts below have fallen in error by not recording the finding that these Defendants have acquired title over the suit land by adverse possession. He, therefore, urged for admission of this Appeal on the above substantial question of law.

7. Mr.S.K.Mishra, learned counsel for the Respondents submitted all in favour of the findings recorded by the Courts below as also the ultimate decision rendered in the suit as well as the First Appeal. According to him, the concurrent findings on fact that the property in question is the absolute property of Surendra is not liable to be interfered as there surfaces no such perversity therein. It was submitted that the courts below having discussed the evidence on record in great detail and viewing the same with the circumstances surrounding the property and those concerning the parties have rightly decreed the suit. According to him, there arises no substantial question of law for being answered in this Appeal meriting its admission.

8. When it is said by the Defendants as also have been deposed to by the D.W.1 that the suit land was the joint family property, no such document has been filed in support of the same. Exts.A and B, the record of right reveal that those stand in the name of Surendra. These

records of rights have remained unchallenged for all these period. The defendant witnesses, i.e., D.W.1 and 2 have not stated anything in their evidence as to how this suit property has been the joint family property of the parties. They have not even stated as to the total property that the joint family was having; the income therefrom and any such more fact in the direction of the acquisition of the suit property form out of the surplus of the income from the joint family property. Therefore, on the face of the evidence on record, the Courts below are right in holding the burden of proof resting on the Defendants to prove that the property in suit is the joint family property where all the members have the right has not been discharged.

The Plaintiffs having taken the plea that Defendants 1 to 5 have been allowed to possess the suit land on certain arrangement as to payment of rent and when as per the case projected by the Defendants they are in possession of the suit land as the members of the joint family since the suit land belongs to the joint family, the submission of the learned counsel for the Appellants (Defendants) that the Civil Court has no jurisdiction to entertain the suit in view of the bar contained in section 67 of the OLR Act has no force. The Courts below, upon extensive examination of the evidence citing all the relevant circumstances, are found to have rightly recorded the finding that here the question of acquisition of title over the suit land by Defendants 1 to 5 in so far as the suit land is concerned, does not arise in holding the possession of Defendants 1 to 5 to be permissive in nature. This Court, therefore, finds no such substantial question of law standing to be answered in this Appeal.

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

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



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