

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.416 of 2009

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 12.09.2009 and 19.08.2009 passed by the learned Additional District Judge, Bhanjanagar, in R.F.A. No.09/2009 (RFA No.30/05 GDC).

Sarat Chandra Sahu ***Appellant.***

-versus-

State of Orissa and Another ***Respondents.***

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

For Appellant - Mr. A.P. Bose
Mr.M.Sinha, S.K. Mishra,
S.C. Mishra, P.A. Sinha
P.K. Mohanty

For Respondents - Mr.G.N. Rout,
Addl. Standing Counsel

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 21.03.2022 :: Date of Judgment:04.04.2022

The Appellant by filing this Appeal under Section 100 Civil Procedure Code (for short, 'the Code'), has assailed the judgment and decree passed by the learned Additional District Judge, Bhanjanagar, in RFA NO.09/2009 (23/09/RFA No.30/05).

The Appellant, as the Plaintiff, has filed the suit, i.e., T.S. No.167 of 1995 in the Court of the learned Civil Judge, Junior Division, Bhanjanagar for declaration of his right, title, interest and possession over the suit land and for injunction restraining the Respondents-State

and its officials from alienating the suit land to the Post and Telegraph Department of Government of India. The suit was decreed on contest.

The State, being the unsuccessful Defendant, had preferred Appeal vide RFA No.30 of 2005. The said Appeal was allowed and the judgment and decree passed by the Trial Court in favour of the Plaintiff stood set aside. The Appellant (Plaintiff) thus had been non-suited. Thereafter the Appellant (Plaintiff) filed Second Appeal, i.e., RSA No.445 of 2006. This Court, by order dated 27.02.2007, found that in view of the rival case, the First Appellate Court should have taken recourse to the provision of Rule 25 of Order 41 of the Code by framing an additional issue as to acquisition of title over the property in the suit by way of adverse possession by the Plaintiff in directing the Trial Court to accept evidence on that issue and resubmit the matter with the answer to the Appellate Court in seisin of the Appeal to decide the same on merit. The Second Appeal being disposed, as aforesaid, the First Appellate Court has followed the course as directed. The Trial Court, in compliance to the order passed by the First Appellate Court, upon examination of the evidence and their analysis, has answered the issue against the Plaintiff. All those being placed before the First Appellate Court in seisin of the Appeal; the First Appellate Court has reiterated its earlier order of dismissal of the suit filed by the Appellant as the Plaintiff and non-suited him by further dismissing the cross-objection filed by the Appellant (Plaintiff) in challenging the answer of the Trial Court on the additional issue after remand.

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 Plaintiff's case is that the suit property under sabik plot no.400/12 A1-A1-A1 stands recorded in the hal plot no.538 measuring Ac.0.206 decimal and plot no.538/2312 measuring Ac.016 decimals. This was the Gramakantha Paramboke during last settlement since 1912. It is stated that the land in question was in possession of Abdul Karim and his brother Abdul Gafar. Abdul Karim son of Abdul Karim married the daughter of Abdul Gafar, namely, Pakhia Bibi. They had three daughters and three sons. Two sons and one daughter died unmarried. Abdul Wahib remained as the son alive and two daughters, namely, Rahmatunisa and Kharunisa remaining alive, inherited suit property. It is further stated that they sold the suit land to Sayed Sahawudhin in the year 1979 and delivered possession of the same to him. The Plaintiff had purchased the said suit land from said Sayed Sahawudhin in the year 1989. Pursuant to the said purchase, the Plaintiff claims to have been delivered with the possession of the suit land by his vendor and accordingly, asserts to be in peaceful possession of the suit land all along. It is his case that having purchased the property in the year 1989, he obtained the plan approved from Berhampur Regional Development Trust for construction of residential house. But he having initiated mutation proceeding, it was dismissed refusing to record the suit land in the name of the Plaintiff and thereby allowing the same to be in the Rakhit Khatian bearing no.1744 in terms of the order passed in misc. case no.3 of 1989 based upon the order passed in Revision Proceeding Case No.776 of 1981. When the Defendant No.2 (the Tahasildar) has invited objection from general public regarding handing over the suit to the Post and Telegraph Department of the Government of India, the suit has come to be filed.

4. The Defendants, in their written statement, have asserted that the Plaintiff is not in physical possession of the suit land. It is stated that the sale made by the vendor of the Plaintiff, i.e., Sayed Sahawudhin is void as he was not the owner of the property in question. It is further stated that in the record of the Settlement Operation, the suit plots had been erroneously recorded in the name of Mahamad Abdul Wahid and two others and that being challenged by the State in Revision Proceeding Case No.775 of 1981; the Land Record Commissioner has set aside the same as those recorded tenants failed to establish their claim of any sort over the property. The Revisional Authority since having directed for recording of the suit land in the name of the State by subsequent order; the same has been carried out by Defendant No.2. It is stated that during the attestation stage of the Settlement Operation, there was an erroneous order to record the possession of Abdul Wahib and two others, namely, Rahamantunisa and Khairunisa in the remark column and that had been also taken note of by the Revisional Authority and accordingly quashed.

5. As already stated, the suit having once being decreed, the Defendants had carried the Appeal under section 96 of the Code which having now been decided in their favour, the unsuccessful Plaintiff is thus before this Court in second Appeal.

At the cost of repetition, it may be stated that the Trial Court had decreed the suit holding the Plaintiff to be having the title by virtue of his purchase and possession. The First Appellate Court has set aside the said finding and simultaneously, has held that the finding subsequently recorded by the Trial Court that the Plaintiff has failed to prove the case of acquisition of title over the suit property by way of adverse possession is in order.

6. The Appeal has been admitted on the following substantial question of law:

““Whether the First Appellate Court, on the basis of overwhelming evidence both oral and documentary showing that the land is in possession of the Plaintiff coming down from the hands of his vendor; is right in saying that the Plaintiff has failed to establish his case of acquisition of title by way of adverse possession in extinguishing the right, title and interest of the Defendants by virtue of the provision of section 27 of the Limitation Act?”

7. Mr. A.P.Bose, learned counsel for the Appellant submitted that on basis of the overwhelming evidence as to possession of the suit land by the Plaintiff since the time of his vendor and there before, the Courts below have fallen in error by discarding the same in proceeding to appreciate the evidence in a wholly perverse manner. In this connection, he has invited the attention of the Court to the oral and documentary evidence on record. It was submitted that the approach of the Courts below, in appreciating the evidence in piecemeal, instead of giving a cumulative reading to all those available and a holistic view of the same, has actually paved the way for the error to creep in. He, therefore, urged for answering the substantial question of law in favour of the Plaintiff.

8. Mr. G.N.Rout, learned Additional Standing Counsel for the Respondents submitted all in favour of the findings recorded by the First Appellate Court. According to him, on the face of the order passed by the Land Record Commissioner in the Revision Proceeding and when it has not been challenged and has thus attained finality, the claim of possession of the Plaintiff, on the basis of the purported purchase of the suit land, is not sustainable. He further submitted that since the Trial Court as well as the First Appellate Court having made

elaborate discussion of evidence, have answered the issues against the Plaintiff; there arises no such compelling reason to interfere with the same.

9. Proceeding to search out the answer to the substantial question of law, in simultaneously addressing the submission of the learned counsel for the parties, first of all it be seen that the Revision Proceeding Case No.775 of 1981, the order of which has been admitted in evidence and marked Ext.A was in relation to the suit land. The revision was decided on contest. That order was not challenged by the vendor's vendor or vendor of the Plaintiff or by the Plaintiff himself. The Plaintiff, during his cross-examination as P.W.1, has admitted that the order passed by the Settlement Officer in the attestation stage in Objection Case No.13178/78 (Ext.4) has been quashed and the suit property has been recorded in Government Khata. It was said that the land was Gramakantha Paramboke. Under section 2(b) of the Odisha Government Land Settlement Act, 1962 (hereinafter called as 'the OGLS Act'), 'Gramakanthak Paramboke' land in the Ex-Madras area has been defined as Government Land. The area of the suit land was under the jurisdiction of Madras Presidency. The word "Parambok" is not defined in the Madras Land Estate Act, which governs the land revenue law in the State. As provided in section 4 of Kerala Land Conservancy Act, 1957, "Parambok" means and include un-assessed lands which are the properties of the Government reserved for public purposes or for the communal use of villagers. Under section 5 of the Orissa Estate Abolition Act, 1962 the suit land vested in the State free from all encumbrances. The State Government is the paramount owner of the land. So, under no circumstance, the Plaintiff by holding a registered sale deed in the year 1979, can claim that thereby the title

over the property in question has passed on to his hand and as such he has the title over it which his vendor and vendor's vendor had.

10. Having said as above, coming to answer the substantial question of law, as has been framed, it is seen that the Courts below have found the land to be lying vacant and that is in view of the evidence of the Plaintiff examined as P.W.1. It has also been found out from the evidence that although the Plaintiff had obtained the approved plan; that has remained as it is without being executed in any manner and when no further action has been taken pursuant to the same, the same certainly does not remain alive for eternity so as to be executed or carried out at any time in future as and when so desired. Therefore, when the land is lying vacant and the Plaintiff is not in physical possession of the same; on the face of the order passed by the Land Record Commissioner and the subsequent orders carrying out the same into effect in the Record of Right, the possession has to be presumed to be with that of the owner which in the instant case thus rests with the State (Defendant No.1). It may further be noted that the evidence of the Plaintiff has been held to be wholly insufficient to establish that his vendor was in possession of the suit property at the time of sale. The report of the Revenue Inspector that the Plaintiff's vendor's vendors were possessing the suit land from 1919 has been rightly held to be of no such proof as to the establishment of factum of possession as he is not at all competent to so testify having no direct knowledge. The Plaintiff, after the purported purchase, had filed mutation application for recording the suit land in his name and that been rejected by an order saying that the land in question is Government land and therein the sale deed produced by him as the basis of his claim for recording of the land has been dishonoured. So, even if this Plaintiff had no

knowledge about the order passed in the Revision Proceeding, yet after the order passed against him in the Mutation Proceeding, he cannot express his ignorance about the order passed in the Revision Proceeding at least as to the ownership status of the suit land as per the record position. The evidence on record reveals that the suit land has been lying as a vacant site where garbages are dumped by the local people.

In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the properties and asserts the right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the true owner. It is well settled principle that a party claiming adverse possession is under the legal obligation to plead and prove the classical requirements, i.e., *nec vi, nec clam and nec precario*, i.e., peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with wrongful disposition of the rightful owner and be actual peaceful, exclusive, hostile and continue over the prescribed period. Therefore, a person, who claims adverse possession should show (a) on what date, he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to other party; (d) how long his possession has continued; and (e) his possession was open and undisturbed.

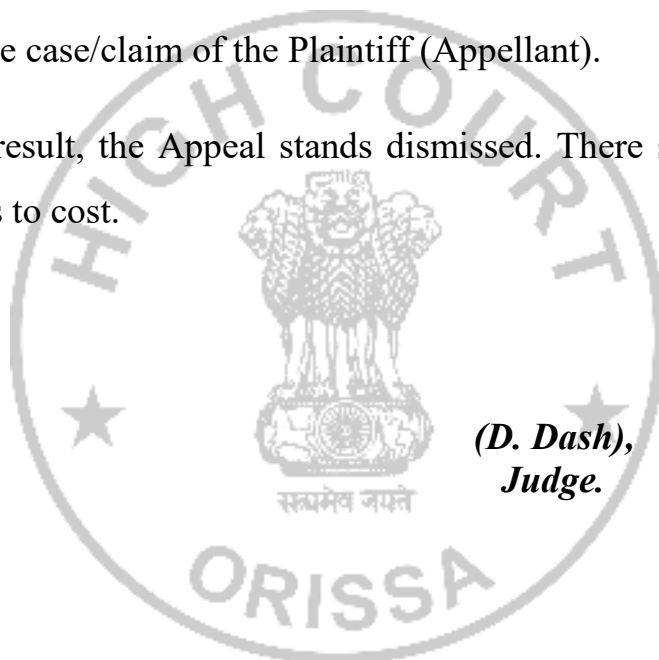
A person pleading adverse possession has no equity in his favour. Since he is trying to defeat the rights of the true owner, it is for

him to clearly plead and establish all the facts necessary to establish his possession.

With the evidence on record, as already discussed; the Courts below thus are found to have rightly answered all the issues including the issue as to acquisition of title over the suit land by the Plaintiff by way of adverse possession by properly appreciating the evidence on record with detail discussion assigning very good reasons in support of their conclusions against the Plaintiff.

The above discussion thus answers the substantial question of law against the case/claim of the Plaintiff (Appellant).

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



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