

HIGH COURT OF ORISSA : CUTTACK

RSA NO.392 OF 2006

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned Additional District Judge, Berhampur in RFA No.21/02 of 2004-06 (GDC) in confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Berhampur in Title Suit No.214 of 1998.

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Kandalu Krishna Murty Patro :::: Appellant.

-:: VERSUS ::-

Daani Narayan Patro & Another :::: Respondents.

**Advocate(s) who appeared in Hybrid Arrangement
(Virtual/Physical) mode.**

Appellant :: M/s. D. Routray, P.K. Sahoo,
D.K. Mohapatra, B.B. Routray,
P.K. Sahoo, D. Mohapatra,
S. Dash, S. Jena, K. Mohanty,
Advocates.
For Respondentss :: M/s. S.S. Rao and
B.K. Mohanty, Advocates.

P R E S E N T :

THE HON'BLE MR. JUSTICE D.DASH

Date of Hearing: 07.03.2022 :: Date of Judgment:16.03.2022

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 Additional District Judge, Berhampur in RFA No.21/02 of 2004-06 (GDC). By the

same, the judgment and decree passed by the learned Civil Judge (Junior Division), Berhampur in Title Suit No.214 of 1998 have been confirmed.

The Respondents as the Plaintiffs had filed the suit for declaration of their right and title over the suit land with a direction to the Defendant not to alienate and alter the structure and deliver of possession of the same with further claim as to the damages. The Appellant as the Defendant has advanced the counter claim of declaration of his exclusive right title, interest and possession over the suit property. The Trial Court having decreed the suit granting the reliefs as prayed for to the Respondents (Plaintiffs) has dismissed the counter claim filed by the Appellant (Defendant).

This Appellant having suffered from the judgment and decree passed in the suit filed by the Respondents (Plaintiffs) and the dismissal of his counter claim had carried First Appeal, which has been dismissed.

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 the suit property is the Sridhan property of original Plaintiff No.3 (since dead). She had acquired the property

by registered sale-deed dated 17.05.1960 (Ext.9). Accordingly, she was in possession of the same on her own right, title and interest and residing in the house standing over there with her husband, who had been driven out of his ancestral home. It is stated that D. Damburu, the father of the Defendant is the son of the husband of the Plaintiff No.3 through his first wife. When the Defendant was not treated well in his home, he requested the Plaintiff No.3 to allow him to stay in a portion of the suit house and that was so permitted. Subsequently, on account of growing age and to meet necessity, the Plaintiff No.3 decided to sale the suit house; so she requested the Defendant to vacate the same. The Plaintiff No.3, thereafter sold the suit house to Plaintiff Nos.1 & 2 by registered sale-deed dated 05.12.1996 (Ext.1) on receipt of valuable consideration followed by delivery of possession. The Defendant No.3 still did not vacate the house and claimed that his grandfather (husband of the Plaintiff No.3) was the owner of the house and he had the absolute title over the same. It is further stated that his grandfather had bequeathed the same in his favour and thus he has been the rightful owner of the same and the Plaintiff No.3 has nothing to do with it.

4. The Trial Court on the above rival pleadings framed in total eleven (11) issues and out of those, issue nos.3 and 4 are the crucial

as they relate to the ownership and possession of the suit house as claimed by both sides.

The Trial Court coming to answer those issues has analyzed the evidence in great detail and at the end it has held the Plaintiff Nos. 1 & 2 to be entitled to the reliefs claimed in the suit as they are the rightful owners of the suit land whereas the Defendant has been held to be having no such right, title and interest. The suit thus being decreed, the counter claim stood dismissed.

The First Appellate Court being moved by the aggrieved Defendant has declined to upset the findings recorded by the Trial Court and thus the result rendered in the suit and counter claim have been confirmed.

5. Mr. D. Routray, learned Counsel for the Appellant submitted that the Courts below are not justified to come to conclusion that the Plaintiff No.3 has purchased the suit property from her Stridhan on the basis of mere assumption that the Plaintiff No.3 must have parted with her personal belongings to meet the basic need of having the dwelling house, when the evidence on that score is wholly lacking. He further submitted that the finding of the Courts below that the Plaintiff No.3 is the owner and entitled to possess the suit property is based on conjecture and surmises and the finding on that score is

wholly perverse. He submitted that the Will dated 25.03.1997 ought not to have been eschewed from consideration. He therefore, submitted for admission of the Appeal to answer the above substantial questions of law.

6. Mr. S.S. Rao, learned Counsel for the Respondents submitted all in favour of the findings rendered by the Courts below. According to him, the property since had been purchased by the Plaintiff No.3 by registered sale-deed and it is said even for a moment that her husband had provided the consideration for the same that is not enough to hold that the property was held Benami by her husband in her name. He submitted that in view of the provision of section 3(2)(a) of the Benami Property Transaction (Prohibition) Act, 1988 as it then stood when the defence was so taken, the presumption as attached to such transaction that it has been so purchased by the husband to benefit the wife stands and that although is rebuttable, he submitted that in the present case, the Defendant had not been able to rebut the said presumption even to the slightest extent by leading any such acceptable evidence.

7. Keeping in view the submissions made, I have carefully read the judgments of the Court below.

8. In the exercise to search out that if any substantial question of law arises in the case to be answered; the precise question falls for consideration is whether the findings of the Courts below that the Plaintiff Nos. 1 and 2 are the owners having title over the suit property and the Defendant has no title over the same is the outcome of just and proper appreciation of evidence or it has been so recorded without proper examination of evidence in the backdrop of rival case projected by the parties in their pleadings keeping in view the settled position of law holding the field.

9. The Plaintiffs have proved the sale-deed Ext.9, which is dated 17.05.1960. It shows that the property has been purchased by the Plaintiff No.3. For the first time, by raising in his defence filed being noticed in the suit instituted in the year 1998, the Defendant is asserting the transaction to be a Benami one by saying that the real beneficiary is the husband of the Plaintiff No.3, who happens to be his grandfather and that Plaintiff No.3 is just a name lender / benamidar. The Courts below are seen to have gone deep into the matter by examining the evidence in finding that the claim of the Defendant in that regard is untenable in holding that the presumption available in law as provided under section-3(2)(a) of the Benami Transaction (Prohibition) Act as then was has not been rebutted. This

Court finds no such reason or justification to take a different view than the one as has been found by the Courts below and finding the same to be right being based on acceptable evidence as also the surrounding circumstances appearing in evidence; the answer so recorded by the Courts below is hereby affirmed. When the Defendant No.3 is held to be the owner of the property then the Will even if is said to have been duly executed by the husband of Plaintiff No.3 in bequeathing the said property in favour of the Defendant is of absolutely no significance as said Testator had nothing to do with the same having no such right over it and thus the legatee (Defendant) does not in any benefitted by the said Will which in so far as the suit property is concerned is not even worth the paper written on.

10. For the aforesaid discussion and reasons, the submissions of the learned Counsel for the Appellant are not accepted. This Court therefore, is the view that there surfaces no such substantial question of law for being answered meriting admission of this Appeal.

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

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

Narayan