

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.41 of 2008

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 22.12.2007 and 02.01.2008 respectively passed by the learned District Judge, Keonjhar, in R.F.A. No.5 of 2007 confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Keonjhar, in C.S. No.24 of 2004.

Suresh Majhi & Others

....

Appellant

-versus-

Chaitanya Charan Mahanta

....

Respondents

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

For Appellants - Mr.B.H. Mohanty, Sr. Advocate
Mr.R.K.Nayak, D.P. Mohanty,
T.K.Mohanty, P.K. Swain and
M.R.Padhi

For Respondents - M/s.S.K.Padhi, N.C.Rout,
S.K.Mishra & L.N. Sahu

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 22.02.2022 : Date of Judgment:23.02.2022

The Appellants, by filing this Second Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), judgment and decree dated 22.12.2007 and 02.01.2008 respectively passed by the learned District Judge, Keonjhar, in R.F.A. No.5 of 2007.

By the said judgment and decree, the First Appellate Court, while dismissing the Appeal filed by these Appellants under Section 96 of the Code, has confirmed the judgment and decree passed by the learned Civil Judge, Junior Division, Keonjhar in C.s. No.24 of 2004. Thus, the

suit filed by the Respondent as the Plaintiff as against the present Appellants arraigning them as the Defendants has been decreed granting the relief of permanent injunction as prayed for by the Plaintiff in restraining the Defendants, their agents and servants are permanently from entering upon the suit land and causing damage to the same. These Appellants-Defendants have also been directed to pay a sum of Rs.650/- towards the damage.

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, in short, is that the suit land originally belonged to the Deity Sri Baladevjew Bijje Nizgarh. The Endowment Commissioner, Odisha having permitted to sell the suit land, the Sub-Divisional Officer-cum-Executive Officer, Debbottar, Keonjhar sold the land to the Plaintiff by registered sale deed no.1405 of 1989. It is stated that after due demarcation of the suit land, the possession of the same was delivered to the Plaintiff and accordingly, he is in possession of the same since the year 1989 and has been raising paddy etc. It is further stated that on the strength of the registered sale deed and the possession pursuant to the same, the land in the suit has been mutated in his name and accordingly, he is paying the land revenue to the State. The Defendants being strangers are having no right, title and interest or possession over the suit land. Being rowdy in nature, it is alleged that all of a sudden, they came over the suit land on 26.07.2004 and damaged the pillars put by the Plaintiff over the land. The Defendants did not listen to the protest. The matter was then reported at the Police Station

and as no such action was taken, the suit for the relief, as stated above, has been filed.

4. The Defendants, in their written statement, while traversing the plaint averments, have raised the question that the suit land is indefinite and is not properly identified. Elaborating the same, it has been stated that when the suit plot no.405 is bounded towards north and east by road, south by the land of Dayanidhi Jena and west by the land of the Defendants, the said plot of land is in their possession since the time of their father Nundu Majhi. It is also stated that the permission for selling the suit land was not given by the Endowment Commissioner and, therefore, the sale on the basis of which the Plaintiff claims to have become the owner of the suit land and claims to be in possession being so delivered by the Executive Officer are invalid and untenable in the eye of law. They have called upon the Plaintiff to establish all the detail foundational facts in support of his claim of ownership and possession of the suit land.

5. The Trial Court, on the above rival pleadings, having framed seven issues, has first of all answered issue nos.3 and 4 taken together for decision in favour of the Plaintiff that he is the owner in possession of the suit land. Practically, answers on those issues has laid the Trial Court to pass a decree as prayed for.

The Defendants being aggrieved by the judgment and decree passed by the Trial Court had carried the Appeal which has been dismissed. Hence, the Second Appeal at their instance wherein they have questioned the decree passed by the Courts below in permanently restraining them from going over the suit land and also to pay damage, as stated above.

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

“Whether the courts below are correct in holding that the suit land which is claimed to have been purchased by the plaintiff has been correct described and is identifiable so as to hold that the plaintiff has title and right to possess the same.”

7. Mr.D.P. Mohanty, learned counsel for the Appellants submitted that here the Courts below have erred both on facts and law in recording the answer to issue nos.3 and 4 in favour of the Plaintiff and accordingly, the ruling upon his claim of ownership and possession over the suit land is unsustainable. He submitted that the issue here is with regard to the identity of the land purchased by the Plaintiff and the plot no.405. Placing the documents on record, it was contended that the Courts below have erred in law by interpreting the order of the Endowment Commissioner and the execution of the sale deed by giving different description of the land which do not find place in the order is without any authority and thus void. He further submitted that on the face of the evidence on record, keeping in view the description of the suit land as given in the plaint, the Courts below are not at all right in decreeing the suit.

8. Mr.S.K.Padhi, learned counsel for the Respondent submitted all in favour of the findings recorded by the Courts below on issue nos.3 and 4. According to him, on detail discussion of the evidence on record and their just and proper appreciation, such finding has been recorded being backed by very good reasons and thus are not assailable.

9. Keeping in view the submissions made, I have carefully gone through the judgments passed by the Courts below as also the evidence on record.

10. The plaint describes the suit land as under:-

“SCHEDULE

District-Keonjhar, P.S. Sadar (now Town) Mouza: Gumura, Khata No.175/6, Plot No.405, Area Ac.0.04 decimals, after mutation mutated Khata No.175/64, Plot No.405, Area Ac.0.04 decimals”

The Plaintiff has purchased that by registered sale deed no.1405 in the year 1989, which has been admitted in evidence and marked as Ext.1. He has purchased the land in question from the Deity Sri Baladevjew Bijje Nizgarh and the sale deed has been executed by the Sub-Divisional Officer-cum-Executive Officer, Debottar. The description of the land sold under the sale deed runs as under:-

“District-Keonjhar, Sub-Division-Sadar Thana (Hal Town), Gundibeda Dandapat Thana No.161, Mouza-Gumura, Khata No.175/6, Plot no.405, area Ac.0.04 decimals. North-Plot no.404, South-West-Own (Deity), East-Road”

This land after purchase is said to have been mutated in the name of the Plaintiff under khata no.175/64. In the said record of right the north of the land in question is said to have been bounded by road whereas to the south, it is said to be bounded by the land of Dayanidhi Jena.

When it is stated that the land in question being the land of the Deity, the Commissioner of Endowment, Odisha had granted permission for sale of this plot of land with other plots in O.A. No.10 of 1986; the order (Ext.4) passed by the Commissioner in a proceeding under section 19 of Odisha Hindu Religious Endowment Act, 1951 being gone through, the description of the land given in the schedule finds mention of plot no.405 but its khata number has been indicated as “1”, Mouza-

Gumura of course remaining the same. This is said to have been communicated to all concerned. When the order of permission is with respect to the land of Mouza-Gumura under khata no.1 with assigned plot no.405, a question comes to mind as to how the sale deed could be executed with respect to the land under plot no.405 appertaining to khata no.175/6.

It has been the settled position that the Authority to further act upon an order of permission/direction has no power to interpret the same in any manner and in case of any inadvertent omission or mistake having crept in the order of permission/direction, necessary clarification/rectification ought to be sought for and only upon that, further action can be taken up. In that view of the matter, when it is also not shown in evidence that the Deity had no land in that mouza-Gumura under khata no.1, the very execution of the sale deed has to be said to be not backed by permission as required under section 19 of the Odisha Hindu Religious Endowment Act and this permission (Ext.4) cannot be said to be for the purpose of sale of land as contained in Ext.1. The sale in question as claimed by the Plaintiff is thus void.

11. Another disturbing feature strikes to the mind on a careful scanning of the documentary evidence. The order under section 19 of the O.H.R.E. Act passed by the Commissioner of Endowment, Odisha is clear that the lands are to be sold by public auction and notice of public auction has to be published in Odia daily 'The Samaj' at least fifteen days before the date of auction. Interestingly, the sale deed (Ext.1) does not find mention of such fact that this suit land was ever put to public auction for sale and that therein, the Plaintiff either remained as the sole bidder or came out successful as the highest bidder. That being not the case here, the consideration money for the suit land appears to be

exactly the same as the offset price fixed by the Commissioner. The Executive Officer of Debottar examined as a witness from the side of the Plaintiff as P.W.3 has also not stated that the suit land had been sold to the Plaintiff pursuant to the result coming out in a public auction and that the sale deed has come into being after bid of the Plaintiff was accepted either as the sole bidder or the highest bidder and the auction being knocked down in favour of the Plaintiff. When he has produced the photocopy of the memo by which the order of the Commissioner was communicated, he has not produced any other document from his custody to show that the order of the Commissioner as to the mode of sale has been complied in the present case. So, here not only that the order of the Commissioner as to the description of the land permitted to be sold has been interpreted differently and the land sold is not so indicated in the order but also the mode of sale as directed is not shown to have been strictly followed.

12. For the aforesaid discussion and reasons, the finding of the Courts below that the Plaintiff has validly purchased the suit land by registered deed of sale under Ext.1 and is in possession of the same is unsustainable as the very sale is not in conformity with the order of permission, which is mandatory in every respect. The sale being thus not found to be backed by the required permission as per law; the very claim of the Plaintiff as regards the conferment of right of ownership by the same followed by possession not cognizable in the eye of law.

The substantial question of law is accordingly answered against the claim/case of the Plaintiff and for that it is said that the Plaintiff is not entitled to the decree as has been passed in his favour by the Courts below which are hereby set aside. The Plaintiff thus being non-suited, the Appeal has to be allowed.

13. In the result, the Appeal stands allowed and the suit filed by the Plaintiff is hereby dismissed. However, there shall be no order as to cost.

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



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