

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.267 of 2008

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 21.05.2008 and 01.07.2008 respectively passed by the learned District Judge, Keonjhar in R.F.A. No.32 of 2007 setting aside the judgment and decree dated 21.07.2007 passed by the learned Civil Judge, Senior Division, Keonjhar in Title Suit No.65 of 1997.

Bidyadhar Tripathy

....

Appellant

-versus-

***Smt. Amulya Kumari Giri &
Another***

.....

Respondents

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

For Appellant

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Mr.D. Bhuyan, A.K. Tripathy,
U.Ch. Barik, P.K. Nayak and
P.Kar
(Advocates)

For Respondents

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Mr.S.P. Mishra, Sr. Advocate
S.Nanda, B. Mohanty,
A.K. Dash, B.S. Panigrahi,
A.P. Mishra, S.K. Mohanty &
S.K. Sahoo
(Advocates for R.1)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 04.05.2022 : Date of Judgment:09.05.2022

The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), has assailed judgment and decree dated 21.05.2008 and 01.07.2008 respectively passed by the learned District Judge, Keonjhar in R.F.A. No.32 of 2007.

By the same, the Appeal filed by the Respondent No.1 (Plaintiff) under section 96 of the Code has been allowed and her title over the suit land has been declared and possession thereof has been confirmed. These Appellants (Defendants 1 and 2) thus have been directed to deliver the possession of the suit land the Plaintiff by removing the barbed wire fencing therefrom.

The Respondent No.1, as the Plaintiff, had filed Title Suit No.65 of 1997 in the Court of learned Civil Judge, Senior Division, Keonjhar seeking declaration of her right, title, interest and possession over the suit land and in the alternative, recovery of possession from these Appellants (Defendants 1 and 2)

The suit having been dismissed by the Trial Court, the unsuccessful Plaintiff had carried the Appeal where she has been granted with the relief, as prayed for.

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 land is a portion of the land under plot no.1577 as specifically shown in the rough sketch map in Schedule-A of the plaint. She claims to have purchased the same by registered sale deed dated 28.03.1991 from the Defendant No.3, the original owner. The area of land purchased by the Plaintiff is Ac.0.05 decimals and it has been mutated in her name being assigned with Plot No.1577/1782. The suit land is said to have been kept as a passage to the residential portion of the house. Some plants have been grown along the boundary line and the Defendants 1 and 2 purchased a portion from

the original Plot No.1577 from that very Defendant No.3. The Plaintiff, some time in the month of June, 1997, went ahead in putting up a pucca boundary wall after the boundary was identified by the local Revenue Inspector on 20.09.1997. She, then stored some materials when the Defendants 1 and 2, putting pillars fenced it by barbed wire and thereby encroached upon the suit land. This has led the Plaintiff to file the suit.

4. The Defendants 1 and 2, coming to contest the suit, stated that they having purchased their land, had planted trees over their area and no space had ever been left by the Plaintiff on the western side as there was a road adjoining the eastern and southern side of the land purchased by the Plaintiff. It is their case that Defendant No.1 had purchased Ac.0.10 decimals from that large plot no.1577 having an area of Ac.0.08 decimals. They having purchased on 21.06.1984, took over possession and it too has been mutated in the name of Defendant No.1 under Plot No.1577/1785 appertaining to Khata no.443/67. It is stated that the Plaintiff although has purchased Ac.0.7 and $\frac{1}{2}$ decimals of land belonging to Defendant No.3 in fact such extent of land was not so available in the field.

5. Faced with the rival pleadings, the Trial Court framing six issues, has concluded that the Plaintiff has failed to prove the right, title and interest over the suit land as claimed by them. Having said that, it has held that the materials on record do not establish that the Defendants have encroached the land of the Plaintiff. So, the suit has come to be dismissed.

The Plaintiff, being aggrieved by the dismissal of her suit, carried the Appeal, which has been allowed.

6. The present Appeal has been admitted on 13.07.2004 for answering the following substantial question of law:-

“(a) Whether in view of the rejection of the report of the Civil Court Commissioner by the trial Court, the courts below ought to have deputed another Civil Court Commissioner to clarify further points in the matter of identification of the suit land by going for measurement in the field with reference to the maps and records of right?

7. Mr.A.K. Tripathy, learned counsel for the Appellant submitted that the First Appellate Court, without examining the identity of the land, has allowed the Appeal only on the ground that mutation ROR is prepared in the name of the Plaintiff in respect of suit plot no.1577/1782 and the defence taken runs without any basis. He further submitted that there being no evidence on record to show that the Defendants have encroached any part of the land under plot no.1577/1782, the First Appellate Court, has gone wrong in passing the order directing the Defendants to give delivery of possession of the suit land to the Plaintiff by removing the barbed wire fencing. It was also submitted that when the Trial Court, assigning very good reasons, had arrived at a right conclusion that the Plaintiffs has failed to prove her case as laid in the plaint against the Defendants so as to be entitled to the reliefs; those have been erroneously set aside.

8. Mr.S.P.Mishra, learned Senior Counsel for the Respondents submitted all in favour of the findings recorded by the First Appellate Court. According to him, reading being given to Paragraph-6 of the judgment of the First Appellate Court, it would be seen that on a threadbare discussion of the evidence on record, in the backdrop of the rival pleadings, the First Appellate Court did commit no mistake at all in saying that the Plaintiff has succeeded in proving her case that too

taking cue from the evidence of the Defendant. He, therefore, submitted that the evidence on record being clear and when leaves no ambiguity in respect of the identity of the land which the Plaintiff claims to have been her land as encroached by alleging overt act; there was no necessity to depute another Civil Court Commissioner, which would have rather created some confusion, which the Defendants wants so as to make the water muddy.

9. Keeping in view the submissions made, I have carefully gone through judgments passed by the Courts below.

10. In the given case, when the Plaintiff asserts that the Defendant No.1 has encroached a portion of her land under plot no.1577/1782, which is mutated under Khata No.413/108 and that portion is of the size of 7 and ½ feet X 66 and ½ feet; the Defendant No.1 has denied the same. It is said that he purchased Ac.0.10 decimals from the same vendor, i.e, the Defendant No.3 as and as that of the Plaintiff from out of the same plot no.1577. Fact that remains that the Plaintiff as well as Defendants have mutated their respective purchased land and have obtained separate ROR when required corrections in the map has too been carried out. The Defendants say that they have not encroached any portion of the land of the Plaintiff and the Plaintiff also states to have nothing to do with the land purchased by the Defendants. The Plaintiff has proved the mutation order Ext.1. Upon due enquiry, the order has been passed in favour of the Plaintiff and the map has accordingly been corrected. The certified copy of the trace map there in the mutation record has been admitted in evidence and marked Ext.1/a. Similarly, Ext.2 is the certified copy of the order sheet in Mutation Case No.3231 of 1991 showing mutation of Ac.0.10 decimals of land in the name Defendant No.1. Ext.2/b is the concerned mutation map. Ext.3 is the

village map whereas Ext.4 is the certified copy of the record of right standing in favour of the vendor of the Plaintiff in respect of the suit land. The Plaintiff's record of right after mutation is Ext.5 whereas Ext.6 is the sale deed basing on which said mutation has been ordered in favour of the Plaintiff. From the side of the Defendants, the D.W.1 being examined, he has stated that they have never encroached upon any portion of the land of the Plaintiff and have no claim over it. Their mutated Record of Right is Ext.B. As it appears from evidence of D.W.1 that the Defendants were aware of the purchase of Ac.0.05 decimals of land by the Plaintiff over which he has no claim. It has been specifically stated by the Defendants that they have no objection if a decree is passed in favour of the Plaintiff declaring her right, title, interest and possession of the land when D.W.1 has said that his purchased land is in the eastern side of Plot No.1577; the length and breadth of which he is not aware of. In the Trial Court, Civil Court Commissioner had been deputed for the purpose. He has submitted his report vide Ext.VI which establishes the identity of the lands of the Plaintiff and the Defendants. In such state of affairs, when in the totality of the oral and documentary evidence, the conclusion is well arrived at that the Plaintiff has succeeded in proving her case and the materials on record and there was no need to take the assistance of the Civil Court Commissioner again, the First Appellate Court has committed no error in decreeing the suit filed by the Plaintiff granting her the reliefs as prayed for.

In the wake of aforesaid, the answer to the substantial question of law stands returned in favour of affirming the findings of the First Appellate Court, which in turn, leads to confirm the judgment and decree passed by the said Court in favour of the Plaintiff granting her the reliefs, as find nmention.

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

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



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