

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.336 OF 2008

In the matter of an appeal under section 100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned Additional District Judge, Khurda, in Title Appeal No.34 of 2002 in setting aside the judgment and decree passed by the learned Civil Judge (Junior Division) Khurda, in Title Suit Nos.126/132 of 2001-2000.

Rankanath Mohanty & Others* *Appellants

-versus-

Pusparani Mohanty* *Respondent

(Appeared in this case by Video Conferencing Mode):

***For Appellant* - M/s.P.K. Mishra, B.K. Stalin,
Advocates.
M/s. Suraj Mahanty,
R.K. PattaNayak, Advocates.**

***For Respondents* - M/s.J.M.PattaNayak,
C. Panigrahi, Advocates.**

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING::11.03.2022, DATE OF JUDGMENT::04.04.2022

The Appellants by filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code') have assailed the judgment and decree passed by the learned Additional District Judge, Khurda, in Title Appeal No.34 of 2002.

By the same, the Appeal filed by the present Respondent (Defendant) under Section-96 of the Code has been allowed and thereby, the judgment and decree passed by the learned Civil Judge (Junior Division), Khurda in Title Suit Nos. 126/132 of 2001-2000 have been set aside. The Appellants who had filed the Suit as the Plaintiffs have been non-suited.

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. Plaintiff's case is that one Bihari Nayak and his brother Rama Chandra Nayak were the erstwhile owner in possession of the suit land. They have sold the said suit land to one Birabhadra Parmanik by registered sale-deed dated 21.06.1968 for valuable consideration followed by delivery of possession. Birabhadra was in possession of the suit land. He died leaving behind his son Rama Chandra as his only successor. Said Rama Chandra sold the suit land in favour of Manorama Mohanty, the wife of Plaintiff No.1 and mother of other Plaintiffs who in view of death of Manorama are now the owners of the property in question. The sale was for valuation consideration and it was evidenced by a registered sale-deed dated 11.11.1988. It is said that pursuant to the said sale of the suit land, Manorama had been

delivered with the possession of the same and she thus being the absolute owner possessed the same. Manorama was staying at Rourkela with Plaintiff No.1 and for that one Naba Kishore Bebartta was looking after the said property of her behalf during the period.

It is stated that he somehow managed to obtain one registered sale-deed in favour of the Defendant on 10.03.1989 from Bihari Nayak and Hena Bewa, who had no right, title and interest over the same at the relevant time. It is thus stated that the Defendant has no right, title and interest over the suit land. With the above sale-deed, taking advantage of the absence of the Plaintiffs, the Defendant included the suit land within her compound and remained in illegal occupation. The Plaintiff when requested the Defendant to deliver the possession of the her purchased land i.e. the suit land of which she is the owner; the same was not paid any heed to. The suit has thus come to be filed for recovery of possession of the suit land from the Defendant.

4. The Defendant in her written statement has averred that she has purchased the suit land from the recorded owners in possession and they are namely, Bihari Nayak and Hena Bewa, wife of Bhawani Mansingh by registered sale-deed dated 10.03.1989 for valuable consideration. It is sated that pursuant to the said sale, the vendors as

above named have delivered possession of the suit land to the Defendant. He thus states to have come to occupy the same as its owner. Accordingly, the suit land has been mutated in her name and she has also obtained the loan from the Bank by mortgaging the said property. She claims to be the absolute owner in possession of the suit land on the strength of her purchase from Bihari Nayak and Hena Bewa by that registered sale-deed dated 10.03.1989. It is stated that sale-deed executed in favour of Birabhadra Parmanik on 21.06.1968 and in favour of Manorama Mohanty, (husband of Plaintiff No.1 and mother of other Plaintiff) on 11.11.1988 is mere paper transaction and by those Monarama has not been clothed with the title in respect of the suit land.

5. Faced with the above rival pleadings, the Trial Court framed five issues. Coming to rightly take up issue nos.2 and 4 first for decision; upon examination of evidence and their evaluation; answer has been rendered that the Plaintiffs are having the right, title and interest over the suit land and as such they are entitled to recover the possession of the same from the Defendant. This answer as led the Trial Court to decree the suit in passing a decree for recovery of the possession of the suit land from the Defendant in favour of the Plaintiff.

6. The Defendant then having suffered from the judgment and decree passed by the Trial Court had carried the Appeal wherein she has been successful in non-suiting the Plaintiffs. The Appellate Court has set aside the judgment and decree passed by the Trial Court in favour of the Plaintiffs as against the Defendant.

7. The Appeal had been admitted on the following substantial question of law:-

- (1) Whether the lower Appellate Court's view that the registered sale-deed dated 10.03.1989 standing in favour of the Defendant being voidable, the Plaintiffs having not sought for a declaration that the said registered deed is void, are not entitled to the decree of recovery of possession based on the registered sale-deed dated 11.11.1988 which is founded upon the registered sale-deed dated 21.06.1968?

8. Mr. Suraj Mohanty, learned Counsel for the Appellants inviting the attention of this Court to the relevant paragraph of the judgment of the First Appellate Court submitted that the conclusions arrived at are wholly unsustainable. He submitted that when the Plaintiff had proved her title through successive registered sale-deeds dated 21.06.1968 and 11.11.1988; one by which the vendor of Manorama had purchased the property and the next one by which the

Manorama's vendor has sold the property; there stands absolutely no necessity to seek for a declaration that the subsequent registered sale-deed dated 10.03.1989 in respect of the same property is void or inoperative as by then the vendor of the said sale did not have the subsisting title to transfer. He submitted that when after the sale-deed standing in favour of the Manorama through which these Plaintiffs claim themselves to be the beneficiaries; the Vendors of the Defendant had absolutely no subsisting title over the property and therefore, by the sale deed in favour of the Defendant coming into being on 10.03.1989; the Defendant has not been clothed with any title in respect of the suit land. He, therefore, contended that the substantial question of law must receive its answer against the conclusion arrived at by the First Appellate Court running against the Plaintiffs and the end result of the First Appeal should be set aside.

9. Mr. J.M. Pattanayak, learned Counsel for the Respondent submitted all in favour of the conclusion arrived at by the First Appellate Court. He submitted that the suit filed by the Plaintiff for the reliefs claimed is not maintainable as the Plaintiffs have not sought for a declaration that the registered sale-deed in respect of the suit land standing in favour of the Defendant is void and inoperative. He contended that the Defendant having acquired valid title over the

suit property by virtue of this registered sale-deed dated 10.03.1989, the First Appellate Court has rightly dismissed the suit and thereby the error committed by the Trial Court has been rectified.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

11. The admitted factual positions stand that the two registered sale-deeds Exts.2 & 3 proved from the side of the Plaintiff in support of their claim of title in respect of the suit property and the registered sale-deed dated 10.03.1989 said to be standing in favour of the Defendant all concern with the suit land. The suit land was standing recorded in the name of one Bihari Nayak. The registered sale-deed dated 21.06.1962 (Ext.2) reveals that Bihari along with his brother Rama Chandra had sold the suit plot with his other landed properties to one Birabhadra Parmanik. On death of Birabhadra, his son Ram Chandra being the sole heir inherited the same and has sold the suit land by registered sale-deed dated 11.11.1988 in favour of the Manorama Mohanty who happens to be the wife of Plaintiff No.1 and mother of other Plaintiffs.

At this stage, before going to state the reason(s) as to how faulty the conclusions of the First Appellate Court are; those relevant

discussions for arrival at the conclusion as have been made by the First Appellate Court need be reproduced:-

“7. From the aforesaid narration of facts and rival contention, it is abundantly clear that the dispute between the two parties and right claim by them flow from two separate Regd. Sale deeds in respect of the self same suit land. Both the parties have adduced their evidence with respect to their respective possession over the suit land. The learned lower Court in the answer to issue No.(iv) has given a finding that the defendant (appellant) never challenged the genuineness of Ext.2 or Ext.3(Regd. Sale deed) dated 21.03.1968 executed by Bihari Nayak and Regd. Sale deed dated 11.11.1988 executed by Rama Chandra Parimanik, in favour of the wife of Plaintiff No.1 (Manorama Mohanty) and no counter claim has been filed by the respondents to declare those sale deeds null and void. Basing on this finding, the learned lower Court has come to a conclusion that the Regd. Sale deed dated 10.03.1989 executed in favour of the appellant cannot convey any title to the defendant (appellant). In view of this analysis, the learned lower court has further held that in absence of such prayer, the Regd. Sale deed dated 10.03.1989 cannot be said as a void document, in favour of the defendant. No contrary discussion has been made by the learned lower Court in this regard. It is argued on behalf of the learned counsel for the respondents that since the Regd. Sale deed dated 10.03.1989 is a subsequent document, the Vendor Bihari Nayak did not have any valid right to transfer the same in favour of the defendant and as such the Regd. Sale deed dated 10.03.1989, on which the appellant

bases her title and possession is ab initio void. I am of the view that the Regd. Sale deed dated 10.03.1989 is “voidable” document and not void ab initio.

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(8) The learned lower Court has lost sight of the fact that this is a suit where the only prayer of the plaintiff was for recovery of possession of the suit land by evicting the defendant therefrom. There was no specific prayer to declare the Regd. Sale deed dated 10.03.1989 as void or inoperative. In absence of such prayer, the findings of the learned lower Court is not legal that the Regd. Sale deed dated 10.03.1989 was not a valid one. Keeping such contingency in view, Section-31 of the Specific Relief Act has been enacted giving option to a party to challenge a written instrument as void or voidable after adjudication. The Plaintiff in the Court below has not taken recourse to such a provision and in absence of such specific prayer in the plaint, the consequential relief of recovery of possession should not have been granted by the learned lower Court.”

12. The First Appellate Court by arriving at the above conclusion appears to have put the cart before the horse. The sale-deed Ext. 2 by which the vendor Manorama had purchased the suit property is dated 21.06.1968. Manorama’s purchase of the suit land is evidenced by the registered sale-deed executed on 11.11.1988.

The Registered sale-deed basing on which the Defendant has laid her competing claim of title over the suit land is dated 10.03.1989, which is even much after the registered sale-deed Ext.3 coming into being. In such situation, it was incumbent upon the Defendant to impeach the sale-deeds Exts. 2 & 3 on any such available/permissible ground as per law either by a suit within the period prescribed in law or if it can be said that she had no prior knowledge then at least advancing a counter claim in the suit by specifically pleading all those required for the purpose and praying therein that she be declared to be the right, title and interest holder in respect of the suit property; wherein the invalidity of those two sale-deeds Exts.2 & 3 on such projected grounds would have been adjudicated upon. Thus, for the Plaintiffs to seek for a declaration that the subsequent registered sale-deed which the Defendant is projecting as the foundation of her claim of right, title and interest over the suit property does not stand as the legal need. The title over the suit land by its true owners having once being transferred on the basis of a first registered sale-deed, the same has to be so presumed till it is not so set aside by the Competent Court of law in a duly constituted proceeding; and it can safely be said that they were having no subsisting title so as to alienate in favour of the Defendant. Thus until

and unless the sale-deeds; Exts. 2 & 3 are declared void and inoperative, the sale-deed dated 10.03.1989 in favour of the Defendant by the vendors who were having no right, title and interest over the subject matter cannot be taken to have clothed the Defendant with any title in so far as the suit land in concerned. The sale deed which is projected by the Defendant as the triumph card to non-suit the Plaintiffs by whittling down their claim as to title and possession over the suit land are here in this suit is not even the value of the paper written on and has to be simply ignored for all purposes whatsoever.

For the foregoing discussions, the answer to the substantial question of law thus is recorded against the case/ claim of the Defendant. In that view of the matter, the judgment and decree passed by the First Appellate Court are to be set aside and those passed by the Trial Court should be restored.

Accordingly, the judgment and decree passed by the First Appellate Court are hereby set aside; and those passed by the Trial Court stand restored.

12. Resultantly, the Appeal stands allowed with cost.

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

Narayan