

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.312 of 2015

(From the judgment dated 19.05.2015 passed by the learned District Judge, Gajapati at Parlakhemundi in R.F.A. No.08 of 2012 confirming the judgment dated 27.03.2006 passed by the learned Civil Judge (Sr. Divn.), Parlakhemundi in C.S. No.4 of 2005)

***Smt. Karnam Annapurna and
others***

....

Appellants

-versus-

Collector, Gajapati ad another

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Respondents

Advocate(s) appeared in this case:-

For Appellants : Mr. D.K. Mohapatra, Advocate

For Respondents : Mr. S. Mishra, A.G.A.

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
10th October, 2022

B.P. Routray, J.

1. The unsuccessful Plaintiffs are the Appellants before this Court. They challenge the concurrent refusal to grant relief to them by both the courts below.

2. The original Plaintiff, namely, Sri Karanam Taudu filed C.S. No.04/2005 before the learned Civil Judge (Sr. Divn.), Parlakhemundi with the prayer as follows:

“(a) To pass a decree in favour of the Plaintiff and against the Defendants declaring that, the Plaintiff is entitled to remaining portion of Khata No.486, Plot No.8304 after deducting 3½ cents of lands gifted by the Plaintiff to the Defendant No.2,

alternatively

the Defendants be directed to pay the compensation as per rule to the Plaintiff,

(b) To grant cost of the suit and to grant such other reliefs as deemed fit, in the interest of justice.”

3. Present Appellants were substituted upon death of the original Plaintiff as his LRs.

4. The case of the Plaintiff is that he was the right, title owner of the lands in Sabik Patta No.407, Survey No.333/8 measuring Ac.0.25 decimals under Kasinagar Khaspa (mouza) and he gifted Ac.0.03½ decimals of land out of the same in favour of the Forest Department for construction of staff quarters by executing Registered Gift Deed No.161 dated 14.2.1963. Thereafter Public Works Department acquired Ac.0.10 decimals out of the same plot for construction of the road upon payment of compensation. But the Forest Department illegally occupied the entire remaining lands beyond the extent of Ac.0.03½ decimals (three and half decimals) gifted to them and constructed another quarters over the same. The Plaintiff therefore has approached the learned civil court with the prayer as afore-stated.

5. The Respondents-State authorities filed their WS stating that Forest Department have got their right over the entire suit property

including those three and half decimals by way of adverse possession and in the last major settlement operation, the entire patch of suit land has been recorded in favour of Forest Department in Plot No.8304, Khata No.486 of mouza-Kasinagar measuring area Ac.0.115 decimals. It is their case that the land beyond three and half decimals is under possession of Forest Department since 1963, i.e. the date of execution of the Gift Deed in respect of three and half decimals. They have constructed quarters over the same and a well is also situating over the suit land. Their possession over the suit land is continuous, intentional and peaceful and within the full knowledge of the Plaintiff. So they have perfected their right against the Plaintiff by way of adverse possession and moreover, the final ROR has now been published on 31.8.2000 in their favour and the Plaintiff also did not raise his objection to the same.

6. Both the trial court as well as first appellate court by accepting the plea of adverse possession in favour of Forest Department refused to grant relief to the Plaintiff and dismissed the suit as well as the first appeal.

7. It reveals from the impugned judgment of the trial court dated 27.03.2006 that Issue Nos.4, 5 and 6 are in respect of acquisition of title by the Respondents (Defendants) by way of adverse possession and entitlement of the Plaintiff for compensation. Learned trial court under Issue Nos.4 and 5 has concluded that the Defendants acquired title over the suit land by way of adverse possession and therefore the Plaintiff lost his title over the same. Under Issue No.6, the learned trial

court held that the Plaintiff is not entitled for any compensation in absence of specification of the quantum thereof stated by him. Further under Issue No.7, which is regarding limitation in filing the suit, the learned trial court concluded that the suit being filed on 5.1.2005 and the settlement ROR being published on 31.8.2000, the suit is barred by limitation as a suit for recovery of possession would have been maintainable within three years from 1963.

8. Learned District Judge, Gajapati, who is the first appellate court confirmed all such findings of the learned trial court in RFA No.08/2012 and dismissed the appeal.

9. This Court by order dated 06.04.2018 framed the substantial question, which is as follows:-

“Whether the Courts below erred in law by declaring the adverse possession of the Forest Department of Government of Odisha over the suit land of the Plaintiffs even if they have gifted only Ac.0.3½ decimals of land out of the said land to the State ?”

10. The title and ownership of the original Plaintiff over the suit land is admitted by the Defendants. Further the State-Defendants (Forest Department) admit their possession over the suit land. They admit that they are in occupation of remaining portion of the patch of land beyond three and half decimals gifted to them by the Plaintiff. In view of such admission of the Defendants, the only pertinent question remains for decision is whether the State can perfect its title against his subject by way of adverse possession ?

11. The Supreme Court in the case of *State of Haryana vs. Mukesh Kumar and others, (2011) 10 SCC 404* while explaining the doctrine of adverse possession has held that no Government Department should be permitted to perfect their title by way of adverse possession. The relevant observations are reproduced below.

“3. xx xx A very vital question which arises for consideration in this petition is whether the State, which is in charge of protection of life, liberty and property for the people can be permitted to grab the land and property of its own citizens under the banner of the plea of adverse possession ?

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22. In a democracy, governed by the rule of law, the task of protecting the life and property of the citizens is entrusted to the Police Department of the Government. In the instant case, the suit has been filed through the Superintendent of Police, Gurgaon, seeking the right of ownership by adverse possession.

23. The revenue records of the State revealed that the disputed property stood in the name of the defendants. It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before different forums claiming right of ownership by way of adverse possession.

24. The citizens may lose faith in the entire police administration of the country that those responsible for the safety and security of their life and property are on a spree of grabbing the properties from the true owners in a clandestine manner.

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42. Reverting to the facts of this case, if the Police Department of the State with all its might is bent upon

taking possession of any land or building in a clandestine manner, then, perhaps no one would be able to effectively prevent them.

43. It is our bounden duty and obligation to ascertain the intention of Parliament while interpreting the law. Law and justice, more often than not, happily coincide, only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious relook is absolutely imperative in the larger interest of the people.

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45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No government department, public undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.”

In the afore-stated case, the State of Haryana filed a civil suit through the Superintendent of Police, Gurgaon seeking relief of declaration to the effect that it has acquired the right of ownership by way of adverse possession over the land of the private Defendants. The State lost his case in every forum starting from trial court and ultimately, the Supreme Court while dismissing the appeal imposed cost of Rs.50,000/- to be paid by the State-Plaintiff.

12. Again in another recent case, i.e. *Vidya Devi vs. State of Himachal Pradesh and others*, (2020) 2 SCC 569, the Supreme Court

in a case relating to the prayer of Vidya Devi for acquisition of her land, forcibly expropriated in 1967, directed for payment of adequate compensation. The Supreme Court further observed as follows:-

“12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.

12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.”

13. In the instant case, as stated earlier, the unauthorized occupation of the suit land by the State Forest Department since 1963 is admitted. At the same time, the true ownership of original Plaintiff and his title over the suit land is not disputed. In view of these admitted facts, the answer to the substantial question would obviously be in favour of the Plaintiffs. The Defendants, who are the State Forest Department, cannot be allowed to retain or continue with possession nor can be permitted to perfect their title by way of adverse possession. For this

purpose, publication of final ROR in their favour would be immaterial because the ROR neither creates nor extinguishes title of the party.

14. So far as limitation is concerned, the finding of the learned trial court is mistaken and based on misconception. The learned trial court proceeded to decide as if the suit by the Plaintiff is for recovery of possession. But the fact remains that the Plaintiff has never prayed for recovery of possession nor has pleaded in that way. The suit was for declaration of right, title and interest and the learned trial court has misconceived the same to treat the relief as recovery of possession and wrongly applied the limitation aspect from 1963. This is a declaratory suit for right, title and interest over the property with alternate prayer for compensation. If the plea of adverse possession of the State-Defendants is negated then nothing remains in favour of the Defendants to deny the Plaintiff for declaration of right over the property. It is well-known that adverse possession, as admitted by the Defendants in the instant case, is a continuous cause of action and therefore period of three years under Article 58 of the Limitation Act for declaration would not be a bar to entertain the suit.

15. In the instant case, the Plaintiff is a poor forest dweller and on the other side mighty Forest Department is there. The Plaintiff by showing his magnanimity donated a portion of his land to Forest Department for construction of quarters for their staff. The Forest Department on their part showed their mighty teeth to grab remaining portion of the plot as a reward to the Plaintiff in return to his noble feelings towards the Department. As seen from the pleadings, both the

parties have admitted about construction of another quarters on the suit land as well as use of the same by digging a well therein. In such circumstances, it would be apposite in the interest of justice to direct the Defendants for payment of adequate compensation to the Plaintiffs. The learned trial court haphazardly rejected the alternate prayer of the Plaintiff saying that he has not specified the amount of compensation. Learned District Judge has also failed to appreciate the fact that the land of a private citizen has been illegally grabbed by the State Forest Department. The compensation amount can be assessed in terms of the principles followed in the land acquisition proceeding.

16. In the result, the appeal is allowed and the alternate prayer of the Plaintiff is granted. The Defendants (present Respondents) are directed to pay compensation to the plaintiffs (present Appellants) equivalent to the amount twice the present bench mark value of the suit schedule 'A' land after deducting three and half decimals there-from as gifted in favour of the Forest Department, within a period of six months from today.

17. The decree be drawn accordingly.

(B.P. Routray)
Judge