

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.03 OF 2015

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 District Judge, Ganjam, Berhampur in RFA No.31 of 2012 by dismissing the judgment and decree passed by the learned Civil Judge (Junior Division), Berhampur in Civil Suit No.213 of 2004.

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Trilochan Sahu & Another :: *Appellants*

-versus-

Rankanidhi Sahu & Others :: Respondents

**Appeared in this case by Hybrid Arrangement
(virtual/physical mode)**

***For Appellants* ::::** M/s.S.K. Nayak-2, Kintara,
P.K. Paikray, S.S.K. Nayak,
A. Behera, Advocates.

For Respondents - --- --- --- ---

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING::23.06.2022, DATE OF JUDGMENT::04.07.2022

D.Dash, J. 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 District Judge, Ganjam, Berhampur in RFA No.31 of 2012.

By the same, the Appeal filed by the present Appellants being the unsuccessful Plaintiff under Section-96 of the Code has been dismissed and thereby, the judgment and decree passed by the learned Civil Judge

(Junior Division), Berhampur in Civil Suit No.213 of 2004 have been confirmed.

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 the suit properties are their ancestral properties and those originally belong to one Mohan Sahu and on his death, his sons, Somanath, Ghana and Bharat came to succeed the same and they are the predecessors in interest of the Plaintiff. The Plaintiffs having succeeded to the properties and possessed the same.

It is alleged that the Defendants being the co-villagers of the Plaintiffs without any right, title and interest over the suit properties in order admitted to grab the same illegally by force and despite of loosing several rounds of litigations with the Plaintiffs in respect of the said properties have been creating disturbance. The Plaintiffs therefore filed the suit for permanent injunction simplicitor.

4. The Defendants filing their written statement have stated that in the last settlement operation land under hal Plot No.316 appertaining to Hal Khata No.14 has been erroneously recorded in the names of the Plaintiffs, though only Khata No.310 was Gramkantha Paramboke and that related sabik Plot No.20 and not sabik Plot No.21/11 and 21/15 of

as claimed by the Plaintiffs. They further claimed to be in possession of the said suit land from the time of their four fathers.

5. The Trial Court on the rival pleadings framed in total five issues. Coming to answer the crucial issues i.e. issue nos. 3 & 4, upon analysis of evidence and their examination, the conclusion has been reached that the Plaintiff have failed to prove that they have right, title, interest and possession over the land covered under Plot No.21/11 and 21/15 or over the land under hal Plot No.310. With that the suit stood dismissed.

The Plaintiffs being thus non-suited having carried an Appeal have been successful in obtaining the decree as prayed for in the suit filed by them.

6. Learned Counsel for the Appellants (Defendants) submitted that the lower Appellate Court is not justified reversing the finding of the Trial Court in finally holding that the Plaintiffs are entitled to the decree of permanent injunction in respect of the suit land. It was submitted that the finding of the lower Appellate Court that the Plaintiffs are in possession of the suit land merely basing upon the documentary evidence which includes the Ext.2 is erroneous. He further submitted that when the title in respect of the suit land is in dispute, the lower Appellate Court ought not to have favoured the Plaintiffs in decreeing the suit filed by them for permanent injunction simplicitor.

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

8. The Plaintiffs suit is one for permanent injunction simplicitor. It is the specific case of the Plaintiff that one Mohan Sahu was the original recorded tenant as per the sabik record and in his favour preliminary record of right was published in the year, 1937 by the concerned Revenue Authority as per Khatian No. 36 under raiyati status. On the death of Mohan Sahu, his sons, Somanath, Ghana and Bharat succeeded to the same and became the sabik recorded tenants. In the final ROR published in the year, 1951, the ownership as such had been confirmed by the then Settlement Authority and suit properties along with other properties were recorded in their favour under raiyati status. So, it is stated by the Plaintiff that since then the successors in interest of Mohan have been in peaceful possession of the said land having joint right, title and interest.

It is stated by the Plaintiff No.1, examined as P.W.1 that the Defendant No.1 filed Objection Case No.2938 of 2000 and therein without notice to the Plaintiffs in the rent camp, the suit land was classified as Gramkantha Paramboke land which is without any basis and it was so done completely ignoring the raiyati status of land as stated in the settlement record of the year, 1937. The suit lands with other lands has been jointly recorded in the name of the Plaintiffs in the

hal settlement. The consolidated register of records of right in respect of the sabik Khata No.36 and sabik Plot No.21/11 and 21/15 along with other plots therein belong to Mohan Sahu, the common ancestors of the Plaintiffs has been proved as Ext.1. The hal ROR in respect of the suit lands i.e. Hal Plot No.310 with other plots of land thereunder stands in the name of the Plaintiffs as indicated in Ext.2. The rent receipts in respect of the land under Sabik Khata No.36 and hal Khata No.14 standing in the name of the Plaintiffs has been proved under Ext.3 series.

9. The Defendants having thrown the suggestions to P.W.1 that three sons of Mohan had alienated the land under Plot No.21/11 and 21/15 in the year, 1952 to one Karada Sundaramma, which has been sold by Karada Sundaramma to one Dandapani Sahu in 1969-71 under two registered sale-deeds, who has again sold the land to one Liari Chanda in the year, 1991, have been denied. He has also flatly denied the suggestion that the said alienated land is the suit land and that the land under Plot No.310 is Gramkantha Paramboke land as to be having no relationship with the Plot No.21/11 and 21/15. The evidence of P.W.2 is on the score that the suit plot is in possession of the Rankanidhi and his family members; which is used as threshing floor situated towards northern of his residential house and behind. This witnesses has also denied the suggestion that the suit land belongs to the Defendants

prior to 1952. It is the evidence of P.W.3 that the Plaintiffs are in possession of the suit land and that his father Liari Chanda has never purchased the suit land. He has in clear terms stated that neither his father's so called vendors nor their predecessors had ever possessed the suit land and that in the last settlement operation, his father got the ROR in respect of his land under Khata No.32.

The stand of the Defendants is that the ancestors of the Plaintiffs were not in possession of the suit land and they had jointly sold the same to one K. Sundaramma and then it was sold to Dandapani. It is also stated by them that subsequently the land under sabik Plot No.21/11 and 21/15 had been transferred to Liari Chanda in the year, 1991. The Defendants assert that the Plaintiffs did never possess the suit land nor had any right, title and interest over the same since 24.09.1952. The certified copies of the sale-deeds being admitted in evidence as Exts. A to D; said predecessors nor their successors in interest have been examined as witnesses on behalf of the Defendants. At this juncture, when the certified copy of the order in Objection Case No.2938 of 2000 and certified copy of the Amin report in the said objection case as well as the land register of the concerned mouza covering Plot No.21/11 and 21/15 marked as Exts. F, G. and H are seen, the Defendants are found to have made attempt thereby to establish that the land under sabik Plot No.21/11 and 21/15 correspond to land under hal Plot No.310.

However, the Plaintiffs have clearly established from Exts.1 & 2 that sabik Plot No.21/11 and 21/15 along with other plots of land stood recorded in the name of Mohan Sahu, their predecessors in interest. It has also been proved that hal Plot No.310 under hal Khata No.14 stands recorded in their name as under Ext.2.

Before the 1st Appellate Court, additional evidence has been adduced which is the order passed by the Tahasildar based upon report of Revenue Inspector. It shows that the hal Plot No.310 under hal Khata No.14 is under physical possession of Ulla Sahu, Somanath Sahu, Dambaru Sahu and Ranka Sahu. The Amin report in Object Case No.1190 of 2001 marked Ext. 4 admitted as additional evidence reveals that hal Plot No.310 corresponds to sabik Plot No.21/11 and 21/15. As it appears therefrom that although above fact was recorded in the Khanapuri stage of the settlement operation, inadvertently it was mentioned at the subsequent stage that hal Plot No.310 corresponds to sabik Plot No.20 under Paramboke Khata, when these two sabik plots are raiyati lands of the Ulla Sahu and others who were in joint possession. The above mutation order being not challenged; in the final record of right, the land under Plot No.310, Khata No.14 has come to be recorded in the name of the Plaintiffs in the year 2001. Even though such record of right does neither create nor extinguish the title, the lower Appellate Court appears to be well within its right to attach

presumption to the correctness of the same banking upon the provision contained under Section-13 of the Orissa Survey and Settlement Act. So, by drawal of necessary conclusion therefrom, the lower Appellate Court is not found to be committed any error in saying that the Plaintiffs are in possession of the suit land. In that view of the matter, basing upon the proved factum of possession of the suit land by the Plaintiffs on the face of the evidence let in by the Plaintiffs that the Defendants are trying to create disturbance in their possession, the lower Appellate Court has rightly decreed the suit filed by the Plaintiffs seeking permanent injunction against the Defendants instead of saying that the suit for permanent injunction simplisitor in the absence of any prayer for declaration of title is not maintainable. With the above, the lower Appellate Court is thus found to have rightly decreed the suit for permanent injunction.

10. In the wake of aforesaid, the submissions of the learned Counsel for the Appellants stands repelled.

11. In the result, this Court finds that no such substantial questions of law stands for being answered meriting admission of this Appeal. Accordingly, the Appeal stands dismissed. No order as to cost.

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