

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.16 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 Additional District Judge, Bhawanipatna, in RFA No. 45/05 of 2004/2014 by setting aside the judgment and decree passed by the learned Civil Judge (Senior Division), Bhawanipatna in Civil Suit No.08 of 2003.

Bisaya Pradhan

:::

Appellant

-versus-

Susanta Pradhan & Others

:::

Respondents

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

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For Appellants

:::

M/s. D. Mund, R.K. Acharya,
S.N. Padhee, P.K. Behera,
Advocates.

For Respondents

:::

M/s.S.S. Kashyap,
S.K. Samantray, N.K. Rout,
Advocate. (R. 1 to 4).
A.K. Pattjoshi, Advocate
(R-5).

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING:: 23.08.2022, DATE OF JUDGMENT::26.09.2022

These Appellant by filing this Appeal under Section-100 of the Code of Civil Procedure 1908 (for short, 'the Code') has assailed the judgment and decree passed by the learned Additional District Judge, Bhawanipatna, in RFA Nos. 45/05 of 2004/2014.

By the same, the Appeal filed by the Respondent Nos.1 to 4 (Plaintiffs) under Section-96 of the Code has been allowed and thereby, the judgment and decree passed by the learned Civil Judge (Senior Division), Bhawanipatna in Civil Suit No.08 of 2003 have been set aside. The suit filed by the Respondent Nos.1 to 4 as the Plaintiffs has been decreed and the Appellant (Defendant No.1) and the Respondent No.5 (Defendant No.2) have been directed to deliver possession of the suit land to the Respondent No.1 (Plaintiff).

The Respondent Nos. 1 to 4 as the Plaintiffs having filed the suit for declaration of their right, title and interest over the suit and recovery of possession by evicting the Appellant (Defendant No.1) and Respondent No.5 (Defendant No.2) thus been successful.

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 Bibhuti Bhusan Pradhan who is their predecessor in interest i.e. husband of Plaintiff No.1 and father of Plaintiff Nos. 2 to 4 was the owner in possession of the suit land described in Schedule-A of the Plaint which stood recorded in his name in the Hal Record of Right and as such he was possessing the same. However, there was a note of possession in the remark column of the

said ROR in the name of Defendant No.1. A settlement Appeal had been initiated suo moto by the Settlement Officer for deletion of the said note of possession, but that had not been finally done. The Plaintiff's claim to be in possession of the suit land after the death of Bibhuti Bhusan Pradhan. The Defendants having put up construction over the suit land some time after the death of Bibhuti Bhusan Pradhan by force, the suit has come to be filed for their eviction.

4. The Defendant No. 1 contested the suit. While filing the written statement, she had also advanced the counter claim for declaration of her right, title, interest and possession over the suit land.

She has denied the assertion of the Plaintiffs to be having the possession over the suit land. It is stated that her father Jagabandhu Sa had purchased the suit land appertaining Sabik Plot No.342 from the rightful owner namely Khirabdi Biswal prior to the settlement of the year 1955-56 and continued to possess the same as its owner to the knowledge of the predecessors of the Plaintiffs as well as the Plaintiff. It is stated that subsequently in a ceiling proceeding vide OLR Case No.16 of 1976 initiated against Khirabdi Biswal, this land under Plot No.342 was demarcated and settled in the name of Jagabandhu Sa. During Hal Settlement Operation in the year 1985-86, the said land was demarcated under Hal Plot No.712 and then Bibhuti Bhusan Pradhan claimed the

same to be the parcel Sabik Plot No.191. The Settlement Authority visited the spot and found the possession of the aforesaid land with Defendant No.1. This was admitted by Tankadhar Pradhan, the father of the Bibhuti Bhusan Pradhan before the Settlement Authority. So, during Khanpuri operation, it was directed that the land be recorded under Plot No.712 in the name of Bibhuti Bhusan with note of possession in favour of Defendant No.1. The Defendant No.1 then had filed the Rent Objection Case No.253 of 1987; there Bibhuti Bhusan appeared and admitted the factum of long possessions of the land by Defendant No.1 as well as her mother and sister.

The counter claim is thus advanced that he being in possession of the suit land to the knowledge of all concerned as its owner from the time of her father for more than 30 years and her father having made lots of developments over the said property by putting up house over there and staying there in, the Defendant No.1 has acquired a title over the suit land by way of adverse possession.

5. The Plaintiffs in their written statement to the counter claim have refuted the claim of the Defendant No.1 as to acquisition of title over the suit property by way of adverse possession. It is stated that the Defendant No.1 stayed with her first husband Khirabdi Biswal for about 10 years and thereafter as the concubine of one Rushi Pradhan and then

as mistress of one Kali Patra. It is stated that lastly she has been staying with Defendant No.2 as the mistress in village Gothbhata, which is 3 kms. away from the suit village. So, it is said that she was never in possession of the suit land for the period as claimed.

6. On the above rival pleadings, the Trial Court has framed eleven issues. On going through the evidence and upon their evaluation the Trial Court has found that although Bibhuti Bhusan Pradhan is the recorded tenant of the suit land, he was not in physical possession of the same. It has also been found that the Defendant No.1's claim of ownership over the property by virtue of purchase by her father from Khirabdi Biswal as claimed has not been established. Then considering the evidence as to possession of the suit land, it has been finally held that there been a dispute with regard to the possession over the suit land from the year 1986 and as the suit has been filed in the year 2000, the same is barred by limitation. It has then been said that even though the parents of the Defendant No.1 and her sister had perfected their title over the suit land, the Defendant No.1 has no exclusive right over it. Having said all these above, both the suit and the counter claim have been dismissed.

7. The Plaintiffs being unsuccessful when questioned the order of dismissal of the suit by carrying First Appeal; the Defendant No.1 did not prefer any Appeal as against the dismissal of her counter claim.

The First Appellate Court on appreciation of evidence has answered those issues in saying that the Plaintiffs being the rightful owner of the property, when the Defendant Nos. 1 has not been able to establish her claim of acquisition of title over the same by way of adverse possession; the suit has to be decreed. Accordingly, the First Appeal has been allowed and the Plaintiffs have been granted with the reliefs as prayed for.

8. The present Appeal has been admitted to answer on the following substantial questions of law:-

“1. Whether the lower Appellate Court is right in repelling the claim of the Defendant No.1 as regards the acquisition of title by the Defendants over the suit land by way of adverse possession without properly considering the evidence of record at this score that the Defendant No.1 was in open, peaceful, continuous and uninterrupted possession as the owner for upward of the property described?

9. Learned Counsel for the Appellant submitted that with the overwhelming evidence as to the possession of the suit land by the predecessors of the Defendant No.1 and the Defendant No.1 thereafter which has always remained open, peaceful and continuous by exercising all the rights of ownership all through and denying the title of the true owner, the First Appellate Court ought to have confirmed the dismissal

of the suit. He further submitted that the appreciation of evidence as has been made by the First Appellate Court to answer the question as acquisition of title over the suit property by the Defendant No.1 by way of adverse possession has been wholly perverse and it has also not been done keeping in mind the settled position of law holding the subject.

10. Learned Counsel for the Respondents on the other hand submitted all in favour of the findings of the First Appellate Court. It was argued that the First Appellate Court having rightly found that the Plaintiffs are the rightful owners and as such entitled to possess the same did commit no mistake in decreeing the suit after having come to a conclusion that the Defendant No.1 has failed to establish her case of acquisition of title over the suit land by way of adverse possession and thereby causing the extinguishment of the title of the Plaintiffs.

11. Keeping in view the submissions made, I have read the judgments passed by the Courts below. I have also gone through the plaint and written statements, the evidence both oral and documentary have been perused.

12. Coming to the question of antecedent title over the suit land, it is seen that the Plaintiffs have taken a stand that Bibhuti Bhusan was the owner in possession of the suit land. It goes without any dispute that the

suit land in the Hal Settlement is recorded in the name of Bibhuti Bhusan Pradhan. The record of Right, Ext.1 in respect of Khata No.27 of suit village was standing recorded in the name of Trijata Bewa in the settlement of 1955-56. The certified copy of the record of right in Khata No.27 in so far as the suit land is in the name of one Tankadhar Pradhan, who is none other than the father of Bibhuti Bhusan. This record of right is of the year 1955-56. The Hal record of right is Ext.3 where in the suit land had been recorded in the name of Bibhuti Bhusan. Plot Index, Ext. 5 clearly reveals that Hal Plot no.712 under Khata No.98 corresponds to Sabik Plot No.191. The Settlement Authority in the suo moto Appeal Case No.05 of 1989 upon verification of record has directed to record the land in the name of Bibhuti Bhusan. It is no doubt true that in the said record note forcibly possession in respect of the suit finds indicated in favour of the Defendant No.1. From all these documentary evidence on record, the First Appellate Court having found that Bibhuti Bhusan was the recorded owner of the suit land is seen to have committed no mistake.

The Defendant No.1's claim as to purchase of the suit land from Khirabdi prior to 1955-56 settlement is rightly found to have been negative. The stand of the Defendant No.1 that the land under Plot No.342 was settled in the name of Jagabandhu Sa is also seen to have

rightly been repelled by looking at Ext.5, the plot index as to be having no relevance in the present suit. This Court is wholly in agreement with the findings of the First Appellate Court that the plaintiffs have proved antecedent title over the suit land.

13. This now takes us to consider as to whether the Defendant No.1 is to be are said to have acquired title over the suit property by way of adverse possession. It has been settled position of law that the plea of general title and adverse possession are mutually inconsistent and the plea of adverse possession would not trigger unless the possessor's claim of general title is renounced. It is also been the authoritative pronouncement of the Apex Court in case of **Karnatak Board of Waqf Vrs. Government of India & Others**; (2004) 10 SCC 779 that in the eye of law, an owner has to be deemed to be in possession of a property so long as there is no intrusion. Non-user of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is the well-settled principle that a party claiming adverse possession must prove that his possession is *nec vi, cec clam, nec precario*, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity

and in extent to show that their possession is adverse to the true owner. It must start with a wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

14. Coming to the case in hand, the concurrent finding of the Courts below have remained that the suit land under Plot No.712 does not corresponds any portion of land under Plot No.342 of the Sabik settlement. The Defendant No.1 had claimed that the disputed land forms a part of Sabik Plot No.342 which had been purchased by her father Jagabandhu Sa and she continued to possess the same from that time onwards. It is next stated that said possession was open, peaceful and continuous to the knowledge of all concerned. It having been pleaded in the written statement that the real controversy started between the parties during Kistawara-Khannapuri when the Settlement Officials prepared the map of state of the Settlement Operation possession of the suit Plot No.712 to be the part of Sabik Plot No.191 which was recorded in the name of Tankadhar Pradhan, the father of Bibhuti Bhusan; it is clear that the Defendant No.1 came to know about the title of Bibhuti Bhusan over the suit land for the first time during that Kistwar Khanpuri Operation. So the Defendant No.1 till then was not aware as to if Bibhuti Bhusan was having the title over the suit land. Thus, her physical possession over the suit land even if accepted is of no legal significance

in so far as the claim of title of the Plaintiffs over the suit land is concerned. In that event, the possession denying title of true owner exhibiting hostile animus against the true owner does not come in. Furthermore, the possession as per the case of Defendant No.1 being referable to a lawful title in her favour and when that has not been proved, such possession for any length of time, it may be cannot be taken to be adverse. The plea of acquisition of title by adverse possession in the present case when is mutually inconsistent, there being no evidence let in by the Defendant No.1 as to the renouncement of her claim of title; the question of banking upon the alternative plea to thwart the suit at the behest of the title holders cannot succeed. The substantial question of law is answered accordingly which leads to confirm the judgment and decree passed by the First Appellate Court.

15. In the result, the Appeal stands dismissed. However, there shall be no order as to cost.

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