

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.404 of 2017

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment & decree dated 18.08.2017 & 28.08.2017 respectively passed by the learned Additional District Judge, Athagarh in RFA No.20 of 2016 confirming the judgment and decree dated 14.04.2016 and 25.04.2016 respectively passed by the learned Civil Judge, Junior Division-Cum-J.M.F.C., Narasinghpur in Civil Suit No.13 of 2015.

Sapneswar Nayak

Appellant

-versus-

*State of Odisha, Represented by
the Collector, Cuttack & Another*

Respondents

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

For Appellant

- M/s. A.R. Dash, S.K. Nanda-1,
K.S. Sahu, A. Mahanta &
Dr.N.Swain
(Advocates)

For Respondents -

Miss.S.Mishra,
Addl. Standing Counsel

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 20.06.2022 : Date of Judgment:04.07.2022

D.Dash,J. The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') has assailed the judgment & decree dated 18.08.2017 & 28.08.2017 respectively passed

by the learned Additional District Judge, Athagarh in RFA No.20 of 2016

By the same, the Appeal filed by the present Appellant (Plaintiff) under section 96 of the Code has been dismissed and thereby the judgment and decree dated 14.04.2016 and 25.04.2016 respectively passed by the learned Civil Judge, Junior Division-Cum-J.M.F.C., Narasinghpur in Civil Suit No.13 of 2015 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 Trial Court.

3. The Plaintiff's case is that his grandfather was not having any homestead land of his own. So, he occupied an area of Ac.0.40 decimals of land from out Ac.0.90 decimals of land appertaining to sabik plot no.1045 under sabik khata no.120 situated in Mouza-Kuranja. It is stated that he possessed the said land since 01.08.1950. On his death, Plaintiff's father came to possess the said land and resided in the house standing on a portion of the same with his family. It is the further case of the Plaintiff that the possession of the suit land from the time of his grandfather and onwards was open, peaceful, continuous and without any interruption from any quarter and to the knowledge of all concerned. It is said that when the Plaintiff was in peaceful possession of the suit land, the Defendant No.2 initiated two encroachment cases; one in the year 1981 and then again in the year 1984-85 under the provisions of Orissa Prevention of Land Encroachment Act, 1972 (for short, the OPLE Act). In both those cases, eviction order being passed, the Plaintiff had preferred Appeal and the same being dismissed, the Plaintiff had filed a writ application numbered as OJC No.2957 of 1987

before this Court. This Court then had directed the Plaintiff to approach the Revisional Forum as provided under the statute. In Revision Case No.14 of 1987, the order of eviction passed by the Tahasildar and the Appellate Authority were set aside and the case stood remanded to the Tahasildar (Defendant No.2) for making a spot visit and then to hear and dispose it in accordance with law. The Tahasildar (Defendant No.2), having conducted a fresh hearing held to be having no jurisdiction to decide the matter as to the possession of the Plaintiff since the time of his father and grandfather for more than thirty years. So, he submitted the matter to the Sub-Collector, Athagarh for taking up the question of settlement of the land under section 8(A)(3) OPLE Act. Then the Sub-Collector, having sought for some clarification, has returned the case with the order to the Tahasildar (Defendant No.2) to act in consonance with the clarification as he would be receiving from the Collector. The Plaintiff, in view of the above move by the Defendants especially from the side of Defendant No.2, when received the threat of being dispossessed, the suit has come to be filed.

4. The Trial Court, in the backdrop on the above pleadings, as contained in the plaint and on going through the evidence on record, has finally held the Plaintiff to have not been successful in proving the case of acquisition of title over the suit land by way of adverse possession as against State-Defendants. This had led to the dismissal of the suit.

5. The unsuccessful Plaintiff, having moved the First Appellate Court, has also not been able to get the finding as well as the result recorded by the Trial court annulled.

6. Learned counsel for the Appellant (Plaintiff) submitted that on the face of the overwhelming evidence on record in showing that the

Plaintiff from the time of his grandfather has been in possession of the suit land and that such possession is open, peaceful, continuous and without any interruption from any quarter as well as exhibiting hostile animus, the Courts below have fallen in error in recording the finding on that crucial issue against the Plaintiff that there has been no acquisition of title over the suit land by way of adverse possession. He further submitted that in view of the long pendency of the encroachment proceedings initiated under the provisions of OPLE Act concerning the suit land when the fact remains that the Plaintiff has never been physically ousted therefrom; the nature of possession of the suit land by the Plaintiff all through ought to be presumed to be in denial of the title of the State (owner). He, therefore, submitted for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned Additional Standing Counsel for the Respondents (Defendants) in assisting the cart submitted that the concurrent findings rendered by the Courts below are well in order being based on just and proper appreciation of evidence on record, keeping in view the settled law by rightly applying to the facts and circumstances as enough from evidences. According to her, the Trial Court as well as the First Appellate Court, having made detail examination of the evidence and their analysis, are right in saying that the Plaintiff has failed to establish their claim as to acquisition of title over the suit land by way of adverse possession. It was submitted that mere pendency of the encroachment proceeding against encroacher would not bring in the presumption that it was hostile in nature. She submitted that when mere possession of the land for any length of time by the possessor is not enough to record a finding that the possessor has acquired title over the suit land by way of adverse possession and from that exhibition of hostile animus in

exercising all the rights of ownership over the said property by denying the title of the true owner is not at all drawable, this pendency of encroachment proceeding cannot bring any such presumption into play.

8. Keeping in view the above submission, I have carefully read the judgments passed by the Courts below.

9. The land which is the subject matter of the suit measures Ac.0.40 decimals and it is from out of a portion of the total area covered under one plot, i.e., Ac.0.90 decimals. The grandfather of the Plaintiff is stated to have entered into the possession of the said property on 01.08.1950. When this has been the plaint averments and evidence of P.W.1, one suspicious feature appears as nothing is stated how this land was selected by the grandfather of the Plaintiff to be so occupied as it is not the case of the Plaintiff that his grandfather was having any land of his own near the suit land or in the vicinity. This projected story being accepted go to show that the grandfather of the Plaintiff, all of a sudden came to occupy the suit land. There is nothing in the evidence that he occupied the suit land claiming its ownership unto himself and thereby denying the title of the true owner to their knowledge. When it is said that the suit land was covered under sabik plot no.120, that concerned sabik ROR has not been filed. So, whether the land was then recorded in the name of the Defendants or not is also not forthcoming and thus knowing the land to be owned by whom, the Plaintiff's grandfather began to possess is not surfacing in evidence.

The plaint schedule indicates that the suit land corresponds to three plots, i.e., plot nos.991, 1662 and 663 whose areas are Ac.0.26 decimals, Ac.0.18 decimals and Ac.0.11 decimals respectively. That in total thus measures Ac.0.55 decimals whereas the plaint averment initially was that

the total area of the suit land was Ac.0.40 decimals. This additional Ac.0.15 decimals how came to be further occupied and specifically when it was so occupied is not stated. The Tahasildar, having merely indicated in the encroachment proceeding record, about the plea of encroacher that he has been in possession of the property for thirty years, the same is not enough to arrive at a finding that the Plaintiff has established to have acquired the title over the suit land by way of adverse possession and thus that noting does not come to the aid of the Plaintiff in establishing a case of acquisition of title by adverse possession. Whom, mere possession of the land for any length of time is not the sole factor to be considered for acquisition of title over the land by the possessor by adverse possession, the pendency of the encroachment proceedings and non-eviction of the plaintiff from the suit land during the period cannot bring into play the presumption that such possession was by way of exhibiting the hostile animus; claiming title and ownership unto himself and that is in denial of the title of the true owner.

The Trial Court, having taken the entire evidence into account and upon threadbare discussion of the same, is thus found to have committed no error in holding that the claim of the Plaintiff as regards acquisition of title over the suit land by way of adverse possession is unacceptable.

For all the aforesaid, this Court is not persuaded to accept the submission of the learned counsel for the Appellant (Plaintiff) that the Appeal deserves to be admitted for answering the substantial questions of law as pointed out and so noted at Paragraph-6.

16. Resultantly, the Appeal stands dismissed. There shall, be no order as to cost.

While parting, it be however clarified that the dismissal of the suit filed by the Appellant (Plaintiff) shall not stand on the way of the Authorities under the OPLE Act for passing appropriate order as to settlement of any portion of land which is the subject matter of the proceeding under the OPLE Act in accordance with law and the govt. guidelines in that regard.

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



Basu