IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.469 OF 2017

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, Balliguda, in RFA No.13 of 2015 by confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Daringbadi in Civil Suit No.02 of 2013.

Akshya Kumar Mallick .... ***Appellant***

-versus-

Collector, Phulbani & Others .... ***Respondents***

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

For Appellant **::::** M/s.Maheswar Mohanty, S.P. Dash, B.P. Chhualsingh, Advocates.

For Respondents **::::** Ms. Samapika Mishra, Additional Standing Counsel.

:::: M/s.Laxman Pradhan, **D.**P. Das, R.K. Mishra, Advocates.

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING::03.08.2022,DATE OF JUDGMENT:: 08.08.2022

The Appellant 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, Balliguda, in RFA No.13 of 2015.

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 passed by the learned Civil Judge (Junior Division), Daringbadi in Civil Suit No.02 of 2013 dismissing the suit filed by the Appellant (Plaintiff) as against the Respondents (Defendants) 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 he from the time of his forefathers is in possession of the suit land covered under Plot No.40/A measuring Hc.0.186R and 40/541 measuring Hc.0.16R appertaining to Khata no.77 and 76/35 respectively of mouza Pliheri. It is stated that the suit land had been developed and made fit for cultivation by the ancestors of the Plaintiff. The Tahasildar, Daringbadi (Defendant No.2) leased out the land under Plot No.40/541 measuring Hc.0.16R under Khata No. 76/35 to the Defendant No.3. The Plaintiff on 31.01.2013 demarcated the plot of land leased out to him and on that day he came to know that the entire suit land of Hc.0.200R under Plot No.40 has not been recorded in his name. The Plaintiff claims that he has been in continuous possession of the suit land to the knowledge of all concerned including the Defendants from the time of his ancestors for

upward of a period of 40 years prior to the suit. The Defendant No.3 never possessed the land under Plot No.40/541 nor he had ever been delivered with the possession of the said land by the Authorities of the State and as such the Plaintiff has not been dispossessed of that land at any time. It is further stated that Defendant No.3 has his house on the land under Plot No.40 since the year, 1995 and his house is at a distance of 200 feet from the suit land and it was the impression of all that the house of Defendant No.3 was on the leased plot of land under plot No.40/541 which is not the fact. The Plaintiff and his father were under an impression that the suit land has been recorded in their name with their other plots. It is further stated that at the time of settlement, the Plaintiff has perfected his right, title, interest and possession over the suit land. The Plaintiff thus filed the suit seeking declaration of his right, title and interest over the suit land and an injunction to restrained Defendant No.3 to enter upon it.

4. The Defendant Nos. 1 & 2 in their written statement have asserted that the land under Plot No.40/A appertaining to Khata No.77 measuring Hc.0.186R is under Patita kisam standing recorded in the name of the State and the State is the absolute owner of the same. It is further stated that out of the land of Hc.1.775R belonging to the State, land measuring has been leased out to Defendant No.3 by order in Misc. Case No.185 of 1994. Accordingly, Mutation Patta has been

issued in his favour by carving out Plot No.40/541 and Khata No.76/34 in that Hc.0.16R as kisam Gharabari. It is stated that Defendant No.3 is in possession of the suit land by constructing dwelling house over there. The suit land is said to be adjacent to the land under Plot Nos. 52, 53, 54, 55 and 56 under Khata No.2, which stand recorded in the name of Arjun Mallick, the father of the Plaintiff. It is stated that the suit land is not part of land under Plot No.52.

5. The Defendant No. 3 admitted that the suit land originally belonged to the State and as he had no homestead land, on his application, Tahasildar leased out that piece of homestead land in his favour and it has been recorded under Khata No.76/35, Plot No.40/541 measuring Hc.0.16R in terms of order passed in Lease Case No.169 of 1994. He states to be in possession of the said land by having his house over there and residing with his family members since 1994.

6. On the above rival pleadings, the Trial Court framed in total nine(9) issues.

Answering the crucial issues i.e. issue nos. 4, 5, 6 and 7 together as those are interlinked; upon examination of evidence and their evaluation, the answers have been returned against the case/ claim of the Plaintiff in holding that the Plaintiff has not acquired the right, title, interest and possession over the suit land by way of adverse

possession. It has further been stated that land under Khata No.77 is the land belonging to the State and the other land under Khata No.76/35 is the land of the Defendant No.3. Having said as above, the suit being dismissed, the unsuccessful Plaintiff had carried the First Appeal which too has been dismissed.

7. Learned Counsel for the Appellant submitted that the Courts below have erred both on facts and law in holding that the Plaintiff has not acquired title over the suit by way of adverse possession. According to him, with the overwhelming evidence on record as to the long possession of the suit land by the Plaintiff since time of his ancestors in an open, peaceful and continuous manner exercising all the right ownership over the same exhibiting hostile animus denying title of the true owners i.e. the Defendants, the Courts below are not right in negating the claim of the Plaintiff over the suit land and non-suited him. He further submitted that the Courts below have not properly appreciated the evidence in the backdrop of the pleadings and the conclusion arrived at is wholly perverse. He, therefore, urged for admission of this Appeal to answer the above as the substantial question of law.

8. Learned Counsel for the State as well as the learned Counsel for the Respondent No.3 assisting the Court in the matter of admission of this Appeal have submitted all in favour of the concurrent finding

returned by the Courts below. According to them, having properly appreciation of evidence, since the Courts below have concurrently returned the finding when there surfaces no such perversity therein; this Court in seisin of the Second Appeal is not permitted to annul the same merely taking a view on its own. It was submitted that the Courts below having rightly been arrived at the conclusion keeping in view the settled position of law holding the field in non-suiting the Plaintiff; the Appeal does not merit admission.

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

10. The claim of the Plaintiff as it reveals from the pleading and evidence is that by remaining in possession over the suit land for a long period since the time of his ancestors and that possession being open, peaceful and continuous as its owner to the knowledge of all concerned, the right, title, interest and possession over the same has come to rest on him. It is further stated that the Plaintiff and his ancestors were all along under the impression that the suit land is the land within the land settled on them. The Plaintiff being examined as P.W.1 has again in clear terms stated that during last settlement operation in the year 1975, the land has been settled in the name of his father leaving a portion of the land under Khata No.77, Plot No.40 to an extent of Hc.0.200R being not so settled and remaining under

Government Khata. This can be seen from Exts. 1 & 2, two record of rights; former in the name of the State and the later one is in the name of Defendant No.3. It is also his evidence that he has no residential house over the said plot of land. The Plaintiff thus having got some Government land on lease, the said area of land has accordingly been recorded in the name of his father. It is not stated as to thereafter when he began to possess the suit land asserting his own right over the same as its owner and also claiming it to be his land getting under the lease. It has simply come out in evidence that the Plaintiff all along remained under the impression that the suit land is also their leased land. In such state of affairs in the evidence, the claim of the Plaintiff as to have acquired title over the suit land by adverse possession has no leg to stand. Even accepting the possession of the land by the Plaintiff, on the face of the settled position of law that mere possession of the land by the possessor for any length of time does not give rise to a case of acquisition of title over the same by adverse possession when in the given case, the Plaintiff at no point of time, claims to have possessed the suit land in denial of the title of the true owner to its knowledge which is one of the most fundamental requirement to substantiate the claim of acquisition of title by adverse possession; the findings returned by the Courts below are found to be well in order and do not warrant interference in this Appeal.

In view of the aforesaid, the submission of the learned Counsel for the Appellant that the Appeal merits admission to answer the substantial questions of law as pointed out cannot be countenanced with.

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

(D. Dash),
Judge.

Narayan

HIGH COURT
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ORISSA