

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.292 of 2015

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 31.03.2015 and 15.04.2022 respectively passed by the learned District Judge, Ganjam, Berhampur in RFA No.59 of 2014 confirming the judgment and decree dated 19.08.2014 and 28.08.2014 respectively passed by the learned Civil Judge, Junior Division, Berhampur in Civil Suit No.459 of 2012.

Subash Chandra Sahu

....

Appellant

-versus-

***The District Collector, Ganjam &
Others***

....

Respondents

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

For Appellant

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**Mr. Nilamadhaba Bisoi
(Advocate)**

For Respondents

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CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 30.06.2022 : Date of Judgment:18.07.2022

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 and decree dated 31.03.2015 and 15.04.2022 respectively passed by the learned District Judge, Ganjam, Berhampur in RFA No.59 of 2014.

By the same, the Appeal filed by these Appellant and her mother, being the unsuccessful Plaintiffs, under section 96 of the Code has been dismissed and thereby the judgment and decree dated 19.08.2014 and 28.08.2014 respectively passed by the learned Civil Judge, Junior Division, Berhampur in Civil Suit No.459 of 2012 have been confirmed.

The Appellant and her mother being thus non-suited, in view of the death of the mother of Appellant (co-appellant), this Appeal has been filed by the surviving unsuccessful Plaintiff as the sole Appellant.

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 Plaintiffs' case is that during the life time of Duryodha Sahu, the father of Plaintiff No.1 and husband of Plaintiff No.2, the suit land was in his occupation and enjoyment. Such was the position from the year 1996 since when Duryodhan was possessing the suit land by putting green fence all around. The possession is stated to be open, peaceful, continuous and without interruption from any quarter. It is also said to be with the full knowledge of all concerned including the Revenue Authority. It is the further case of the Plaintiffs that after the death of Duryodhan, they remained in possession of the suit land, which has been noted in the record of settlement operation in the year 1970. The land being recorded under Anabadi status; its occupation is said to be resting with Duryodhan.

When the situation was thus, the Revenue Authority initiated a proceeding under the Odisha Prevention of Land Encroachment Act, 1972 (for short, 'the OPLE Act') vide Land Encroachment Case No.130 of 2010. The Plaintiff paid a fine of Rs.101/- in terms of the order

passed therein on 29.03.2010, but then the suit land having not been recorded in the name of the Plaintiffs, the present suit came to be filed.

4. The Defendants, though entered appearance in the Suit, did not file any written statement.

5. On the above rival pleadings, the Trial Court framed as many as five issues and upon examination of evidence and their evaluation, has found the Plaintiffs to have failed to prove their case either to be having the right, title and interest or to have acquired the right of absolute ownership over the suit property. It is also stated that by virtue of the possession of the suit property, as claimed by the Plaintiffs, no case of acquisition of title over the same by way of adverse possession has been made out. With the said finding, the suit having been dismissed, the Plaintiffs have failed in their attempt to get it annulled in the Appeal filed by them. The First Appellate Court has affirmed the finding of the Trial Court and consequently, the end result recorded in the suit has received the seal of approval.

6. Learned counsel for the Appellant submitted that the Courts below are not at all right and justified in arriving at a finding that the Plaintiffs have not perfected title over the suit land by way of adverse possession when admittedly the long possession of the suit land fulfilling all the ingredients as required is available to be so recorded on the basis of the oral evidence corroborated by the documentary evidence exhibited from the side of the Plaintiffs. He submitted that by virtue of such possession of the suit land by the Plaintiffs since the time of Duryodhan; the Defendants-State having not taken any step to physically oust Duryodhan or the Plaintiffs from the suit land, the suit

ought to have been decreed. He, therefore, contended for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned counsel for the State, in assisting the Court in the matter of admission hearing, submitted that even accepting the factual settings of the case as projected by the Plaintiff, and testing the same in the touchstone of the settled law holding the field, the dismissal of the suit has to be upheld.

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

9. Admittedly, the Plaintiffs have no document of title in respect of the suit land. It is their case that since the year 1966 onwards, Duryodhan was possessing the suit by putting fence all around.

Position of law is well settled that mere possession of a piece of land by a possessor for whatever length of time, it may be would not lead to establishment of a case of acquisition of his title over the said land by adverse possession. In order to establish the claim over the property in acquiring title over the same by adverse possession, three classic requirements are required to be proved and those are:- ‘nec vi’, ‘nec clam’ and ‘nec precario’. The possessor must be in possession of the suit land and its nature has to be open, peaceful, continuous and uninterrupted. The other element is that the possession of the land by the possessor must be to the knowledge of the real owner and it has to all along be by exhibiting hostile animus claiming the ownership over the property and denying the title/ownership of the true owner all through. The statutory period of such long possession satisfying above ingredients for the purpose has to be for a period upward of thirty years in respect of the public property belong to the State.

10. Coming to the case on hand, it is stated by Plaintiff No.1 examined as P.W.1 that Duryodhan was in possession of the suit land prior to 1966. Although no specific date and month has been stated, it has been the evidence of P.W.1 that from that period onwards, Duryodhan has remained in possession of the suit land till his death whereafter the Plaintiffs are possessing the suit land. At this juncture, even if it is accepted for a moment that the suit land was in possession of Duryodhan from the year 1966, here the Plaintiffs have candidly admitted that when a proceeding under the OPLE Act was instituted in respect of the suit land; they having been found to be in unauthorized occupation, as directed by the order passed therein, have paid fine on 29.03.2010 for such unauthorized possession. This clearly shows that the Plaintiff on that day admitted the title of the State over the suit land and the very fact that their possession is still unauthorized. There is absolutely no explanation on that score that when for such a long period, the land was in their possession and they had already acquired title over it by adverse possession, how is it that again they paid the fine and thereby how can they retain their earlier nature of possession. This conduct of payment of fine by the Plaintiffs now has to be taken in the eye of law that they have admitted the title of the true owner that it being the land of the true owner, they are in possession of the same and for their unlawful possession, they paid the fine. So, the possession of the suit land by the Plaintiffs for whatever previous period it might have been, pales into insignificance. Thus the Plaintiffs having admitted the title of the true owner, i.e, State in respect of the suit land on 29.03.2010, their claim of acquisition of title over the suit land by way of adverse possession as laid in the suit instituted on 24.04.2012, has to fail.

For all the aforesaid, the submission of the learned Counsel for the Appellant that there surfaces any substantial question of law as indicated in the aforesaid paragraph for being answered, meriting admission of this Appeal cannot be.

11. In the result, the Appeal stands dismissed. There shall however be no order as to cost.

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



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