

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.94 Of 2021
(Through video conferencing mode)

Shankarsan Sahay ***Appellant***

Mr. D.K. Pradhan, Advocate.

-versus-

Urmila Sahay and others ***Respondents***

CORAM: JUSTICE ARINDAM SINHA

ORDER
03.02.2022

Order
No.

1.

1. Mr. Pradhan, learned advocate appears on behalf of appellant and submits, his client filed suit for declaration of title and possession over suit schedule-B property. His client deposed at trial but defendants did not. Even then the trial Court dismissed the suit on purported appreciation of facts. The dismissal was confirmed by the first appellate Court. Concurrent judgments of dismissal of suit gives rise to substantial questions of law involved, for admission of this appeal.

2. He submits further, his client is son of late Gouri Shankar Sahay and his second wife. His father had two brothers. There was a partition suit, in which neither his client nor his mother was made party. As a result in the suit, certain properties came to the share of

late Rukmani Devi, who was stepmother of his client being first wife of his client's father. There was erroneous appreciation of evidence in laying emphasis on appellant's omission to produce sabik RoR establishing tally between land mentioned therein and land allotted to late Rukmani Devi in the partition suit. This emphasis was misplaced since appellant should have been given benefit of adverse presumption, on defendants omission to take the box. Therefore, plaintiff's evidence ought to have been accepted as uncontroverted.

3. It appears from judgment of the trial Court that in dealing with the suit it said and reiterated that there was no issue framed regarding appellant being son of late Gouri Shankar Sahay through his second wife. Issues arise on variance of pleadings. As such, it can be presumed that there was no dispute raised in the suit on appellant being the son of late Gouri Shankar Sahay.

4. The first appellate Court in its judgment referred to provisions in section 15 and 16 of Hindu Succession Act, 1956. Thereupon the Court said, inter alia, as follows.

“The plaintiff is the legal heir of the husband of Rukmani Devi being the son of his second wife. Even if the property allotted in favour of Rukmani Devi in T.S. No.10/1973 is treated as her exclusive property, after her death the plaintiff being the only

legal heir of Gouri Shankar Sahay shall succeed to the said property and the property described as per the Sabik ROR is to devolve in favour of the plaintiff U/s. 15 (1)(b) of the Hindu Succession Act, 1956. Therefore there is no need on the part of the plaintiff to challenged the judgment and decree passed in T.S. No.10/1973, as the lands allotted in favour of Rukmani Devi devolves in his favour in the event of death of Rukmani Devi, in absence of any other legal heir.”

5. This Court does not find any substantial question of law involved in the appeal for its admission. However, it is necessary to reiterate that there was no issue decided between the parties regarding plaintiff's claim of being son of late Gouri Shankar Sahay through his second wife. The first appellate Court has also observed regarding plaintiff being successor of late Rukmani Devi, in respect of the suit schedule land falling in her share as a result of the partition. This is because late Rukmani Devi died issueless. As such appellant has benefit of constructive res judicata on his claim of being the son of late Gouri Shankar Sahay and successor of late Rukmani Devi.

6. With above observations, the appeal is dismissed.

(Arindam Sinha)
Judge

