

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.310 OF 2019

In the matter of an Appeal under Section-100 of the Code of Civil Procedure assailed the judgment and decree dated 01.02.2018 & 13.02.2018 respectively passed by the learned First Additional District Judge, Rourkela in RFA No. 26 of 2016 setting aside the judgment and decree dated 07.07.2016 & 21.07.2016 respectively passed by the learned Civil Judge (Senior Division), Rourkela in Civil Suit No.27 of 2015.

M/s. Ridhi Sidhi Trade & Services ::: Appellant
Private Limited

-versus-

Sanjay Kumar Singh & Another ::: Respondents

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

<i>For Appellant</i>	-	M/s. Nirod Ku. Sahu, P.K. Samantaray, B. Swain, S.K. Nayak, Advocates.
<i>For Respondents</i>	-	M/s.R.K. Mohanty, Sr. Advocate, S.K. Patnaik, S.S. Padhy, A.S. Mohanty, B. Bhuyan, Advocates.

CORAM:
MR. JUSTICE D.DASH

DATE OF HEARING:: 01.12.2022, DATE OF JUDGMENT:: 23.12.2022

These Appellant, in filing this Appeal under section-100 of the Code of Civil Procedure 1908 (for short, 'the Code'), assails the judgment and decree dated 01.02.2018 & 13.02.2018 respectively

passed by the learned First Additional District Judge, Rourkela in RFA No. 26 of 2016.

By the same, the Appeal filed by the unsuccessful Plaintiff in Civil Suit No.27 of 2015 of the learned Court of learned Civil Judge (Senior Division), Rourkela under section-96 of the Code has been allowed. The Trial Court having dismissed the suit filed by the Respondents (Plaintiffs), the First Appellate Court has decreed the suit declaring that the Plaintiffs have the right, title, interest and possession over the suit land and confirmed their possession in further holding that the registered sale-deed dated 13.10.2009 is not binding on the Respondents (Plaintiffs); and therefore the Appellant (Defendant No.2) has been injuncted from entering upon the suit land.

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. Plaintiffs case is that the suit land belongs to Jaga Puran. He had sold away the suit land to the grandfather of the Plaintiffs for a sum of Rs.95/- on 13.05.1949 by a unregistered sale-deed prepared by one Soma Oram on the request of said Jaga Puran. It is stated that after the death of Jaga Puran, the grandfather of the Plaintiffs performed his obsequies and possessed the suit land till his death and after his death,

the father of the Plaintiffs possessed the same and went on paying the rent. The father of the Plaintiffs during then had attempted to record the suit land in his name in the current settlement but as the unregistered document dated 13.05.1949 could not be traced out and produced before the Settlement Authority, the suit land stood recorded in the name of Jaga Puran with a note of forcible possession in the name of the grandfather of the Plaintiffs. It is further stated that in the year, 2002, one Sambhu Bhumij encroached a portion of the land for which the Plaintiffs had filed Title Suit No.37 of 2002 where a compromise was entered into and the suit stood decreed declaring the right, title and interest of the Plaintiffs over the suit land. It is further stated that some time in the month of July, 2014, the Plaintiffs came to know that Defendant No. 1 has sold away the suit land in favour of the Defendant No.2 vide registered sale-deed dated 13.10.2009. The Plaintiffs claim that the Defendant No.1 has no relation with the original owner Jaga Puran and he has not inherited property from him. The sale-deed executed by him thus is said to be fraudulent one and it is stated that the Defendant No.2 has not derived any right, title and interest over the suit land. The Plaintiffs claim is that w.e.f. 13.05.1949, the suit land has been under the possession of their ancestors and they have never been dispossess by anybody.

The Defendant did not file any written statement.

4. The Trial Court on going through the evidence of the Plaintiff No.1 (P.W.1) as well as the documents admitted in evidence and marked Exts. 1 to 10 on behalf of the Plaintiffs came to a conclusion that the Plaintiffs have failed to prove their case as laid in the plaint and as such are not entitled to the reliefs claimed. The suit was therefore stood dismissed.

The Plaintiffs thus being non-suited carried the First appeal. The First Appellate Court after hearing and on going through the evidence on record has set aside the order of dismissal of the suit passed by the Trial Court and decreed the same as stated above.

5. The Appeal has been admitted to answer the following substantial question of law:-

Whether on the basis of an unregistered sale document, the title would pass, particularly in absence of specific evidence with regard to delivery of possession?

6. Learned Counsel for the Appellant submitted that when the evidence on record is not there to prove that pursuant to that transaction, which is said to have taken place between the Jaga Puran and the grandfather of the Plaintiffs on 13.05.1949, there had been delivery of

possession of the suit land by Jaga Puran to the grandfather of the Plaintiffs, the so called transaction places the Plaintiffs nowhere in saying that by that they acquired title over the suit land. He further submitted that when the Plaintiffs here base their claim upon the purchase of the said suit land by their grandfather from Jaga Puran, the original owner and thus are seeking a declaration of their right, title interest and possession; the same is not cognizable in the eye of law. He, therefore, submitted that the First Appellate Court has committed grave error in setting aside the dismissal of the suit as ordered by the Trial Court and is not right in decreeing the suit granting all the reliefs as prayed for.

7. Learned Counsel for the Respondents submits all in favour of the findings returned by the First Appellate Court. According to him, the Defendant having not denied the case of the Plaintiffs set out in the plaint, the First Appellate Court has rightly decreed the suit finding the Plaintiffs to be in possession of the property in question for quite a long period. He further submitted that even if, it is held that the sale transaction of the year 1949 has not been proved, the evidence of the Plaintiff No.1 examined as P.W.1 coupled with the documentary evidence being clear that the land in suit is in the possession of the

Plaintiffs from the time of their grandfather; the suit had been rightly decreed by the First Appellate Court.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also read the plaint and written statements have perused evidence.

The provisions of law contained in Section-54 of the Transfer of Property Act is clear that in cases of sales of immovable property, when the property in question is valued at less than Rs.100/-, the same can be effected either by registered instrument or by delivery of possession of the same land involved in the transaction by the vendor to the vendee.

The very claim of the Plaintiffs is that, their grandfather namely, Dhanjay Singh had purchased the suit land from one Jaga Puran for consideration of Rs.95/- by a unregistered sale-deed which had been executed by Jaga Pradhan setting out the terms and conditions with the grandfather of the Plaintiffs who thus became the owner of the suit property. There is absolutely no pleading that pursuant to the sale which is said to have been by way of execution of the unregistered sale-deed, there had been delivery of possession of property by Jaga Puran in favour of so called vendee, Dhanajay Singh. It is not seen that either of the grandfather of the Plaintiffs or their father or they had ever taken any

steps to record the suit land in their favour. When it is stated that in the current settlement although Plaintiffs had attempted to get the suit land recorded in their name, but for the non-availability of the unregistered sale-deed, that did not so happen yet no such contemporaneous documents have been proved. The Plaintiffs having based their case/claim upon purchase of the land by their grandfather for consideration of Rs.95/-, which is below a sum of Rs.100/- since have not pleaded and proved that right from that day Jaga Puran parted with possession of the suit land in favour of the grandfather of the Plaintiffs which then likewise continued to be in the hands of the father of the Plaintiffs and with the Plaintiffs by tendering clear, cogent and acceptable evidence on that score. The First Appellate Court in the above state of affairs, in my considered view thus is not right in decreeing the suit. The substantial question of law is accordingly answered that the judgment and decree passed by the First Appellate Court cannot be sustained.

9. In the result, the Appeal stands allowed. The judgment and decree passed by the Trial Court in non-suiting the Plaintiffs is hereby restored. No order as to cost.

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

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