

HIGH COURT OF ORISSA : CUTTACK
RSA NO.222 of 2022

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 22.06.2022 and 30.06.2022 respectively passed by the learned District Judge, Ganjam in RFA No.17 of 2017 in confirming the judgment and decree dated 24.12.2016 and 09.01.2017 respectively passed by the learned Additional Senior Civil Judge, Berhampur in C.S. No.205 of 2012.

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Teli Raja Rao

::: Appellant.

-:: VERSUS ::-

State of Odisha & Another ***::: Respondents.***
**Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.**

For Appellant

... M/s.Nibas Chandra Misra, Advocate

For Respondent

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**CORAM :
MR. JUSTICE D.DASH**

Date of Hearing: 28.11.2022 :: Date of Judgment: 23.12.2022

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 passed by the learned District Judge, Ganjam, Berhampur in R.F.A. No.17 of 2017. By the same, the Appeal filed by the present Appellant as the unsuccessful Plaintiff in Civil Suit No.205/2012 of the court of the learned Additional Senior Civil Judge Berhampur under section 96 of the Code has been dismissed. The

Appellant as the Plaintiff having been non-suited by the Trial Court, the same has been upheld.

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 case of the Plaintiff is that the suit land measuring Ac.0.012 dec. under Plot No.1209 assigned with Anabadi Khata No.1617 of Gharabari Kissam in Mouza Baidyanathpur under the jurisdiction of Berhampur Tahasildar in the District of Ganjam originally belonged to one A. Gunamma. Said A. Gunamma had sold her property including her suit properties to one Lingaraj Panigrahi by registered sale deed dated 07.06.1946. Lingaraj Panigrahi being the owner of the suit land and other properties remained in possession of the same. Said Lingaraj then had sold the property by registered sale deed to the grandfather of the Plaintiff, namely, T. Appeya. The sale deed had been executed on 04.06.1948 in respect of land measuring Ac.0.460 dec., which was the part of the purchased property of Lingaraj.

It is stated that the grandfather of the Plaintiff having purchased the property including the suit land, which was a part of the same began to possess the same by constructing house thereon and have been residing therein with family. It is further stated that in view of increase in the members of the family, there was a partition amongst them by registered deed of partition dated 08.05.1978. The suit land had fallen to the share of the father of the Plaintiff and accordingly he being the exclusive owner was in possession of the same and they were residing in the house standing over it. The father of the Plaintiff died on 03.06.1998. The Plaintiff being the successor came to possess the suit land as before like his father and grandfather. Thus, it is stated that the suit land is under the possession of the Plaintiff from the time of his

grandfather for last 62 years. However, in the major settlement operation in the year 1980, the record of right concerning the suit land has been erroneously prepared in the name of the State under Anabadi Khata. For the said erroneous recording of the suit land, the Defendant No.2 initiated Land Encroachment Case No.881/1984 against the Plaintiff. The Plaintiff therein approached the Defendant No.2 to pass necessary orders for recording the suit land in his name. But that was not heeded to. So, he has been compelled to file the suit by complying the provision of section 80 of the Code.

4. The Defendant (State and its officials) in their written statement while traversing the plaint averments have denied the factum of possession of the suit land by the Plaintiff from the time of his grandfather. It is also stated that the property in question is the Government property and unilateral partition of the properties amongst the members of the family of the Plaintiff taking this suit land to their common stock is wholly illegal. It is also stated that the property in question was never the property of that A. Gunamma nor it had been purchased by Lingaraj and then by the grandfather of the Plaintiff. They have also stated that the Plaintiff has not acquired right, title and interest of the suit land by way of adverse possession.

5. Faced with the above rival pleadings, the Trial Court framed five issues. The crucial issue, i.e., Issue No.3 has been answered against the Plaintiff holding that he has no right, title and interest over the property and that answer has led to provide the answer to the next issue as to the entitlement to the plaintiffs to the reliefs claimed in the suit which has obviously gone against the Plaintiff. Thus, the Trial Court dismissed the suit filed by the Plaintiff seeking the reliefs of declaration of right, title, interest and possession over the suit land and permanent injunction

restraining the Defendants from creating any disturbance with the possession of the suit land by the Plaintiff.

The Plaintiff being aggrieved by the said order of dismissal of the suit passed by the Trial Court having preferred the First Appeal has also been unsuccessful there before the First Appellate Court.

6. Learned counsel for the Appellant submitted that the finding of the Courts below that the Plaintiff does not have the right, title and interest over the suit land and has not acquired the same by way of adverse possession is the outcome of perverse appreciation of evidence. According to him, the Courts below have unjustifiably ignored the entry made in the column-8 of the record of right (Ext.1) as regards the kissam of the land as 'Gharabari' and that provides great support to the case of the Plaintiff as regards their settled possession for much more than the prescribed period so as to be matured with title. He further submitted that the overwhelming evidence of the witnesses examined from the side of the Plaintiff as regards the possession of the suit land by the Plaintiff from the time of his grandfather ought not to have been thrown aside and that to without assigning any good and acceptable reason. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned counsel for State assisting the Court in the matter of admission of this Appeal submitted that the claim of the Plaintiff over the suit land is his acquisition of title by way of adverse possession. He submitted that the evidence let in by the Plaintiff do not establish such a claim as the foundational facts required to be pleaded and proved for the purpose have not been proved. He, therefore, submitted that the Courts below have rightly dismissed the suit filed by the Plaintiff against the State.

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

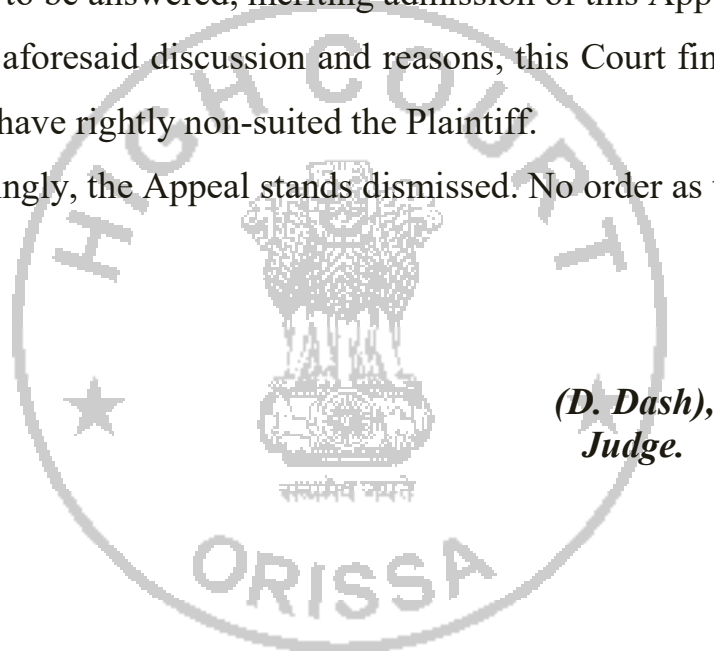
9. The suit is for declaration of right, title, interest and possession over the suit land as to have been acquired by the Plaintiff by way of adverse possession and the consequential relief of injunction.

The principle of law is well settled that when the possessor possesses the property in question on the basis of his purchase from the particular person whom he had accepted as the owner; he cannot again claim acquisition of title over the very property by way of adverse possession. In the present case, the Plaintiff's case is that his grandfather had purchased the property from Lingaraj by registered sale deed. But it has not been proved through the documents that when Lingaraj sold the property in suit along with other properties; this suit land as it was then stood recorded as such and was owned by Lingaraj. So from the beginning even accepting the case of the Plaintiff, that falls flat as the possession of the suit land commenced accepting Lingaraj to be the owner and not anybody else. Admittedly, the suit land has been recorded in the Hal settlement in the name of the State under Anabadi Khata. There being initiation of encroachment proceeding against the Plaintiff for his unauthorized occupation of the said property, the Plaintiff has accepted the order passed therein and paid the fine imposed on him for such unauthorized occupation of the suit property belonging and owned by the State. This has been proved by none other than the Plaintiff himself vide Ext.4. So, this conduct of payment of fine by the Plaintiff shows that he on that day in that encroachment proceeding of the year 1984 admitted the title of the Defendant-State. So, his possession of the suit land for the prior period for whatever length it may be is of absolutely no value and lands him nowhere. After that particular date of payment of fine, the Plaintiff is not coming forward to plead and prove

that thereafter from which date he began to possess the suit land by exhibiting the hostile animus and denying the title of the State which is the recorded owner, which he too accepted by paying time. The very foundational fact that the possession must commence by denial of the title of true owner and with the claim of the title to be resting with the possessor being wholly absent in the present case; the submission of the learned counsel for the Appellant pales into insignificance. Therefore, this Court is not in a position to accept the submission of the learned counsel for the Appellant that there arises the substantial question of law as pointed out to be answered, meriting admission of this Appeal.

10. For the aforesaid discussion and reasons, this Court finds that the Courts below have rightly non-suited the Plaintiff.

11. Accordingly, the Appeal stands dismissed. No order as to cost.



Himansu