

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. NO.301 OF 2022

In the matter of an Appeal under Section-100 of the Code of Civil Procedure assailed the judgment and decree passed by the learned Additional District Judge, Bhubaneswar in RFA No.237 of 2022 by confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Bhubaneswar in Title Suit No.313 of 1997.

Sucharita Mohanty

:::

Appellant

-versus-

Biswajeet Mohanty & Others

:::

Respondents

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

For Appellants

:::

M/s. G. Mishra, Advocate.

For Respondents

:::

CORAM:

MR. JUSTICE D.DASH

DATE OF HEARING:: 15.12.2022, 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 Additional District Judge, Bhubaneswar in RFA No.237 of 2022.

By the same, the Appeal filed by the present Appellant being the unsuccessful Plaintiff in Title Suit No.313 of 1997 of the Court of learned Civil Judge (Senior Division), Bhubaneswar under Section-96 of the Code has been dismissed and thereby, the judgment and decree

passed by the learned Civil Judge (Senior Division), Bhubaneswar in Title Suit No.313 of 1997 have been confirmed.

The Appellant as the Plaintiff had filed the suit for declaration that the sale-deed executed by the Respondent No.1 (Defendant No.1) in favour of Respondent no.4 (Defendant No.4) is null and void, with further declaration that Respondent No.4(Defendant No.4) had not acquired granted with the right, title and interest over the suit property by virtue of such purchase and also for permanent injunction. The suit having been dismissed, the Appellant (Plaintiff) had carried the First Appeal, which too has been dismissed.

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 she is the daughter of one Hemendra Nath Mohanty and Defendant Nos. 1, 2 and 3 are the three sons of Hemendra Nath and as such the brothers of the Plaintiffs. It is stated that the Plaintiff's father had got a piece of land by way of lease from the State Government way back in the year, 1972 and had constructed a building over the same covering area 700 sqft. It is stated that for such construction, Hemendra had taken a loan of Rs.1.00 lakh and had also availed a gold loan of Rs.39,000/-. He had applied to the Government seeking permission to transfer the suit land in favour of Defendant No.1

on 01.05.1985 and the permission being granted by the State (who is the lessor of the land), on the strength of the same Hemendra Nath had transferred the suit land to the Defendant No.1. It is stated that this transfer was only made for the purpose of repayment of the loan dues and it was a nominal one for all practical purpose and the Defendant No.1, had no absolute right over the said property which he having transferred, the Defendant No.4, has acquired no right over the same.

4. The Defendant No.1 in the written statement has stated the suit to be a collusive one and it is stated that the Plaintiff has colluded with the Defendant Nos. 2 & 3 in instituting the suit. He claims to have purchased the property by registered sale-deed dated 20.09.1995 from his father, who having obtained permission from the lessor as required under the lease-deed had sold his leasehold right. He has pleaded that only after acquisition of the suit land, he has constructed the building over the same by availing loan from State Bank of India and that had never been constructed by Hemendra Nath Mohanty during his lifetime. He further submitted that Hemendra Nath had sold such property for undergoing heart operation in the United States of America (USA) in the year 1983 and had utilized the consideration money for the purpose. He asserts the purchase to be legal and valid and it is also stated that having purchased the property, he has mutated the same in Mutation Case no.2294 of 1992. He states that due to love and affection, the

Plaintiff was permitted to stay in that house with Defendant No.2 and 3, who were dependants of Defendant No.1. He further pleads that after marriage of the Plaintiff in the year 1995, she has been staying with her husband in her in-laws place in the District of Keonjhar. He further submitted that having acquired the right over the property by virtue of purchase of the same from Hemendra Nath, he has later on having obtained permission from the Government and sold the property to Defendant No.4 for valuable consideration.

Defendant No.2 & 3 while supporting the case of the Plaintiff have further stated that building had been constructed over the land in suit by Hemendra Nath Mohanty.

Defendant No.4 claims to be the bonafide purchaser of the suit land for value from Defendant No.1 who was having the right over the said property by virtue of the registered sale-deed dated 20.09.1985 and was the recorded owner as such.

5. The Trial Court on the above rival pleadings framed eight(8) issues and dismissed the suit in concluding upon examination of evidence and their evaluation that the sale-deeds are valid and as such the Defendant No 4 is now the rightful owner is in possession of the suit land. The case of the Plaintiff had been adversely viewed by the Trial Court as she has not come to the witness box in examining herself in support of her case instead a witness who is a Advocate Clerk of

Bhubaneswar having no direct knowledge about the family affairs stood as the lone witness for the Plaintiff whose evidence has no bearing. The Plaintiff thus being non-suited had carried the First Appeal, which too has been dismissed.

6. Learned Counsel for the Appellant submitted that on the date of hearing of this First Appeal although an application for adjournment of the hearing of the Appeal had been filed, the Court having rejected the same has committed the error in proceeding to hear the Appeal on merit and dispose of the same which has caused grave prejudice to the Plaintiff. He further submitted that when the Appellant had filed the application under order-41 Rule 27 of the Code seeking permission to adduce additional evidence, which if would have been rightly considered, had been allowed when the matter would have necessitated a remand to the Court below. According to him, the First Appellate Court was not right in rejecting the said application and finally deciding the First Appeal. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

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

8. In the instant case, the property in question originally belongs to the State. The father of the Plaintiff and Defendant Nos. 1 to 3 was admittedly the lessor under the State and was having the leasehold right

over the same. As required under the terms and conditions of the lease on certain contingencies if the lessee wants to transfer his leasehold right in favour of another, he can only do so with the prior permission of the lessor. In the present case, permission has been so taken from the lessor and then the original lessee i.e. Hemendra Nath Mohanty had transferred said right over the land to his son Defendant No.1 and that is under a registered deed as required in law. The sale-deed being of the year, 1995, it has held the field all along till the suit in the year 1997. When the Defendant No.1 has transferred his rights over the property to Defendant No.4 that too again by registered sale-deed in the year 1992 after again taking the permission from the State Government-lessor, the suit has been filed in challenging those transactions; on various grounds and most importantly that the sale by Hemendra Nath was a nominal one. There is absolutely no evidence on that score and the evidence of Advocate Clerk, who does not have any knowledge about the family from which the parties hail. And the evidence of Advocate Clerk is absolutely of no avail in support of the case of the Plaintiff and mere that he has stated to be the power of attorney holder of the Plaintiff, his evidence will not be the substitute of the Plaintiff's evidence. The Plaintiff having failed in the suit after having pursued the same through so called power of attorney holder who is Advocate Clerk of Bhubaneswar who had no direct knowledge about the acquisition of the

property of Hemendra Nath and their family affairs, again during the First Appeal stage had filed an application for adducing additional evidence which is a letter addressed to the Director Estate by Hemendra Nath while seeking permission. The First Appellate Court has rightly rejected the same by taking a note of the relevant provision of law and upon their proper application to the facts and circumstances of the case. When it is seen that the Plaintiff has miserably failed to establish her case and practically, there is no evidence from her side to substantiate her case, the claim of prejudice for rejection of the Application for adjournment by the First Appellate Court does not stand for any consideration.

9. For all the aforesaid, the submission of the learned Counsel for the Appellants fails and it is held that the Appeal does not merit admission since there surfaces no such substantial questions of law for being answered.

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

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

Narayan