

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.388 of 2019

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 13.08.2019 and 26.08.2019 respectively passed by the learned Additional District Judge, Salipur in RFA No.90 of 2017 confirming the judgment and decree dated 12.05.2017 and 20.05.2017 respectively passed by the learned Civil Judge, Junior Division, Salipur in Civil Suit No.94 of 2014.

Satrughna Das @ Behera

....

Appellant

-versus-

***Sri Ramesh Chandra Mishra &
Another***

....

Respondents

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

For Appellant - Mr. Debi Prasad Mohanty,
(Advocate)

For Respondents - *सत्यमेव जयते*

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

Date of Hearing : 19.09.2022 : Date of Judgment: 26.09.2022

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 13.08.2019 and 26.08.2019 respectively passed by the learned Additional District Judge, Salipur in RFA No.90 of 2017.

By the same, the Appeal filed by the present Appellant, as the unsuccessful Plaintiff under Section 96 of the Code, has been dismissed

and thereby the judgment and decree dated 12.05.2017 and 20.05.2017 respectively passed by the learned Civil Judge, Junior Division, Salipur in Civil Suit No.94 of 2014 dismissing the suit filed by the present Appellant, as the Plaintiff, have been confirmed.

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 Plaintiff's case is that the suit land under Consolidation Khata No.421, Chaka No.109 assigned with Plot No.928 which measuring Ac.0.558 decimals stood recorded in the name of Defendant No.1. Out of the suit land, the Defendant No.1 transferred a part, i.e., Ac.0.200 decimals in favour of the Plaintiff by registered sale deed dated 03.10.1981 for valuable consideration. It is stated that pursuant to the same, there was delivery of possession of the property covered under the sale deed. The Defendant No.1 again sold an area of Ac.0.240 decimals of land out of the rest area by registered sale deed dated 01.11.1985. It is said that pursuant to the said sales, the Plaintiff was delivered with the possession of the land and he is continuing as such by developing the same and having cultivation thereon. It is stated that the Plaintiff had not got his purchased land of Ac.0.440 decimals mutated soon after the purchase and when in the year 2013, he came to applied for mutation, it was known that in Mutation Case No.2451 of 2012, an application for mutation of the total land being filed by the Defendant No.2, the same has been allowed. His case is that while he was in possession of the suit land as the lawful purchaser, the sale deeds by which the Defendant No.2 is said to have purchased the property has come into being, the same is illegal and inoperative. Said deed is also said to have been

obtained by the Defendant No.2 by committing fraud. The Plaintiff, therefore, filed the suit for declaration that he is the original owner in possession of the suit land with further prayer to declare that sale deeds standing in favour of Defendant No.2 is illegal void and inoperative. He has also sought for a decree of permanent injunction.

4. The Defendant No.2, in his written statement, has pleaded that he has validly purchased the entire land under that Chaka measuring Ac.0.558 decimals from Defendant No.1, the owner in possession for valuable consideration. It is also stated that having purchased the property in question, she has taken the delivery of possession from the Defendant No.1 and having mutated the same in her name, is continuing as such. The sale deeds projected by the Plaintiff, in support of his claim of ownership over the portion of the Chaka land, is said to be void in view of the provisions contained in Sections 34 & 35 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (in short, 'the OCH & PFL Act').

5. On the above rival pleadings, the Trial Court has framed seven issues. Rightly proceeding to first rule upon the claim of the Plaintiff that he has the right, title, interest and possession over the suit land by virtue of the sale deeds executed by the Defendant No.1 in his favour vide Exts.2 & 3 way back in the year 1981 and 1985, on going through the evidence and taking note of the provisions contained in Section 34 of the OCH & PFL Act, the answer to that issue has been returned against the Plaintiff. Furthermore, the alternative claim of the Plaintiff as to have perfected title over the said purchased land by way of adverse possession, has also been repelled. These answers have practically led the Trial Court to dismiss the suit.

The unsuccessful Plaintiff, having carried the First Appeal, has also failed in that move.

6. Learned counsel for the Appellant submitted that the Plaintiff, being the lawful purchaser of the suit property for valuable consideration, the Courts below are not right in holding that he has no title over the suit property simply for the reason that as provided in section 34 of the OCH & PFL Act, those sale deeds are invalid and inoperative. He further submitted that the alternative case projected by the Plaintiff that he being in possession of the properties since the year 1981 and 1985 with respect of different portions all along openly, peacefully and continuously as its owner has perfected title over the said land by way of adverse possession, ought to have been accepted by the Courts below. Accordingly, he urged for admission of the Appeal to answer the above as the substantial question of law.

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

8. The Plaintiff claims to have acquired the right, title and interest over the property and is in possession of the same on the strength of two registered sale deeds executed by the Defendant No.1 in his favour, which have been admitted in evidence and marked Exts.2 and 3. The land stood recorded in the name of Defendant No.1 under Consolidation Khata No.421, Plot No.109 measuring Ac.0.558 decimals under one Chaka. The Plaintiff's purchase is to the extent Ac.440 decimals by those two sale deeds and even after purchase, as claimed by the Plaintiff, therefore, remained further area of Ac0.118 decimals of land. The land under the plot forms a Chaka as per the Record of Right published in the Consolidation Operation.

The provision contained in Section 34 of the OCH & PFL Act makes a bar for transfer or partition of the agricultural land in a locality so as to create a fragmentation. Section 35 of the said Act declares such a transfer or partition in contravention of the provision of Section 34 of the OCH & PFL as void.

Admittedly, in this case, no permission, as required under the law, has been taken from the Authority. Those sale deeds, being in contravention of the provision of Section 34 of the OCH & PFL Act, the Courts below are found to have rightly held that no decree can be passed in favour of the Plaintiff declaring him to be original owner in possession of the suit land covered under the sale deeds as in that event, said decree would also not be executable and rather would stand to support the fragmentation which is prohibited in law and for the prevention of the same as that would frustrate the whole scheme of consideration, the provisions, as aforesaid, have been made in the nature.

For all the aforesaid, this Court is not in a position to accept the submission of the learned counsel for the Appellants that the Appeal merits admission to answer any substantial question of law.

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

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

Basu