IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.388 of 2006

[In the matter of an appeal under Section 100 of CPC from the judgment and decree dated 15.07.2006 passed in Title Appeal No. 2 of 2001 by the District Judge, Phulbani, arising out of the judgment and decree dated 18.12.2000 passed in T.S. No.6 of 1993 by the Civil Judge (Senior Division), Baliguda]

AFR **Bhagabati Nayak and others .... Appellants**

-Versus-

Sarangadhar Pradhan .... Respondent

Advocate(s) appeared in this case:

For the Appellant :M/s. Sanatan Das, A.K. Sharma, M.K. Sahoo & A.K. Panda, Advocates.

For Respondent :M/s. S. Mohanty, H.N. Parida & N.K. Bhoi, Advocates

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CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

5th December, 2025

SASHIKANTA MISHRA, J.

This is a plaintiffs' appeal against a confirming judgment. The judgment dated 15.07.2006 followed by decree passed by learned District Judge, Phulbani in Title

Appeal No. 2 of 2001 is impugned, whereby the judgment dated 18.12.2000 passed by learned Civil Judge (Sr. Division), Baliguda in Title Suit No.6 of 1993 followed by decree was confirmed.

2. For convenience, the parties are referred to as per their respective status before the Trial Court.

3. The case of the plaintiffs, briefly stated, is that the suit land under Schedule A of the plaint originally belonged to one Benu Nayak, the common ancestor. He had two sons, Daitari and Surendra. After their death, the plaintiffs possessed the suit land jointly. It was recorded in the name of Benu in 1923 settlement. However, in 1983 settlement, the suit plot was divided into two plots, i.e. 2038 and 2039. While Plot No.2038 was recorded in the name of plaintiff Nos. 3 to 7, that is the successors Surendra, Plot No. 2039 was recorded in the name of the defendant. The defendant initiated RMC No.10/1991 under Section 3(2) of Regulation-II of 1956 against plaintiff No.3 claiming that he had purchased suit Plot No.2039 on 29.09.1957 through an unregistered sale deal executed by Daitari Nayak for

consideration of Rs.110/-. Since then, he is possessing the same. The plaintiffs claim that there had been no partition by metes and bounds between Daitari and Surendra. As such, the sale deed was void and never acted upon. The plaintiffs claim to be in continuous and peaceful possession. Since the defendant attempted to dispossess them on the strength of the ROR published in 1983, they filed the suit for declaration of right, title and interest, for confirmation of possession and for permanent injunction.

4. The defendant contested the suit by filing written statement. His case was that after partition between the sons of Benu Naik, Plot No. 2039 fell to the share of Daitari, who sold the same to him on 29.09.1957 through an unregistered sale deed. The suit land was recorded in his name in 1983 settlement, over which he constructed a house and has been possessing the same on payment of rent and holding tax etc. Since the plaintiff No.3 forcibly occupied a portion of the suit land in 1991, the defendant filed RMC Case No.10 of 1991, which is pending. The plaintiffs also forcibly constructed a compound wall over the

suit land in 1993. The defendant has constructed three rooms over the suit land, which he has let out to different persons. He further claimed that having possessed the suit land from 29.09.1957 to the knowledge of the plaintiffs, he has acquired title by way of adverse possession

5. Basing on the rival pleadings, the trial court framed the following issues for the determination.

> *"1. Is the suit maintainable?*
>
> *2. Has the plaintiffs any cause of action to file the suit?*
>
> *3. Is the suit barred by limitation?*
>
> *4. Whether the suit is hit under section 80 of Civil Procedure Code?*
>
> *5. Whether the suit property is the ancestral joint family property of the plaintiffs or the same has been partitioned and the suit land fell to the share of late Daitari Nayak who sold it to the defendant in 1957 followed by delivery of possession?*
>
> *6. Whether the plaintiffs or the defendant are in possession of the suit land?*
>
> *7. Whether the defendant acquired title by adverse possession or otherwise?*
>
> *8. Whether the R.O.R. published on 7.12.83 is erroneous?*
>
> *9. Whether the suit is bad for non-joinder of Settlement Authorities?*

10. Whether the suit is hit under Regulation-2 of 1956 in view of order in R.M.C. 10/91?

11. Whether this court has jurisdiction to try the suit?

12. Whether the alleged sale by Daitari to the defendant is valid?

13. To what relief the plaintiffs are entitled"

6. Taking up issue No.5 for consideration at the outset, the Trial Court after analysing the oral and documentary evidence as also the conduct of the parties in dealing with the properties separately, held that there was partition of the properties between Daitari and Surendra much before 1957 and thereby the suit land fell to the share of Daitari, who sold it to the defendant and delivered possession.

On issue No.12, the Trial Court, taking note of the provision under Section 17(b) of the Registration Act as also Section 54 of the Transfer of Property Act held that the sale deed executed by Daitari being an unregistered one, was invalid for not being registered even though the consideration was more than Rs.100/-

On issue Nos. 6 and 7, the Trial Court held that the defendant was in continuous possession from 1957 till 1991 when the RMC case was filed. Such possession amounted to adverse possession.

On issue No.8, the Trial Court held that the settlement authorities had rightly settled the suit land in favour of the defendant, which not having been challenged by the plaintiffs within the period of limitation, the suit was bad by Section 42 of the Orissa Survey and Settlement Act.

On issue No.10, the Trial Court held that the suit is hit by Section 3(4) of Odisha Regulation-II of 1956.

On issue Nos. 4 and 9, the Trial Court held that in the absence of settlement authorities and non-service of notice under Section 80 of CPC on them, the suit was bad.

On issue No. 3, it was reiterated that the suit was bad under Section 42 of the Orissa Survey and Settlement Act. On such findings, the suit was dismissed.

7. The plaintiffs carried appeal challenging the findings of the Trial Court rendered in respect of issue Nos.5

to 7. The First Appellate Court re-appreciated the evidence on record vis-à-vis the findings of the Trial Court and concurred therewith and held that in the absence of any other evidence, it can be well said that there was separation of joint family status between the coparceners. The conduct of the parties is consistent with the claim of severance of joint family status. The First Appellate Court was therefore, convinced that there was partition of the ancestral property between Daitari and Surendra prior to 1957 and that there was sale of the suit land by Daitari in favour of defendant in 1957. Further, the finding that the defendant is in possession since the date of purchase was not wrong though the sale deed was invalid. Therefore, on the basis of an invalid sale deed, the possession of the defendant became adverse to the true owner with effect from the date of execution of the sale deed, i.e. on 29.09.1957. The First Appellate Court therefore found no reason to interfere with the impugned judgment and dismissed the appeal.

8. Being further aggrieved, the plaintiffs filed the present second appeal which was admitted on the following substantial questions of law:

> *"1. Whether a valid title in respect of an immovable property can be transferred/passed through a sale deed which is invalid/inoperative/ab initio void?*
>
> *2. Whether the plea of acquisition of title in respect of an immovable property through adverse possession can be judicially accepted to have been proved without specific pleadings?*
>
> *3. Whether a person or a party claiming title in respect of an immovable property through adverse possession can be granted such relief without any specific pleading and required proof thereto as regards the day/date of possession adverse the interest of true owner/plaintiffs inasmuch as the specific pleadings and proofs of hostile animus, knowledge of over act against the will and without the consent of possession, i.e., adverse the interest of the true owners?*
>
> *4. Whether the permissive possession through an invalid sale deed can be treated as adverse possession only because the deed was invalid, though the plea of adverse possession has not been specifically pleaded and proved?*
>
> *5. Whether the status of partition of jointness of Hindu undivided family can be said to be proved without any specific pleading inasmuch as cogent evident?*
>
> *6. Whether the record of right published in favour of a party basing on an invalid sale deed can accrued/confirm/establish title in respect of the said property?"*



9. Heard Mr. Sanatan Das, learned counsel for the appellants and S. Mohanty, learned counsel for the defendant.

10. Mr. Das assails the impugned judgment by submitting that the finding regarding partition of the ancestral joint family properties is based on presumption and not evidence. The sale deed dated 29.09.1957 is a void document not having been registered. There is no specific pleading regarding adverse possession. The defendant never challenged the finding regarding validity of the sale deed nor pleaded and proved the date of his entry into the suit property. Mr Das further argues that the Regulation II case was with regard to possession and no finding was given with regard to title. Both the Courts below have therefore, erroneously held the suit to be hit by Section 3(4) of the Regulation.

11. Per contra, Mr. Mohanty would argue that as per the settled position of law, a vendee's possession becomes adverse from the date of execution of the sale deed, if it is held to be invalid for non-registration. Therefore,

there was nothing wrong in the findings of both the Courts below that the defendant had entered into possession on and from 29.09.1957. As regards evidence of partition, both the Courts below have not only relied upon the oral and documentary evidence but have also considered the conduct of the parties in dealing with the properties separately. According to Mr. Mohanty therefore, the findings of the Courts below do not warrant any interference

12. In view of the rival contentions noted above, it is evident that the first point that falls for consideration is, whether the finding of the Courts below that there was partition of the joint ancestral properties is erroneous, warranting interference. This Court finds that both the Courts below have based their findings on the evidence produced by the parties, particularly the oral evidence as also the documentary evidence. The witnesses have admitted about partition and possession of shares exclusively by the co-sharers. Documentary evidence was adduced to show that the co-sharers were dealing with the property separately which strongly supports the claim of

partition. Even though there was no specific evidence adduced to show partition by metes and bounds, yet the Courts below have taken note of the conduct of the parties in dealing with the ancestral joint family properties separately. It is the settled position of law that the conduct of the parties is relevant in this regard. In the case of **Heram Patel v. Parikhita Patel**[1], this Court held as follows:

> ***"8.*** *Partition consists in a numerical division of the property in defining the shares of the coparceners in the joint property and an actual division of the property by metes and bounds is not necessary. (See Ram Parshad Singh v. Lakhpat Koer. [I.L.R. 30 Cal. 231.] If the shares are defined whether by an agreement between the parties or otherwise then the partition is complete. After the shares are defined if there has been no division of property by metes and bounds, then it is the mode of enjoyment of the property that is only effected but not the tenure of the property. The property ceases to be joint immediately after the shares are defined. Partition means a severance of joint status and, therefore, it is a matter of individual volition. What is necessary to constitute a partition is, therefore, a definite, unequivocal indication of the intention of a member of a joint family to separate himself from the family and enjoy his share in severalty. The Supreme Court examined this point in Raghavamma v. Chenchamma [A.I.R. 1964 S.C. 136.] , Puttarangamma v. M.S. Ranganna [A.I.R. 1968 S.C. 1012.] , and Smt. Krishnabai Ganapatrao Deshmukh v. Appasaheb Tuliaramarao Nimbalkar [(1979) 4 SCC 60 : A.I.R. 1979 S.C. 1880.] , and held that to constitute severance there must be an intimation, indication or representation of such intention and what form that manifestation should take would depend upon the*

[1] **1987 SCC OnLine Ori 208 : (1987) 64 CLT 448**

circumstances of each case. It is implicit in this principle that this manifestation or declaration of intention should be to the knowledge of the persons affected for a mere uncommunicated declaration may amount to no more than merely harbouring an intent to separate. It is immaterial, in such a case, whether the other members assent. Once a member of a joint family has clearly and unequivocally intimated to the other members his desire to severe himself from the joint family, his right to obtain and possess his share is unimpeachable whether or not they agree to a separation, and there is an immediate severance of the joint status. This intention to separate may be evinced in different ways either by explicit declaration or by conduct. There cannot be any manner of doubt that a partition can also be effected by an agreement between the parties. It has been held by their Lordships of the Privy Council in the case of Appovier v. Ram Subba Aivan [(1866) 11 M.I.A. 75 (P.C.).] , that the true test of partition of property according to Hindu Law is the intention of the members of family to become separate owners. Intention being the real test, it follows that an agreement between the members of a joint family to hold and enjoy the property in defined shares as separate owners operates as a partition, although there may have been no actual division of the property by metes and bounds. It is no doubt true that a person who claims partition has to prove the same, but it may not be necessary in every case to prove the same by a document of partition and the burden can be discharged by other acts and conducts, though standing by themselves not conclusive proof of partition, yet may lead to the conclusion that there has been partition in conjunction with other facts. Separate occupation of portions of the joint property, division of the income of the joint property, definement of shares in the joint property in revenue records, independent dealings with the joint family property, are some such evidence from which a conclusion can be arrived at that there had been a partition in the family."

[Emphasis added]



13. After independently going through the evidence on record, this Court finds nothing wrong in the conclusions arrived at by the Courts below so as to be persuaded to interfere. As regards possession, it is seen that adequate evidence was adduced to show that the defendant was in possession of the suit land and had constructed three rooms on it which he let out to different persons on rent. Besides, he was paying revenue rent and holding tax etc. in respect of the buildings constructed by him. There being an attempt to dispossess him by the plaintiffs in 1991, he filed a case under Regulation-II of 1956. So as between 29.09.1957 and the date of filing of the Regulation case in 1991, the defendant was in continuous possession. Now, it is well settled that where possession is delivered on the basis of an invalid sale deed, the same becomes adverse to the true owner. Reference in this regard may be had to the judgment of the this Court in the case of **Ranjit Sahu v. Chintamani Sethi**[2], wherein it has been held as follows:

> *"10. The sale deed dated 15-1-1966 could have conveyed valid title but for the facts that no prior*

[2] **1990 SCC OnLine Ori 115 : (1990) 69 CLT 812**

permission had been taken from the Revenue Officer for such transfer and it comes within the mischief of Section 22 of the O.L.R. Act. In 1988 (1) O.L.R. 1 (supra) it has been held—

> *"Sec. 23-A was inserted into the statute by Act 44 of 1976 and it became operative with effect from 25-10-1976. If an unauthorised occupant has prescribed his title by adverse possession by the time Sec. "23-A came into the statute book, then the Revenue Officer will have no jurisdiction to restore possession of the property to the raiyat or to his heirs. It has been so decided in the case of Siani Nag v. Gobardhan Ganda, by a Bench of this Court after considering all the relevant provisions of the Orissa Land Reforms Act. In the present case, the sale being invalid, possession of defendant No. 1 pursuant to the sale deed dated 30-3-1964 would be adverse by the time Sec. 23-A came into force and defendant No. 1 would be held to have prescribed title by being in possession for more than twelve years..." which, in our opinion, is the correct position of law. The sale deed dated 15-1-1966 being a document void ab initio did not convey any title and the possession of the petitioner from 1-4-1962 continued to be adverse against the opp. parties. Section 23-A was introduced by way of amendment which came into force from 25-10-1976 to take into its ambit the forcible possession. Since the finding of fact is that the petitioner was in possession from 1-4-1962 which, in our opinion, is adverse possession, such adverse possession continued as the subsequent transfer on 15-1-1966 was void and by the time Sec. 23-A came into force, the petitioner had perfected his title by way of adverse possession."*

14. This is what both the Courts below have held. In view of the settled position of law discussed above, this Court fully concurs with such findings and finds no reason to interfere.

15. Be it noted that the First Appeal was preferred by the plaintiffs against the findings rendered by the Trial Court on issue Nos.5, 6 and 7 only. The findings on the other points not having been challenged before the First Appellate Court, need not be gone into in the present appeal.

16. Thus, from a conspectus of analysis of facts, law and contentions raised, this Court is unable to persuade itself to find fault with the judgments passed by both the Courts below. The substantial questions of law are answered accordingly.

17. In the result, the appeal fails and is therefore, dismissed. There shall be no order as to costs.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 5th December, 2025/ A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: P.A.
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Date: 06-Dec-2025 13:00:15