A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
S.A. No.127 of 1991
(In the matter of an appeal under Section 100 of the Code of Civil Procedure)

Shyamabandhu Mishra (since dead) through his LRs. .... ***Appellants***

-versus-

Banalata Mishra (dead) and others .... ***Respondents***

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellants - Mr. S. Mishra, Advocate.

For Respondents - Mr. D.P. Mohanty, Advocate.
Mr. A.K. Mishra, Advocate.

CORAM:
MR. JUSTICE A.C.BEHERA

Date of Hearing :15.12.2023 :: Date of Judgment :31.01.2024

A.C. Behera, J. This Second Appeal has been preferred by the Appellant against the confirming judgment.

2. The Appellant of this Second Appeal i.e. Shyamabandhu Mishra was the defendant in the suit before the Trial Court, vide O.S. No.4 of 1982-I and he was the appellant in the First Appeal vide T.A. No.6 of 1989.

When during the pendency of this Second Appeal, the Appellant-Shyamabandhu Mishra expired, then his legal heirs have been substituted in his place.

The ancestor/predecessor of the Respondents of this Second Appeal i.e. Lokanath Mishra was the sole plaintiff in the suit before the Trial Court, vide O.S. No.4 of 1982-I and he was the respondent in the First Appeal vide T.A. No.6 of 1989.

But, when during the pendency of the First Appeal vide T.A. No.6 of 1989, the sole plaintiff in the suit vide O.S. No.4 of 1982-I i.e. Lokanath Mishra (who was the appellant in the First Appeal vide T.A. No.6 of 1989) expired, then his LRs were substituted in his place as the respondents in the First Appeal. The said LRs. of the Lokanath Mishra are the Respondents in this Second Appeal.

3. The suit of the plaintiff Lokanath Mishra against the defendant Shyamabandhu Mishra vide O.S. No.4 of 1982-I was a suit for declaration of title over the suit properties and recovery of possession thereof from the defendant.

4. As per the averments made by the plaintiff in his plaint, the suit properties are Ac.0.060 decimals i.e. Plot No.741 under Khata No.59 situated at Kundhebenta Sahi of Puri Town corresponds to Municipal Holding No.701 in Ward No.7. The said suit properties were originally

belonged to Kausalya Das Math at Bali Sahi, Puri. Father of the plaintiff i.e. Biswanath Mishra along with Ganeswar Mishra took the suit properties on lease for a period of 20 years in the year 1931 from the Mahanta of Kausalya Das Math through a registered lease deed.

According to the terms of the said lease deed, the lessees i.e. Biswanath Misra (father of the plaintiff) and Ganeswar Mishra constructed a house on the same and lived there jointly. But, unfortunately in the year 1941, their house on the suit properties was damaged due to cyclone. Thereafter, the above two lessees i.e. Biswanath Mishra and Ganeswar Mishra did not renew their lease as per the terms indicated in the lease deed of the year 1931. After expiry of lease in the suit properties, the plaintiff (who was working at Puri Town) intended to take the suit properties from the Kausalya Das Math through a fresh lease, for which, he approached for the same to the Mahanta of Kausalya Das Math. After accepting the request of the plaintiff, the Mahanta of Kausalya Das Math executed a fresh lease on 20.02.1951 for leasing out the suit properties to him (plaintiff) for 20 years. On the basis of that lease dated 20.02.2051, the plaintiff constructed a house on the suit properties and resided in that house with the family members of the plaintiff. The defendant is the son of the elder brother of the plaintiff and accordingly, the defendant is the nephew of the plaintiff. The defendant

being the nephew of the plaintiff requested the plaintiff to allow him to reside with them in the house on the suit properties, to which the plaintiff accepted and accordingly, the defendant resided with the plaintiff's family members in that house on the suit properties since the year 1960.

In the year 1969, the plaintiff went to his native village Biswanathpur, as some defects arose in his eye sight, for which, the defendant being the relative of the plaintiff requested the plaintiff to allow him to reside in the suit house temporarily during the absence of the plaintiff and his family members, to which the plaintiff agreed. Accordingly, as per the permission of the plaintiff, the defendant stayed in the suit house. When the lease dated 20.02.1951 in favour of the plaintiff in respect of the suit properties for 20 years expired in the year 1971, then the plaintiff requested the Mahanta of the Kausalya Das Math for renewal of his lease deed and accordingly, after accepting the request of the plaintiff, the Mahanta of the Kausalya Das Math renewed the lease of the suit properties on 27.07.1972 in spite of the objection raised by the defendant for such renewal. But, on verification of the renewal lease deed, it was found some inadvertent defects therein, because instead of Khata No.59 Plot No.741 of the suit properties, it was indicated therein mistakenly as Khata No.6 Plot No.39 and 769. When

the plaintiff approached the Mahanta of the Kausalya Das Math for correction of that lease deed, then after accepting the request of the plaintiff, the Mahanta of the Kausalya Das Math executed a deed of rectification/correction correcting the above defects in the renewal lease deed dated 27.07.1972 indicating the correct Plot No.741 and Khata No.59. During the continuance of lease of the plaintiff over the suit properties before the abolition of the ex-intermediary system, the plaintiff was regularly paying rent of the suit properties to the ex-intermediary and when due to the abolition of ex-intermediary estate, the suit properties vested in the Government being free from all encumbrances, the plaintiff continued to pay rent of the suit properties to the Government through the local Revenue Officer and obtained the rent receipts. When for the basic requirement of the plaintiff for residing his entire family in the suit house, he (plaintiff) requested the defendant in the month of June, 1975 to leave the suit house, then the defendant did not agree for the same and tried to reside their forcibly. For which, without getting any way, the plaintiff approached the Civil Court and filed the suit vide O.S. No.4 of 1982-I against the defendant praying for declaration of his right, title and interest over the suit properties and for recovery of possession of the suit properties from the defendant along with other reliefs, to which, he (plaintiff) is entitled for.

5. Having been noticed from the Court in O.S. No.4 of 1982-I, the defendant contested the same by filing his written statement after taking his stands denying the averments made by the plaintiff that, as the plaintiff has approached the Court suppressing the material facts i.e. the dismissal of his earlier suit vide O.S. No.277 of 1975-I in respect of the self same properties against him vide order dated 30.09.1977, for which, he (plaintiff) is precluded under law to file the fresh suit against him in respect of the suit properties. Therefore, the suit of the plaintiff is barred by the principles of res-judicata due to dismissal of the earlier suit vide order O.S. No.277 of 1975-I as per order dated 30.09.1977. The defendant in his W.S. denied about the construction of any house by the plaintiff on the suit properties and also denied about the taking up of the suit properties on lease by the plaintiff from the Kausalya Das Math through its Mahanta and also denied to the payment of rent by the plaintiff either to the ex-intermediary or to the State in respect of the suit properties. It was the specific case of the defendant that, when the suit Plot No.741 way lying vacant, his father had constructed a house on the suit properties by occupying the same in the year 1939. As such, since the year 1939, he (defendant) has been residing in the house situated on the suit properties, which was constructed by his father thereon and due to his long and continuance uninterrupted possession over the suit

properties since the year 1939, he (defendant) has perfected his title over the suit properties by adverse possession. For which, the plaintiff has no manner of right, title, interest and possession over the same. So, the plaintiff is not entitled either for the decree of declaration of title over the suit properties or for recovery of possession of the same against him (defendant). Therefore, the suit of the plaintiff is liable to be dismissed with cost.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 9 (nine) numbers of issues were framed by the Trial Court and the said issues are:-

Issues

i. Whether the suit is maintainable?
ii. Whether the suit is undervalued?
iii. Whether the O.S. No.277 of 1975(I) instituted by plaintiff in the court of Munsif, Puri against the Defendant relates to the present suit property?
iv. Whether the suit is barred under the principles of res-judicata?
v. Whether the suit is barred U/o 9, Rule 9 of the C.P.C.?
vi. Whether the defendant acquired title by adverse possession?
vii. Whether the plaintiff has ever been ousted by defendant?
viii. Whether the plaintiff has exclusive right, title, interest over the suit land?
ix. To what relief, if any, the plaintiff is entitled?

7. In order to substantiate the aforesaid reliefs sought for by the plaintiff against the defendant, he (plaintiff) examined four witnesses

from his side including him (plaintiff) as P.W.1 and proved series of documents on his behalf vide Exts.1 to 4.

8. On the contrary, on behalf of the defendant, two witnesses were examined i.e. the wife of the defendant as D.W.1 along with another independent witness and relied upon one document vide Ext.A i.e. the copy of the plaint in O.S. No.277 of 1975-I.

9. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the Trial Court answered issue Nos.1, 2, 4, 5, 6, 7 & 8 in favour of the plaintiff and against the defendant and basing upon the findings and observations made by the Trial Court in issue Nos.1, 2, 4, 5, 6, 7 & 8, decreed the suit of the plaintiff vide O.S. No.4 of 1982-I as per its judgment and decree dated 28.11.1988 and 15.12.1988 respectively against the defendant on contest and declared the right, title of the plaintiff over the suit land and directed the defendant to deliver the vacant possession of the suit land with the house thereon within three months hence in favour of the plaintiff, failing which, the plaintiff is at liberty to recover the possession through Court by assigning reasons that, on the basis of the documents relied upon by the plaintiff, it is established that, he (plaintiff) is the owner of the suit properties, but, the defendant has not perfected his title over the suit properties through adverse possession, for which, the

plaintiff is entitled for the decree of recovery of possession of the suit properties from the defendant.

10. On being dissatisfied with the aforesaid judgment and decree dated 28.11.1988 and 15.12.1988 respectively passed in O.S. No.4 of 1982-I by the Trial Court in favour of the plaintiff and against the defendant, he (defendant) challenged the same by preferring the First Appeal vide T.A. No.6 of 1989 being the appellant against the plaintiff by arraying him (plaintiff) as respondent. But, when during the pendency of that First Appeal vide T.A. No.6 of 1989, the plaintiff (who was the respondent in that First Appeal, expired), then his LRs. were substituted in his place as Respondents.

11. After hearing from both the sides, the First Appellate Court dismissed the First Appeal of the defendant vide T.A. No.6 of 1989 as per its judgment and decree dated 22.03.1991 and 09.04.1991 respectively on contest concurring/accepting the findings and observations made by the Trial Court in the judgment and decree of O.S. No.277 of 1975-I in favour of the plaintiff and against the defendant.

12. On being aggrieved with the aforesaid judgment and decree of dismissal of the First Appeal of the defendant vide T.A. No.6 of 1989, he (defendant) challenged the same by preferring this Second Appeal

being the Appellant against the respondents of the First Appeal by arraying them as Respondents.

When during the pendency of this Second Appeal, the Appellant (defendant) expired, then his LRs. were substituted in his place as the Appellants.

13. This Second Appeal was admitted on formulation of the following substantial questions of law i.e.:-

> *i. Whether the courts below were justified in holding that the suit was not barred by principles of res judicata.*
> *ii. Whether the courts below were justified in holding that Exts.5, 13 and 14 have established the claim of the plaintiffs to be the title holder?*
> *iii. Whether the courts below were justified on placing reliance on Ext.6, the order passed by the Collector under the Orissa Estates Abolition Act recognizing the plaintiffs as tenants?*
> *iv. Whether the courts below were justified in holding that the defendant has not perfected his title by way of adverse possession?*

14. I have already heard from the learned counsels for the Appellants, Respondents and as well as the learned counsel for the proposed third party i.e. Lord Jagannath, Puri.

15. In order to have a better appreciation and so also for the just decision of the Second Appeal, it is pertinent to answer the above four formulated substantial questions of law one after another serially and chronologically according to the materials available in the record.

So far as the first substantial question of law i.e. whether the Courts below were justified in holding that, the suit was not barred by principles of res-judicata is concerned;

a ground has been raised on behalf of the defendant through his written statement and as well as during trial of the suit through the evidence from the side of the defendant that, the present suit vide O.S. No.4 of 1982-I is hit and barred by the principles of res judicata as per Section 11 of the CPC, 1908, due to the dismissal of the earlier suit vide O.S. No.277 of 1975-I as per the order dated 30.09.1977 for the self same properties between the parties filed by the plaintiff himself.

16. It appears from the materials placed on behalf of the defendant that, the earlier suit, vide O.S. No.277 of 1975-I filed by the plaintiff against the defendant in respect of the suit properties was dismissed on dated 30.09.1977 without hearing on merit.

17. As, the earlier suit vide O.S. No.277 of 1975-I between the parties was dismissed without hearing on merit, for which, at the time of answering issue No.4, the Trial Court has held that, the dismissal of the earlier suit vide O.S. No.277 of 1975 (I) shall not be a res judicata for adjudication of the present suit vide O.S. No.4 of 1982-I. Therefore, the present suit, vide O.S. No.4 of 1982-I is not hit and barred by the provisions of res judicata envisaged in Section 11 of the CPC, 1908.

The above findings of the Trial Court in issue No.4 rejecting the plea of the defendant for barring the present suit on the ground of res judicata has also been accepted by the First Appellate Court in the judgment of decree of T.A. No.6 of 1989.

18. As per the provisions of law envisaged in Section 11 of the CPC, 1908, for the dismissal of a suit on the ground of res judicata, there must be material in the record to show that, the previous suit was heard and finally decided by the Competent Court.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> (i) ***2012(11) Lawdigital.in 338 (Patna)—Zainul Abdin @ Zainul Abedin & Ors. Vs. Sheo Kumar Mukherjee & Ors.***—CPC, 1908—Section 11—Res Judicata—Dismissal of suit for default—Applicability of principle of Res judicata—Held, when suit is dismissed for default, it will never operate as res judicata, because none of the issues raised by the parties was decided in the suit.
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> (ii) ***2009(I) Civil Court Cases 753 (S.C.) & 2009(1) Apex Court Judgments 707 (S.C.)—State of U.P. Vs. Jagdish Saran Agrawal***—CPC, 1908—Section 11—Res Judicata—Dismissal of suit for non prosecution—Not a decision on merit—Does not operate as res judicata.
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> (iii) ***1996(I) OLR 423 (S.C.)—Union of India (UOI) and Ors. Vs. Ranchi Municipal Corporation, Ranchi and Ors.—CPC, 1908—Section 11—Res judicata***—Summary dismissal does not constitute Res-judicata for deciding the controversy.
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> (iv) ***2020(3) Civil Court Cases (Ker))—George Abraham and Ors. Vs. Minu Susan Mathew—CPC,***

> ***1908—Section 11***—Res Judicata—When there was no adjudication of issues, principles of Res-judicata would not come into play.

19. Here in this suit at hand, when there was no adjudication of the previous suit vide O.S. No.277 of 1975-I between the parties on merit, but that suit vide O.S. No.277 of 1975-I was dismissed without its decision on merit, then by applying the principles of law enunciated by Hon'ble Courts and Apex Court in the ratio of the aforesaid decisions, the first substantial question of law is answered accepting the findings and observations made by the Trial Court as well as by the First Appellate Court in their respective judgments and decrees that, the present suit of the plaintiff vide O.S. No.4 of 1982-I is not hit and barred by the principles of res-judicata.

20. So far the second substantial question of law i.e. whether the Trial Court and the First Appellate Court were justified in holding that, Exts.5 Series, 13 Series & 14 have established the claim of the plaintiff to be the title holder is concerned;

Exts.5 Series, 13 Series and 14 are the rent receipts regarding the payment of rent before and after the abolition of ex-intermediary estate in respect of the suit properties on behalf of the plaintiff.

Ext.6 is the certified copy of the order passed in Misc. Case No.278/1981 by the Additional Tahasildar, Puri indicating about the

settlement of the suit properties in favour of the plaintiff (Loknath Mishra) as per the clearance given by the ex-intermediary for such settlement.

Ext.7 is the certified copy of the order passed in O.E.A. Misc. Case No.389/1979 regarding the rejection of the claim of the defendant for settlement of the suit properties in his favour.

Exts.1 to 14 relied upon on behalf of the plaintiff including Exts.5 Series, 13 Series and 14 are going to show that, even after the abolition of the ex-intermediary system, the plaintiff is paying the rents of the suit properties to the Government and he (plaintiff) is also paying the holding tax of the suit house to the Puri Municipality as per Ext.14.

The above documents relied upon by the plaintiff are going to show that, after the abolition of the ex-intermediary system, the tenancy ledger in respect of the suit properties has been opened in the name of the plaintiff and the plaintiff has been paying rent to the State in respect of the suit properties and the State Government has been accepting the same.

There is no legally admissible evidence in the record on behalf of the defendant to show his lawful possession over the suit properties. That apart, the defendant himself has not been examined as a witness before the Trial Court in the suit vide O.S. No.4 of 1982-I to state about

his case. No plausible explanation has been offered on behalf of the defendant about the cause and reason of withholding his examination.

21. The law on this aspect like the suit at hand, when the defendant does not come to the witness box to be examined as a witness in his suit and when after abolition of the estate of the ex-intermediary, tenancy ledger of the suit properties is opened in the name of a person like the plaintiff and when the Government receive the rents of the suit properties from the tenant indicated in the tenancy ledger like the Exts.5 Series, 13 Series & 14 in this suit at hand, then the legal effects thereof has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> ***(i) AIR 1999 (SC) 1441—Vidhyadhar Vrs. Manikrao & Ors.—(Para 16):: AIR 1999 (S.C.) 1341—Iswar Bhai C. Patel Vrs. Harihar Behera & Ors.***—Civil trial read with Indian Evidence Act, 1872—Section 114—when a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that, the case set up by him is not correct.
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> ***(ii) 2014(II) CLR 1217—Susanta Kumar Jena and anr. Vrs. Smt. Basanti Sethi and ors.—(Para 12)—Tenancy—Creation of***—Claim of lease of the suit properties by the Ex-intermediary in favour of Kameswar—Kameswar was paying rent in respect of the suit property to the Government—Held, tenancy has been created in favour of Kameswar even in absence of proof of the any original lease.
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> ***(iii) 2004(II) OLR-528—Choudhury Balaram Dash Vrs. The Commissioner Consolidation, Orissa and others—(Paras 6 to 8)—O.E.A. Act, 1951—Sections 6 & 7***—Lands in dispute were part of an Intermediary Estate which vested with the State

> Government free from all encumbrances in consonance with the O.E.A. Act. After vesting, the lands have been settled in favour of the petitioner under the O.E.A. Act and record of rights were prepared in his favour. That order not challenged by the O.P. and the same has attained finality. The order being a valid one, the Consolidation Authorities are bound by the said order.

22. Here in this suit at hand, when the defendant himself has not come to the witness box to state his own case on oath and when, he (defendant) has not offered himself to be cross examined by his opponent i.e. plaintiff and when there is no plausible explanation on behalf of the defendant about the cause and reason for withholding his examination and when on the basis of the clearance of the ex-intermediary, the tenancy ledger of the suit properties has been opened in the name of the plaintiff and when after abolition of ex-intermediary system, the Government has accepted the plaintiff as a tenant under the Government directly in respect of the suit properties after receiving the rents from him through Exts.5 Series, 13 Series & 14, then at this juncture by applying the principles of law enunciated in the ratio of the aforesaid decisions, it cannot be held that, the Trial Court as well as the First Appellate Court were not justified in holding that, Exts.5 Series, 13 Series & 14 have established the claim of the title of the plaintiff over the suit properties. For which, in other words, it is held that, the Trial Court and as well as the First Appellate Court were justified under law

in holding that, the Ext.5 Series, 13 Series & 14 have established the title of the plaintiff over the suit properties.

23. So far as the third substantial question of law i.e. whether the Trial Court and the First Appellate Court were justified on placing reliance on Ext.6, the order passed by the Collector under Odisha Estates Abolition Act recognizing the plaintiff as the tenant is concerned;

as per the discussions and observations made above in foregoing paragraph, it has already been held that, the Trial Court and as well as the First Appellate Court were justified under law in placing the reliance on the order of the Collector under Odisha Estates Abolition Act recognizing the plaintiff as the tenant of the suit properties.

24. So far as the last and the fourth substantial question of law i.e. whether the Trial Court and as well as the First Appellate Court were justified in holding that, the defendant has not perfected his title by way of adverse possession over the suit properties is concerned;

it is very fundamental in civil law that, the plea of adverse possession taken by the defendant like in this suit at hand is an indirect admission of ownership of the plaintiff over the suit properties.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:-

(i) ***IV (2005) Civil Law Times 378 (P & H)—Sultan & Ors. Vrs. Kasturi & Ors—Indian Limitation Act—Article 64 & 65—(Para 8)—***Plea of adverse possession taken by the defendant is an indirect admission of ownership of plaintiff.

(ii) ***2008 (3) CCC 173 (P. & H.)—Jagat Singh and others Vrs. Srikishan Dass and others—Indian Limitation Act, 1872—Article 64 & 65—Suit for possession filed by plaintiff***—Defendant raised plea of adverse possession over the suit land—Held, once a plea of adverse possession is raised, it pre-supposes the title of the plaintiff over the suit land.

(iii) ***2008(4) CCC 239 (P&H)—Gurbax Singh Vrs. Karnail Singh— Indian Limitation Act, 1872—Article 64 & 65—Adverse Possession—*** The plea of adverse possession of the defendant necessarily implies the admission of the title of the plaintiff.

So, by taking the plea of adverse possession in respect of the suit properties against the plaintiff in his W.S., he (defendant) has indirectly admitted the title and ownership of the plaintiff over the suit properties.

25. It is the settled propositions of law that, mere possession for some years, the same itself is not sufficient to claim adverse possession. The defendant is to show that, his possession was hostile to the title and possession of its true owner and in order to establish his such plea, he (defendant) shall state specifically in his pleadings (written statement) from which date he is in possession over the suit properties and on which date his possession became adverse to the true owner and on which date his hostile possession had matured to the title, but not only

he (defendant) will plead the same but also he shall prove the same through legally admissible evidence.

On this aspect the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> (i) ***(2008) 15 SCC 150—Kurella Naga Druva Vydaya Bhaskar Rao Vrs. Galla Jani Kamma @ Nacharamma—Indian Limitation Act, 1963—Article 64 & 65***—mere possession for some years not sufficient to claim adverse possession unless such possession was hostile possession denying title of the true owner.
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> ***(ii) 2017 (3) C.C.C. 509 (S.C.) & 2017 (II) CLR (S.C.) 1097—Dharampal Vrs. Punjab Wakf Board and others (paragraphs 39 & 40)—Adverse Possession***— Only averment that, defendant was in possession through his father since 1953, that itself do not constitute plea of adverse possession.
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> Because, date from which, possession became adverse to Plaintiff not pleaded, likewise date of ripening of adverse possession also not pleaded.
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> ***(iii) I (2009) Civil Law Times 120 (UK)—Kalawati (Since deceased) through LRs. and anr. Vrs. Girish Shram (Since Deceased) through LRs. and Anr.—(Paras 8 & 10)—Adverse Possession***—When in written statement of the defendant, it is nowhere stated since which date the defendant is in possession and when possession became adverse to true owner—the plea of adverse possession fails.

26. Here in this suit at hand, nowhere in the pleadings (written statement) of the defendant, it has been stated, on which date, the defendant had come into the possession of the suit properties or on which date, his possession in the suit properties became adverse to its true owner or on which date his hostile possession was matured to title.

None of the witnesses on behalf of the defendant has deposed stating about the above necessary essential requisites, to establish the claim of adverse possession.

27. Here in this suit at hand, when the examination of the defendant during the trial of the suit has been withheld without any plausible explanation and when the pleadings and evidence of the defendant are totally silent about the date of starting of the possession of the defendant over the suit properties and the date of starting of hostile possession of the plaintiff over the suit properties denying the title of the plaintiff thereon and the date of mature of his hostile possession on the suit properties to title, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions to this suit at hand, it is held that, the Trial Court and as well as the First Appellate Court are justified under law in holding that, the defendant has not perfected his title over the suit properties by way of adverse possession.

28. As per the discussions and observations made above, none of the grounds raised on behalf of the Appellants/defendant to assail the judgments and decrees passed by the Trial Court and the First Appellate has become tenable under law.

29. So far as the Misc. Case No.76 of 2017 filed on behalf of the defendant/Appellant under Order 1 Rule 10 of the CPC is concerned;

The Misc. Case No.76 of 2017 under Order 1 Rule 10 of the CPC, has been filed on behalf of the Appellant (defendant) for impletion of Lord Jagannath, Puri as a party in this Second Appeal on the ground of preparation of the R.o.R. of the suit properties in the meanwhile in the year 2017 during the pendency of this Second Appeal in the name of Lord Jagannath, Puri, to which, the plaintiff (respondent) as well as the Lord Jagannath, Puri through their counsels seriously objected claiming rejection of the aforesaid Misc. Case No.76 of 2017 under Order 1 Rule 10 of the CPC of the defendant (appellant).

30. This Second Appeal was preferred by the defendant in the year 1991 for adjudication of the controversies between the parties arising in the suit vide O.S. No.4 of 1982-I. For which, in case, the proposed third party is not impleaded, the said third party shall not be bound by the decision passed in this Second Appeal arising out of the suit vide O.S. No.4 of 1982-I and the proposed third party shall not be prejudiced for the same.

31. The law in respect of the impleation of a third party has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> ***(i) 2022 (4) Civil Court Cases 457 (S.C.) and 2022 (3) Apex Court judgments 272 (S.C.)—Sudhamayee Pattnaik & Ors. Vrs. Bibhu Prasad Sahoo & Ors.—CPC, 1908—Order 1 Rule***

> ***10—Impletion of a third party***—Plaintiffs are domius litis and nobody can be permitted to be impleaded as defendants against the wish of plaintiffs, unless Court suo motu directs to join any other person not party to suit for effective decree and/or for proper adjudication as per Order 1 Rule 10 of the CPC.
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> ***(ii) 2019(1) LH (P&H) 921—Neelam Jain Vrs. Mange Ram & Ors.—CPC, 1908—Order 1 Rule 10—Impleadment of a party***—Plaintiff being dominus litits cannot be fored to add any person as a party to the suit unless pleadings and relief claimed therein that a person sought to be impleaded as a party is necessary party and without his presence neither the suit can be proceed nor the relief can be granted.

32. When this Second Appeal has been preferred for adjudication of the controversies arising between the parties *inter se* in respect of the suit vide O.S. No.4 of 1982-I, then at this juncture, in case of non-impleation of the proposed third party in this Second Appeal, as per law, the proposed third party i.e. Lord Jagannath shall never be bound by the decision passed in this Second Appeal and the judgment of this Second Appeal shall not cause any prejudice to the said proposed third party.

That apart, when, neither the plaintiff nor the proposed third party are interested for impleation of the proposed third party as a party in this Second Appeal as per their resistance made to the petition under Order 1 Rule 10 of the CPC of the Appellant (defendant) and when there is no impediment under law for deciding the Second Appeal effectively relating to the *inter se* controversies between the parties in the suit vide O.S. No.4 of 1982-I in absence of the proposed third party, then at this

juncture, by applying the principles of law enunciated by Hon'ble Courts and Apex Court in the ratio of the aforesaid decisions, it is held that, the Misc. Case No.76 of 2017 of the Appellant (defendant) under Order 1 Rule 10 of the CPC for impleation of the proposed third party has no merit. For which, the Misc. Case No.76 of 2017 of the Appellant (defendant) under Order 1 Rule 10 of the CPC is dismissed. Accordingly, the Misc. Case No.76 of 2017 of the Appellant (defendant) is disposed of finally.

33. On analysis of the formulated substantial questions of law in this Second Appeal, as per the discussions and observations made above, when it is held that, none of the grounds raised on behalf of the Appellant/defendant to nullify the judgments and decrees passed by the Trial Court and the First Appellate Court in favour of the plaintiff against the defendant has become tenable under law, then at this juncture, the question of interfering with the said judgments and decrees passed by the Trial Court as well as by the First Appellate Court in O.S. No.4 of 1982-I and in T.A. No.6 of 1989 respectively through this Second Appeal filed by the Appellant (defendant) does not arise.

Therefore, there is no merit in the Appeal of the Appellant (defendant). The same must fail.

34. In the result, this Second Appeal filed by the Appellant (defendant) is dismissed on contest, but without cost.

The judgments and decrees passed by the Trial Court in O.S. No.4 of 1982-I as well as by the First Appellate Court in T.A. No.6 of 1989 are confirmed.

(A.C. Behera),
Judge.

Orissa High Court, Cuttack.
31st January, 2024//Utkalika Nayak//
Junior Stenographer