

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.94 of 1992

(In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908)

Sri Demka Singh and others *Appellants*

-versus-

Sri Daitari Patra and others *Respondents*

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellants - Mr. R. K. Mohanty,
Sr. Advocate.
Ms. S. Mohanty,
Advocate.

For Respondents - None

**CORAM:
MR. JUSTICE A.C.BEHERA**

Date of Hearing :07.12.2023 :: Date of Judgment :16.01.2024

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

2. The Appellants of this Second Appeal were the defendants in the suit vide T.S. No.85 of 1982 and they were the Appellants in the First Appeal vide T.A. No.7 of 1988.

The Respondents of this Second Appeal were the plaintiffs in the suit vide T.S. No.85 of 1982 and they were the respondents in the First Appeal vide T.A. No.7 of 1988.

3. The suit of the plaintiffs (those are the Respondents in this Second Appeal) vide T.S. No.85 of 1982 was a suit for declaration of title, recovery of possession and permanent injunction.

4. As per the averments made by the plaintiffs in their plaint, they (plaintiffs) are the sons of late Raghunath Patra. The suit properties were originally belonged to one Ekadasi Singh, who was the father of the defendant No.1 and grandfather of other defendants. The father of the plaintiffs i.e. Raghunath Patra had purchased the suit properties from the predecessor of the defendants i.e. from Ekadasi Singh through registered sale deed dated 16.07.1936 vide Ext.1 after obtaining due permission from the State Authorities and accordingly, since the date of purchase i.e. since 16.07.1936, the father of the plaintiffs i.e. Raghunath Patra was possessing the suit properties being the exclusive owner thereof and accordingly, the suit properties were recorded in the name of the father of the plaintiffs i.e. Raghunath Patra on the basis of the sale deed (Ext.1). After the death of Raghunath Patra, the plaintiffs being his successors succeeded to the suit properties along with other properties left by Raghunath Patra and accordingly, the plaintiffs possessed the suit properties being the owners thereof. As the predecessor of the defendants i.e. Ekadasi Singh had sold the suit properties to the father of the plaintiffs i.e. to Raghunath Patra, for which, the defendants have no

interest at all over the suit properties. But, on 14.08.1982, surprisingly, the defendants forcefully took possession to the suit properties from the plaintiffs by using their muscle power and did not allow the plaintiffs to cultivate the same, for which, without getting any way, the plaintiffs approached the Civil Court by filing the suit vide T.S. No.85 of 1982 against the defendants praying for declaration of their title over the suit properties and also for recovery of possession and permanent injunction against the defendants.

5. Having been noticed from the Court, the defendants challenged the suit of the plaintiffs by filing their written statements denying the averments made by the plaintiffs in their plaint by taking their stands/pleas that, neither their predecessor Ekadasi Singh nor any of the defendants has/had sold the suit properties to the father of the plaintiffs i.e. Raghunath Patra at any point of time. Neither Raghunath Patra nor his successors i.e. plaintiffs were/are in possession over the suit properties at any point of time. But, they (defendants) being the successors of Ekadasi Singh, they are the owners of the suit properties and they are in possession over the same. The suit properties have devolved upon them by way of succession after the death of Ekadasi Singh and as they (defendants) are in continuous possession over the suit properties, for which, they have perfected their title over the suit properties by way of

adverse possession and as such the plaintiffs have no manner of right, title, interest and possession over the suit properties. For which, the suit of the plaintiffs is liable to be dismissed.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 10 (ten) numbers of issues were framed by the Trial Court in T.S. No.85 of 1982 and the said issues are :-

Issues

- (i) Whether the suit is maintainable?
- (ii) If the plaintiffs have locustandi to file the suit?
- (iii) If the suit is barred by limitation and adverse possession?
- (iv) Whether the alleged sale deed in favour of Raghunath Patra was executed by Ekadasi and whether consideration was passed there under and delivery of possession was under the deed and whether this deed, if any, is valid?
- (v) Whether the defendants have been and are in possession of the suit land and have never posted with possession of the suit land since the time of Ekadasi and whether the defendants have acquired right by adverse possession?
- (vi) Whether the market value of the suit land is correctly given in the plaint and proper court fees paid?
- (vii) Whether the plaintiffs have subsisting title over the suit land?
- (viii) To what relief, if any, the plaintiffs are entitled?
- (ix) Whether the suit is maintainable under Army Act?
- (x) Whether alternatively the alleged sale by Ekadasi is void as the suit land is ancestral and there belongs no legal necessity or benefit of estate?

7. In order to substantiate the aforesaid reliefs sought for by the plaintiffs against the defendants, they (plaintiffs) examined altogether seven numbers of witnesses including plaintiff No.1 as P.W.7 from their

side and relied upon series of documents on their behalf including the registered sale deed dated 16.07.1936 vide Ext.1. But, on the contrary, the defendants examined five witnesses from their side including the defendant No.3 as D.W.1 and exhibited the documents vide Exts.A to G on their behalf.

8. After conclusion of hearing and on appreciation of materials, documents and evidence available in the record, the Trial Court answered all the issues in favour of the plaintiffs and against the defendants and basing upon the findings and observations made by the Trial Court in the issues in favour of the plaintiffs and against the defendants, the Trial Court decreed the suit of the plaintiffs vide T.S. No.85 of 1982 on contest against the defendants vide its judgment and decree dated 23.12.1987 and 11.01.1988 respectively entitling the plaintiffs to recover the possession of the suit properties from the defendants assigning the reasons that, the original owner of the suit properties i.e. Ekadasi Singh had alienated/transferred the suit properties to the father of the plaintiffs i.e. Raghunath Patra duly executing and registering the sale deed dated 16.07.1936 vide Ext.1 after receiving the due consideration money and delivering the possession of the same in favour of the Raghunath Patra divesting him (Ekadasi Singh) from his all sorts of interests from the

same. For which, the successors of Ekadasi Singh i.e. the defendants have no interest in the suit properties.

9. On being dissatisfied with the aforesaid judgment and decree dated 23.12.1987 and 11.01.1988 respectively passed in T.S. No.85 of 1982 against the defendants and in favour of the plaintiffs, they (defendants) challenged the same by preferring the First Appeal vide T.A. No.7 of 1988 being the Appellants against the plaintiffs by arraying them (plaintiffs) as respondents.

10. After hearing from both the sides, the First Appellate Court dismissed the First Appeal vide T.A. No.7 of 1988 of the defendants/appellants vide its judgment and decree dated 26.02.1992 and 06.03.1992 respectively concurring the findings and observations made by the Trial Court in favour of the plaintiffs.

11. On being aggrieved with the aforesaid confirming judgment passed by the First Appellate Court in T.A. No.7 of 1988 concurring the judgment and decree of the Trial Court against the defendants, they (defendants) preferred this Second Appeal being the Appellants against the plaintiffs by arraying them (plaintiffs) as Respondents.

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

- (i) Whether the document, Ext.1, is valid in the absence of any signature and thumb impression of the vendor Ekadasi, even though there is certificate of Registration?
- (ii) Whether the document, Ext.1, can be held to be valid without proof of due execution though there is proof of registration?
- (iii) Whether the decisions of the learned courts below are vitiated because of non-consideration of the plea of adverse possession?

13. I have already heard from the learned counsel for the Appellants only, as none participated from the side of the Respondents at the time of hearing of the Appeal.

14. On perusal of the judgments and decrees of the Trial Court and First Appellate Court, it appears that, both the Courts i.e. Trial Court and as well as First Appellate Court have given their concurrent findings on facts on proper appreciation of all the oral and documentary evidence available in the record taking into account the pleadings of the parties that, the sale deed dated 16.07.1936 vide Ext.1 has been duly/properly executed by the admitted owner of the suit properties i.e. Ekadasi Singh in favour of the father of the plaintiffs i.e. Raghunath Patra in selling the suit properties admitting its proper execution and registration by the vendor Ekadasi Singh putting symbol as per the prevailing practices on those days. Accordingly, after transferring the suit properties in favour of Raghunath Patra on 16.07.1936, that Ekadasi Singh was divested from his ownership and possession of the suit properties making his vendee Raghunath Patra as the owner thereof and after purchasing the suit

properties through Ext.1, Raghunath Patra had become the exclusive owner and was in possession over the suit properties since 16.07.1936 and thereafter, the suit properties were recorded in the name of Raghunath Patra exclusively as the owner thereof by the Settlement Authorities.

15. On this aspect the propositions of law has already been clarified in the ratio of the following decision:

2011 (3) Civil Law Times 292 (Madras)—Latif Estate Line India Ltd. Vrs. Hadeeja Ammal & others—(Paragraph 48)—T.P. Act, 1882—Section 54—Sale—Meaning of—Transfer of ownership by one person to another.
Once vendor is divested himself of his ownership of property, he retains no control or right over said property.

16. The above concurrent findings of the Trial Court and the First Appellate Court on facts regarding the due and proper execution of the sale deed vide Ext.1 on dated 16.07.1936 transferring the suit properties by the predecessor of the defendants i.e. by Ekadasi Singh in favour of the father of the plaintiffs i.e. Raghunath Patra are not interferable as per law in this Second Appeal preferred by the defendants. Because, such findings on facts arrived by both the Courts are neither perverse nor there is material to show that, both the Courts have taken into consideration to the inadmissible evidence ignoring the material/vital evidence.

17. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

- (i) **2010 (3) PLR 387 (P & H)—Tarsen Lal Vrs. D. Improvement Trust, Patiala**—CPC, 1908—Section 100—High Court has no jurisdiction to interfere with the findings of the fact arrive at by Courts below, even if, the same are erroneous—Legislature never wanted Second Appeal to become a third trial on facts.
- (ii) **2014 (Supp-I) OLR 429—Kasinath Nandi (dead), after him, his LRs. Tapan Kumar Nandi and others Vrs. Rudranarayan Mishra and others—(Paragraph 9)**—CPC, 1908—Section 100—Findings by Courts below being a finding of fact on proper appreciation of evidence, it cannot be interfered with in Second Appeal.
- (iii) **2023 (3) Civil Court Cases 653 (Raj.)—Mahaveer & others Vrs. Omprakash**—CPC, 1908—Section 100—Finding of fact recorded by the First Appellate Court after appreciation evidence not to be interfered with the findings in the Second Appeal.
- (iv) **2017 (I) Civil Court Cases 515 (Bombay)—Madhukar vrs. Smt. Nanda Madhukar Yene and another**—CPC, 1908—Section 100—Second Appeal—Concurrent findings of fact by Trial Court and First Appellate Court considering evidence led by both the parties, when such findings are not perverse, the same cannot be interfered with in the Second Appeal.
- (v) **2020 (I) Apex Court Judgments—C. Doddanarayana Reddy (dead) by Lrs. & others Vrs. C. Jayarama Reddy (dead) by Lr. & others**—CPC, 1908—Section 100—Second Appeal—Concurrent finding—Finding of fact cannot be interfered in the Second Appeal, unless the findings are perverse.
- (vi) **2018 (6) ALD-2—M. Venugopal Vrs. Smt.M.B. Rama Tulasi**—CPC, 100—Second Appeal—Re-appreciation of evidence—High Court cannot re-appreciate the evidence and arrive at different conclusion—non re-appreciation of entire evidence is warranted in Second Appeal.
- (vi) **2010 (3) Civil Court Cases page 800 (P & H)—Raj Kali Vrs. Jitender**—CPC, 1908—Section 100—Second Appeal—High Court has no jurisdiction to interfere with the findings of fact, arrived at by the Courts below even if the same are grossly erroneous.
- (vii) **AIR 1999 (S.C.) 2213—Kondiba Dagadu Kadam Vrs. Savitribai Sopan Gijar and others**—CPC, 1908—Section 100—Concurrent finding on facts howsoever erroneous—cannot be interfered with. On equitable ground no relief can be granted.
- (viii) **2019 (I) MAH. LJ 183—Sabaji Dhabji Dhore Vrs. Baburao Raghujji Kare**—CPC, 1908—Section 100—Second Appeal—Scope

where there are concurrent findings of fact and there is no materials to show that, any vital evidence was ignored or that inadmissible evidence has been considered, there is no scope for interference with such findings in the Second Appeal.

(ix) *1996 (II) OLR 451—Bhagaban Behra Vrs. Dhiraj Kumar Sivjee and others & 1989 (3) SCC 287—Smt. Annapoorani Ammal Vrs. G. Thangapalam—(Paragraphs 7 & 8)—CPC, 1908—Section 100—Scope of Interference—Concurrent findings rendered by the Trial Court and First Appellate Court. When reasoning of the First Appellate Court cannot be said to be wholly unacceptable or perverse. Because, the Trial Court and the First Appellate Court have considered the documentary evidence. When neither the findings are perverse nor it is a case of non-consideration of material evidence, in that situation the findings of the Trial Court and the First Appellate Court are not to be disturbed in the Second Appeal.*

18. As per the aforesaid dictums of the Hon'ble Courts and Apex Court, the propositions of law is very much clear that, the Court of Second Appeal is not a Court of facts. Because, the final Court to appreciate the facts is the First Appellate Court and the Second Appellate Court like this Court is not a Court of facts. For which, in the Second Appeal, the Second Appellate Court should not interfere with the concurrent findings on facts arrived by the Trial Court and First Appellate Court on appreciation of oral and documentary evidence of both the sides, unless and until it is found that, the findings on facts given by the Courts are perverse or they have considered the inadmissible evidence ignoring the vital/material evidence.

19. When in this suit at hand, the Trial Court as well as the First Appellate Court have given their concurrent findings on facts after

appreciating the oral and documentary evidence of the parties taking into account all the materials and evidence available in the record and both the Courts have finally held about the due and proper execution of the sale deed vide Ext.1 by the predecessor of the defendants i.e. Ekadasi Singh in selling/transferring the suit properties in favour of the father of the plaintiffs i.e. Raghunath Patra, then at this juncture, in view of the principles of law enunciated in the ratio of the above decisions of the Hon'ble Courts and Apex Court, there is no scope with this Second Appellate Court to interfere with the above concurrent factual findings on facts by the Trial Court and the First Appellate Court for taking any other views, then the views expressed by the Trial Court and First Appellate Court on facts.

20. So far as the plea of adverse possession taken by the defendants (Appellants in this Second Appeal) over the suit properties is concerned;

As per the pleading of the defendants in their written statement, they (defendants) have claimed their ownership/title over the suit properties on the basis of their inheritance from their predecessor Ekadasi Singh, but at the same time, they (defendants) have also claimed their title over the suit properties through adverse possession.

21. The law on this aspect has already been clarified by the Apex Court in the ratio of the following decision:-

2015 (II) CLR (S.C.) 981—M. Venkatesh and Ors. Vrs. Commissioner, Bangalore Development Authority— Indian Limitation Act, 1963- Article 64 & 65 – Where the plaintiffs claim to be the owners of suit property on the basis of inheritance, they cannot take the plea adverse possession over the very same property.

22. It is the settled propositions of law as per the ratio of the aforesaid decision of the Apex Court that, the defendants cannot claim their title over the suit properties simultaneously in two ways i.e. on the basis of inheritance and on the basis of adverse possession, because both the pleas are mutually inconsistent and destructive with each other and one plea among them cannot survive, unless other plea is renounced.

23. When the defendants have claimed their title over the suit properties through inheritance and adverse possession simultaneously and when as per law, the defendants are precluded under law to take the above both the pleas simultaneously and when the claim of title of the defendants over the suit properties through inheritance has already been discarded as per the discussions and observations made above, then at this juncture, their claim of title over the suit properties through adverse possession by the defendants has become unentertainable under law.

24. It is very fundamental in law that, plea/claim of adverse possession of the defendants itself is their admission to the title of the plaintiffs over the suit properties. So, the defendants have indirectly admitted to the title

of the plaintiffs over the suit properties by claiming their title over the suit properties through adverse possession.

On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

- (i) **2008 (3) CCC 173 (P. & H.)—Jagat Singh and others Vrs. Srikishan Dass and others—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 presupposes the title of the plaintiff over the suit land.
When the title of the plaintiff over the suit land is deemed to be admitted by the defendant, then the contention/argument of the defendant that, the suit property is not identifiable falls to the ground.
- (ii) **2008(4) CCC 239 (P&H)—Gurbax Singh Vrs. Karnail Singh—Adverse Possession**— The plea of adverse possession of the defendant necessarily implies the admission of the title of the plaintiff.
- (iii) **2005 (3) CCC 167 (Mad.)—Pappayammal Vrs. Palanisamy & Ors.**—Plea of adverse possession—A party can plead adverse possession, only when, he admits that, another party has got title.

In view of the principles of law enunciated in the ratio of the above decisions, by raising the above untenable plea of adverse possession, the defendants have ultimately admitted to the lawful ownership of the plaintiffs over the suit properties bringing adverse affects on their all claims raised by them (defendants).

25. On analysis of the facts and circumstances of the suit at hand, as per the discussions and observations made above, when it is held that, the findings and observations made by the Trial Court and the First Appellate Court entitling the plaintiffs to recover the possession of the suit

properties from the defendants are not erroneous in any manner, then at this juncture, the question of interfering with the same through this Second Appeal filed by the defendants (Appellants) does not arise. As such there is no merit in the Appeal of the Appellants. The same must fail.

26. In the result, the Second Appeal filed by the defendants/Appellants is dismissed of merit, but without cost.

The judgments and decrees passed by the Trial Court in T.S. No.85 of 1982 and First Appellate Court in T.A. No.7 of 1988 are confirmed.

Orissa High Court, Cuttack.
16th January, 2024//Utkalika Nayak//
Junior Stenographer

