

HIGH COURT OF ORISSA, CUTTACK

R.S.A. No. 300 OF 2003

From the judgment and decree dated 22.11.2002 and 05.12.2002 respectively passed by the learned Ad hoc Additional District Judge, (FTC), Rourkela in Title Appeal No. 16/7/98 of 2002.

Bhupatlal Tribhuban Das

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Appellant

Versus.

Chema Oram (dead) through his
L.Rs. Bisu Ekka @ Oram & ors.

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Respondents

For Appellant : M/s. S.N.Mohapatra,
K.R.Mohapatra, S.Ghosh, advocates.

For Respondents: M/s.R.N.Patnaik, R.N.Mishra,
D.K.Biswal, P.K.Nayak,
H.B.Das, B.C.Panda,
S.Mishra, J.N.Panda, L.Das,
advocates

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PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 19.06.2015 : Date of judgment: 30 .06.2015

The appellant in this appeal has challenged the judgment and decree passed by the learned Ad hoc Additional District Judge (F.T.C.), Rourkela in Title Appeal No. 16/7/98 of 2002 confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Rourkela in Title Suit No. 25 of 1992.

2. For the sake of convenience, to bring in clarity and avoid confusion, the parties hereinafter have been referred to as they have been arrayed in the trial court.

3. The appellant as the plaintiff had filed this suit for declaration of his right, title, interest and possession over the suit land and also for injunction.

It is the case of the plaintiff that he had purchased the suit land from one Bisu Ekka @ Oram for consideration a of Rs.95/-. The sale deed though was executed, the same was not registered and it was followed by delivery of possession of the suit land by Bisu in favour of the plaintiff. It is stated that the plaintiff developed the land and constructed the pucca house with asbestos roof and used the same as residence and a part for motor garrage purpose. During the settlement operation after enquiry, the land stood recorded in the name of the plaintiff and that was not challenged by the defendant. The plaintiff claims to be paying the holding tax to Rourkela Municipality. It is further stated that the defendant having no right over the properties when began to interfere with the peaceful possession of the plaintiff in respect of the suit land, the plaintiff found no other option but to file the suit.

4. The defendant in the written statement claimed the land in suit to be the joint ancestral family properties, wherein other co-sharers to be also having right, title and interest. It is further stated that there had never been any partition of the ancestral properties amongst the defendant and his co-sharers in metes and bounds at any point of time. The defendant claimed to be in possession of the suit land putting structure over it and letting out portion thereof to

the Proprietor of Murali Motor Works. It is stated that the said tenant was paying monthly rent of Rs.300/- and some time thereafter he unscrupulously parted with the possession of the suit land as was being used in favour of the plaintiff without knowledge and consent of the defendant. It is said that the plaintiff being successful in the said clandestine deal with the tenant of the defendant in entering into the possession of the suit house is continuing to remain as such. It is further stated that the plaintiff thereafter did not leave the possession. So there was a complaint by Deogi Oram, sister of the defendant as per the provision of Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956 and Revenue Misc. Case No. 06 of 1981 was initiated. By order dated 10.10.1991, the plaintiff was directed to vacate the possession and as such liable to be evicted. Also penalty of Rs.200/- was imposed on him for every year's unauthorised occupation. The plaintiff preferred an appeal bearing Revenue Appeal No. 03 of 1983 before the Additional District Magistrate, Rourkela, who after hearing, remitted the matter to the competent authority for decision afresh. The competent authority by order dated 25.07.1997 again held the occupation of the suit land by the plaintiff to be unauthorised and found him to be having no right, title and interest over the suit land.

It is further stated that the suit land belonged to Gosain Oram and Bandhu Oram. Gosain Oram was survived by his daughter, where as Bandhu Oram was survived by his four sons Bisu, Tunia, Godra

and Chema (defendants). With all these, defendant prayed to non-suit the plaintiff.

5. On such rival pleadings, the trial court framed as many as nine issues. Plaintiff examined himself as P.W.1, when from the side of the defendant, he has come to the witness box as D.W.1 and brought one more as D.W.2. Both sides proved the documents in support of their respective case which will be referred in course of discussion, if so found necessary.

Taking up the vital issues no. 2,3 and 4 relating to the plaintiff's right, title, interest and possession over the suit land on the basis of purchase from one Bisu Ekka @ Oram vide unregistered deed of sale dated 01.05.1954 together for decision, upon going through the evidence in the back drop of the rival case of the parties, the trial court answered those against the plaintiff. In view of that the findings on other issues have followed the same path.

6. Being aggrieved by the judgment and decree of the trial court, the unsuccessful plaintiff filed appeal which came to be heard by the learned Ad hoc Additional District Judge, Rourkela, wherein mainly finding of the trial court on issue nos. 2 to 4 were put to serious challenge. The lower appellate court upon hearing, has gone for analysis of the evidence on record and keeping in view the position of law has independently rendered answers on those issues ultimately remaining the same as that of the trial court and thus the plaintiff's suit has met with dismissal.

7. Following is the substantial question of law as has been formulated while admitting the appeal.

“Whether the Record of Right prepared in favour of the appellant during the settlement operation ought to have been accepted by the courts below since these were not challenged and set aside by the competent authority/court and the same have been prepared to be correct having remained un-rebutted without being proved to be incorrect.”

8. Learned counsel for the appellant submits that in this case the unregistered sale deed of the year 1954, Ext.1 has been duly proved by the plaintiff and the consideration involved being less than the sum of Rs.100/-, the same is a valid document clothing the plaintiff with the title in respect of the suit land. He contends that though the sale transaction had taken place without permission of the competent authority as required under Orissa Merged States Laws Act, 1950, which was in force then in the area since the vendor happens to be the member of an aboriginal tribe and the vendee non-aboriginal tribe, none the less, the possession having remained with the plaintiff since that date and when the plaintiff possessed the suit land as its owner peacefully and continuously for such long period, the courts below ought to have held that he perfected title by adverse possession which has been so recognised in the Record of Right of the last settlement to the knowledge of the defendant. It is contended that the courts below ought to have decreed the suit of the plaintiff, when

the Record of Right has also gone unchallenged for such long period, which carries with it the presumption of correctness. Therefore, he contends that the concurrent findings of the court below on issue nos. 2 to 4 are highly erroneous and as such cannot stand to scrutiny in the eye of law.

9. Learned counsel for the respondent on the other hand submits all in favour of the finding rendered by the courts below. According to him, there has been factual finding by the learned courts below disbelieving said Ext.7, the unregistered deed of sale and so the plaintiff's claim to have been in possession of the suit land by virtue of the same and to have continued with the possession pursuant to it has been rightly negated. In this connection, he has placed all those factual aspects which give rise to grave doubt over the genuineness of Ext.7. It is also submitted that the Ext.7 has not at all been proved so far as its execution is concerned, as also the payment of consideration.

He further contends that when as per the decision of the Apex Court in case of **Amarendra Pratap Singh vrs. Tej Bahadur Prajapati & ors**, 2004 (I) CLR (SC)-1 reiterated in case of **Lincai Gamango & others vrs. Dayanidhi Jena and others**; AIR 2004 SC-3457, the principle of adverse possession has been held to be not applicable to the case concerning the land belonging to the Scheduled Tribe situated in the Scheduled Areas, the courts below have rightly negated said claim of the plaintiff.

10. It is the settled position of law that the record of right prepared in the settlement operation does neither create nor extinguish the title. Admittedly in this case, the plaintiff's case so far as the title over the suit land is concerned is based upon the projected un registered deed of sale Ext. - 7. Both the courts below have on detail analysis of evidence on record found the un-registered deed of sale Ext. - 7 to be shrouded with suspicion. Thus, it has been held that execution of the sale by the vender who was an illiterate member of the aboriginal tribe has not been proved in accordance with law. Neither the scribe has been examined nor any witness to the said documents have been brought to the witness box. Admittedly the executants is an illiterate member of aboriginal tribe whose age is even not indicated in Ext. 7 and no proof stands on the score that the consideration was duly paid. Both the courts have gone for elaborate discussion of evidence in arriving at the finding against Ext.7. Nothing has been shown in course of hearing that the courts below have either overlooked material evidence or have taken into consideration some inadmissible evidence. In view of above, this Court finds no justifiable reason to hold the said finding of the courts below that by Ext. 7, the plaintiff has not been clothed with the title for being disturbed.

11. Now the question comes as to whether the plaintiff can be said to have acquired title by way of adverse possession having remained in possession on the basis of Ext. 7. In view of the decision of the Apex Court in case of Amarendra Pratap Singh (Supra) as also Lincai

Gomango and Others (supra), it can simply be said that such a claim of acquisition of title by way of adverse possession does not stand for consideration in the eye of law so far as the present case is concerned. Thus, the basis of claim of appellant being not found out to be sustainable in the eye of law the record of right prepared during the Major Settlement operation cannot be held as the trump card for the plaintiff for the purpose of the suit. The answers to the substantial questions of law thus are rendered that the courts below have rightly refused to accept the record of right and as such in the absence of any other evidence, being there from the side of the plaintiff to establish his title and entitlement to possess as of right, the claim of the plaintiff as laid in the plaint is found to have been rightly negated.

12. Resultantly, the appeal stands dismissed and in the facts and circumstances with cost throughout.

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D. Dash, J.