

HIGH COURT OF ORISSA, CUTTACK

R.S.A. No. 80 OF 2008

From the judgment dated and decree dated 14.12.2007 and 08.01.2008 respectively passed by the learned Ad hoc Additional District Judge, Kamakshyanagar in RFA No. 1/8 of 2007.

Amruti Kumari Das.

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Appellant

Versus.

State of Orissa & others

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Respondents

For Appellant : M/s. B.H.Mohanty, S.C.Mohanty,
J.K.Bastia, B.Das, R.K.Nayak,
D.P.Mohanty, T.K.Mohanty,
S.Berma, P.K.Swain,
advocates.

For Respondents : Mr. R.P.Mohapatra,
Addl. Standing Counsel.

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PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of hearing : 23.04.2015 : Date of judgment: 30.04.2015

This appeal has been preferred against the judgment and decree passed by the Ad hoc Additional District Judge, Kamakshyanagar in R.F.A. No.1/8 of 2007 confirming the judgment and decree passed by the learned Civil Judge (Sr. Division), Kamakshyanagar in C.S. No.69 of 2003.

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

3. The appellant is the unsuccessful plaintiff. It is her case that she was in possession of schedule 'A' and schedule 'B' land since the year 1961 and in the year 1963-64 she was granted with lease in respect of the land described in schedule 'A' of the plaint whereas her prayer for grant of lease was not acceded to by the State in respect of schedule 'B' land. However, she claimed to have remained in possession of schedule 'A' and schedule 'B' land as before. It is her case that she had reclaimed the land in total measuring Ac.3.72 dec. which is schedule 'A' and schedule 'B' land. Lease having been granted with respect to Ac.2.40 dec., of land the balance area measuring Ac.1.32 dec. remained with the lessor and the lessor did not part with any of the right over , thus the same by granting lease in favour of the plaintiff. So, he claims her right over schedule 'A' land on the basis of the said lease vide order in Lease Case No.701/1964 whereas he claims title with respect to schedule 'B' land by adverse possession for having remained upward of the statutory period in possession over the same openly, peacefully, continuously claiming title unto herself.

It is stated that defendant nos.3 to 5 created disturbances in her possession over schedule 'B' land and, therefore, she filed the suit for all these reliefs by giving prior notice to the State as required under section 80 of the Code of Civil Procedure.

4. The State resisted the claim of the plaintiff denying the acquisition of title by her by way of adverse possession and terming the

possession of the plaintiff to be that of a rank encroacher without any sort of right, thus remaining at the mercy of the State. It is also stated that proceeding for eviction has been initiated for such unauthorized occupation and order of eviction in accordance with law has been passed. Defence has been specifically taken that the very plea of adverse possession is not tenable in the facts and circumstances of the case. The defendant nos.3 and 5 have resisted the claim of the plaintiff by filing written statement.

The trial court has decreed the suit in respect of schedule 'A' land by allowing all the prayers made in the plaint by the plaintiff. However, the suit in respect of schedule 'B' land has been dismissed. The appeal being carried out by the plaintiff, the same has not yielded any fruitful result.

5. Learned counsel for the appellant submits that here on the basis of the admitted case of possession of the plaintiff over schedule 'B' land since the year 1961, the courts below ought to have presumed the same to be of adverse in nature. It is his further contention that when the plaintiff possession is proved to be open, continuous without any interruption from any quarter for such a long period, the courts below have erred in law by denying the plaintiff with the reliefs in respect of schedule 'B' land. Therefore, he urges that the following is the substantial question of law which requires to be answered in the case.

“Whether the courts below have rightly discarded the claim of defendant no.3 when the State even did not contest the claim by adducing the evidence for schedule ‘B’ property?”

6. On going through the judgments of the courts below, it is seen that both the courts have rendered the finding over the claim of acquisition of title by adverse possession by the plaintiff so far as the schedule ‘B’ land is concerned in the negative. For the purpose, the evidence adduced by the plaintiff both oral and documentary have been examined and those have been found to be deficient.

7. Be that as it may, let me examine the matter first accepting that the plaintiff has been in possession of the schedule ‘B’ property since 1961 all along till the suit in finding as to if her claim is still tenable or not. With this, the question arises whether she can be said to have perfected title over it by adverse possession. It is her own case that she went to possess schedule ‘A’ and schedule ‘B’ land at a time in one go in the year 1961. When she was continuing to be in possession, in the year 1964 she has accepted the settlement of the land in schedule ‘A’ in her favour. So, her possession with respect to the schedule ‘A’ land from the year 1964 remains as that of a lessee which in clear terms being in admission of the title of the lessor in view of the settled position of law is that the lessee is estopped from denying the title of the lessor. Thus, the peculiar situation stands that in respect of one part of the land the status of the plaintiff when stands as the lessee admitting the title of the lessor,

she claims her status in respect of the rest part which she had started possessing with the part which she was leased out at the same time claiming ownership and asserting so. That means when she accepted the title of the lessor in respect of one part she now as per her own claim goes to deny the title of the same lessor in respect of the other part right from the year 1961 prior to the grant of lease of a part. Thus, acceptance of the claim of the plaintiff would lead to say that either she is possessing the entire denying the title of the lessor, which is actually not a fact or that the leased part as lessee and the rest part with the same intention as that of a lessee but not as its owner. So, her case is that when she got the schedule 'A' land on lease, now accepting for a moment that she continued to possess schedule 'B' land as before, then also the nature of possession with respect to the schedule 'B' land can never be said to be by way of exhibition of any hostile animus, denying title of the true owner, who remains the lessor in respect of the contiguous land under schedule 'A' land. Had that schedule 'B' land been owned by someone else other than the lessor of schedule 'A' land, the matter would have been stood for consideration from a completely different angle. It almost seems absurd as if one will be remaining in possession of a part of holding on his status as member of joint family for convenience and the rest adjoining part would be possessed by that member by way of ouster of all other members of the family. I am afraid that entertainability of such a plea also

violates the very rule of morality and would stand to run against the canons of law.

7. In view of the aforesaid the very claim of the plaintiff on her own showing that she acquired title in respect of the schedule 'B' land by way of adverse possession lacks foundation in the eye of law. Thus, this Court finds no substantial question of law to be certified for being answered in this appeal for its admission. For the aforesaid, the appeal does not merit admission.

7. In the result the appeal stands dismissed. No order as to cost.

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D. Dash, J.

Orissa High Court, Cuttack
Date 30th April, 2015/Himansu.