

## HIGH COURT OF ORISSA: CUTTACK

**SA No.46 of 1988**

From the judgment and decree dated 27.11.1987 and 10.12.1987 respectively passed by Sri R.N. Bhuyan, learned Subordinate Judge, Khurda in Title Appeal No.15 of 1985 confirming the judgment and decree dated 4.10.1985 and 5.11.1985 passed by Sri S.K. Nanda, learned Munsif, Khurda in O.S. No.1 of 1984 (I).

Abbas Khan

• • • •

Appellant

*Versus*

Garibulla Khan &amp; another

• • • •

## Respondents

For Appellant

...

Mr. Bijan Ray, Sr. Adv.  
Mr. Sanjeev Das, Adv.

## For Respondents

...

Mr. P.K. Mohapatra, Adv.  
Mr. Dayananda Mohapatra, Adv.

## J U D G M E N T

**PRESENT:**

**THE HONOURABLE DR. JUSTICE A.K.RATH**

Date of hearing: 22.03.2018 : Date of judgment: 30.03.2018

**Dr. A.K.Rath, J** This is a defendant's appeal against confirming judgment.

**2.** Plaintiffs-respondents instituted the suit for declaration of title over the suit schedule properties, recovery of possession, mandatory and permanent injunction. Case of the plaintiffs is that they are brothers. The Tahasildar, Khurda granted lease in respect of Lot No.1 property in favour of the plaintiff no.1 in W.L. Case No.256 of 1980-81 and delivered possession to him. In W.L. Case No.2201 of 1980-81, the Tahasildar, Khurda granted lease in respect of Lot No.2 property in favour of plaintiff no.2 and delivered possession. Pattas had been issued in their favour on 25.4.1981. Accordingly, Khasmahal records had been corrected. They are in possession of the

suit schedule properties. They used to pay rent. Defendants have no semblance of right, title and interest over the same. They constructed a thatched house over a portion of the land and stacked paddy crops. With this factual scenario, they instituted the suit seeking the reliefs mentioned supra.

**3.** Defendant entered contest and filed a written statement denying the assertions made in the plaint. Case of the defendant is that the Tahasildar, Khurda had not observed the formalities in granting lease. No proclamation was issued. The land was in possession of his grandfather. After his death, his father was in possession of the land. Thereafter, he is in possession of the land peacefully, continuously and to the hostile animus of the plaintiffs for more than the statutory period and as such, perfected title by way of adverse possession. It was pleaded that the lease was granted in his favour in respect of Plot No.48 in W.L. Case No.309 of 1979-80. The description of the suit land is indefinite.

**4.** Stemming on the pleadings of the parties, learned trial court struck nine issues. Parties led evidence, both oral and documentary, to substantiate their case. Learned trial court decreed the suit holding, inter alia, that there was no procedural infirmity or illegality in granting lease in favour of the plaintiffs by the Tahasildar. Defendant had applied for lease of the land. He had not perfected title by way of adverse possession. Unsuccessful defendant appealed before the learned Subordinate Judge, Khurda, which was eventually dismissed.

**5.** The second appeal was admitted on the substantial questions of law enumerated in Ground Nos.A to G of the appeal memo. The same are -

“A. If the plaintiffs, who are purported lessees in respect of distinct pieces of Government land granted in different transactions can maintain one suit for declaration of title and recovery of possession against a trespasser.

B. If plaintiffs can maintain a suit to recovery possession of lease hold land without impleading the lessor-Government as a party to the suit.

C. If on vague and indefinite description of suit land in the plaint and evidence, the plaintiffs are entitled to a decree declaring title and recovery of possession.

D. If a report of the pleader commissioner based on perfunctory local enquiry without reference to village map is available to be accepted and relied as without an iota of corroboration on record.

E. If the assertion of adverse possession is available to be negated merely on the basis of a perfunctory report of pleader commissioner, who admittedly enquired without notice to defendant.

F. If the defendant who challenges the plaintiffs' title is competent to challenge the lease procedure and the validity of lease transaction through which the plaintiffs claim title.

G. If the court can ignore the admitted valuation of estimate a valuation to maintain its pecuniary jurisdiction over the suit.

**6.** Learned counsel for the appellant submitted that the plaintiffs are lessees in respect of different parcels of land. They cannot maintain one suit. No recovery of possession can be granted in the absence of lessor-State. Description of the suit land is vague and indefinite. The courts below have committed a manifest illegality in accepting the report of the pleader commissioner. The defendant is in possession of the suit land peacefully, continuously and to the hostile animus of the State for more than the statutory period and as such, perfected title by way of adverse possession.

**7.** Per contra, learned counsel for the respondents submitted that the lease was granted in favour of the plaintiffs. Defendant failed to prove the plea of adverse possession.

**8.** The Tahasildar, Khurda granted lease in respect of Lot No.1 property in favour the plaintiff no.1 in W.L. Case No.256 of 1980-81. Similarly, in W.L. Case No.2201 of 1980-81, the Tahasildar granted lease in respect of Lot No.2 property in favour of plaintiff no.2. Accordingly, pattas had been issued in their favour. They used

to pay rent. Mere possession of the suit land for long time is not suffice to hold that the defendant has perfected title by way of adverse possession, unless the classical requirements of adverse possession nec vi, nec clam, nec precario are pleaded and proved. The date of entry into the suit land has not been mentioned. Adverse possession is not a pure question of law, but blended with facts. The courts below, on an analysis of the evidence on record and pleadings, negated the defendant's plea of adverse possession. There is no perversity in the said finding. Further, the lease had been granted to the plaintiffs. State is neither necessary nor proper party to the lis. The suit schedule land has been properly described. It cannot be said that the report of the Commissioner is perfunctory. The substantial questions of law are answered accordingly.

**9.** A priori, the appeal fails and is dismissed. There shall be no order as to costs.

.....  
**DR. A.K.RATH, J**

*Orissa High Court, Cuttack.  
Dated the 30<sup>th</sup> March, 2018/Pradeep*