
(2019) 01 OHC CK 0049

In the Orissa High Court

Case No : Regular Second Appeal No. 89 Of 2008

Adikanda Behera

APPELLANT

Vs

State Of Orissa Represented By The Collector

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Citation : AIR 2020 (NOC 226) 77

Hon'ble Judges : A.K. Rath, J

Bench : Single Bench

Advocate : D.P. Mohanty, Swayambhu Mishra

Final Decision : Dismissed

Judgement

TA.K. Rath, J

1. This appeal at the instance of the plaintiff assails the affirming judgment dated 31.1.2008 of the learned 1st Addl. District Judge, Puri, in RFA No.

25/161 of 2007/2003 in a suit for declaration of title and the proceeding initiated against him under the provisions of Orissa Prevention of Land

Encroachment Act (in short "OPLE" Act) was without jurisdiction.

2. The case of the plaintiff was that the suit land was recorded in the name of the State of Orissa. His father reclaimed the same in the year 1934. He

was in possession of the same. Thereafter he is in possession of the suit land openly, peacefully and to the knowledge of the defendant and as such

acquired title by way of adverse possession. In the year 1982, he filed an application to grant lease in his favour. Accordingly, Balu Lease Case No.

18 of 1982 was initiated. But then, the Tahasildar initiated Encroachment Case No. 682 of 1982 against him. Order of eviction was passed. He filed

Appeal Case No. 1 of 1988 before the S.D.O., Puri, which is subjudice. In O.J.C.

No. 416 of 1996, the order of eviction has been stayed by this Court. With this factual scenario, he filed the suit seeking the reliefs mentioned supra.

3. The defendant was set ex parte. The plaintiff led evidence, both oral and documentary. Learned trial court came to hold that the plaintiff had not perfected the title by way of adverse possession. Unsuccessful plaintiff filed R.F.A. No. 25/161 of 2007/2003 before the learned 1st Additional District Judge, Puri, which was eventually dismissed.

4. This appeal was admitted on the following substantial question of law:

“Whether the general principle of giving the exact date of initiation of the adverse possession by the person claiming such possession, can be strictly adhered to, where the possession is an ancient one, beyond the memory of the person claiming such possession, especially when the possession is claimed from the time of the predecessor(s) of the person concerned.”

5. Mr. D.P. Mohanty, learned counsel for the appellant argues with vehemence that the suit land is the ancestral property of the plaintiff. The father of the plaintiff possessed the same since 1934. He had constructed a house over the suit land. Plaintiff had planted coconut and cashew nut trees. After the death of his father, plaintiff is in possession of the land peacefully, continuously and to the hostile animus of the defendant and as such perfected title by way of adverse possession.

6. Per contra, Mr. Swayambhu Mishra, learned ASC for the State submits that both the courts have concurrently held that the plaintiff had not perfected title by way of adverse possession. There is no perversity in the findings of the learned courts below.

7. Adverse possession is not a pure question of law, but a blended one of fact and law. In *Karnataka Board of Wakf v. Govt. of India*, (2004) 10 SCC 779, the apex Court observed as under:

“In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled

principle that a party claiming adverse possession must prove that his possession is â??nec vi, nec clam, nec precarioâ?, that is, peaceful, open and

continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must

start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who

claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum

of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person

pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and

establish all facts necessary to establish his adverse possession.â??

(emphasis laid)

8. The date of entry into the suit land has not been mentioned. Both the courts have concurrently held that the plaintiff has not perfected title by way

of adverse possession. These are essential findings of fact. There is no perversity in the findings of the courts below. The matter may be examined

from another angle. The plaintiff filed an application for grant of lease of the land in his favour in the year 1982, whereafter Balu Lease Case No. 18

of 1982 was initiated. The element of â??hostile animusâ?? is absent. The substantial question of law has been answered accordingly.

9. In the wake of the aforesaid, the appeal, sans merit, deserves dismissal. Accordingly the same is dismissed. There shall be no order as to costs.