
(2019) 01 OHC CK 0098
In the Orissa High Court
Case No : S.A. No.41 Of 1988

Balunkeswar Das

APPELLANT

Vs

State Of Orissa, Represented By The Collector, Koraput, Dist.-
Koraput

RESPONDENT

Date of Decision : 24-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 3

Citation : (2019) 01 OHC CK 0098

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

Bench : Single Bench

Advocate : T. K. Patnaik, Swayambhu Mishra

Final Decision : Dismissed

Judgement

DR. A.K.RATH, J

1. Â This is a plaintiff's appeal against a reversing judgment in a suit for declaration of title and confirmation of possession.

2. The case of the plaintiff was that the suit land was purchased by his mother by means of a registered Sale Deed No.3/44 dated 27.11.1944 for a

consideration of Rs.600/-. His mother's vendor had purchased the same by means of a Sale Deed dated 18.5.1922. The suit land and other lands

mentioned in the Sale Deed appertain to old Patta Nos.26 and 27. The settlement operation in the area was started in the year 1954. The plaintiff was

a minor. The suit land was recorded wrongly as a part of 'Patra Jungle' (bushy forest). In the year 1974, he came to know about the wrong

recording of the suit land in the ROR. On 1.9.1974, he issued a notice under Section 80 CPC to the Collector, Koraput and instituted the suit seeking

the reliefs mentioned supra.

3. The defendant entered contest and filed written statement denying the assertions made in the plaint. According to defendant, the suit land was not a part of the lands covered under old Patta Nos.26 and 27. The same was never transferred in either of the Sale Deeds. Plaintiff encroached upon the suit land, whereafter, the Tahasildar, Koraput initiated an Encroachment Case No.534/74 against the plaintiff.

4. Stemming on the pleadings of the parties, learned trial court struck seven issues. Parties led evidence, oral and documentary. Learned trial court decreed the suit holding inter alia that the suit land was a part and parcel of lands of Patta Nos.26 and 27. The same was transferred in favour of the vendor of the plaintiff's mother in the year 1922. Thereafter, the land was alienated in the name of his mother in the year 1944. They were in

continuous and peaceful possession of the suit land. The plaintiff has title over the suit land. Felt aggrieved, the defendant filed Title Appeal No.30 of

1985 before the learned District Judge, Koraput, Jeypore. Learned appellate court on a scrutiny of Sale Deed, Ext.2 came to hold that there was no

mention of Khata and Plot number. Only boundary has been given. Old Patta Nos.26 and 27 has not been exhibited. The Sale Deed has not been

accompanied with a trace map. There is no material on record to indicate that the suit plot no.495 has been described in the record of rights as

KAITHA GACHHA MECHHAKA. Plaintiff has not filed any other documents to show that the suit plot is locally known as such. In the

Record of Right of Holding No.26, there is nothing to presume the suit land is a part of Patta No.26. Item No.7 is no way correlated to the suit land.

Plaintiff has not filed any petition for demarcation of the suit land. There is no documentary evidence to connect the suit land with the lands described

in Item No.7 of Ext.2. The evidence adduced by the plaintiff is inconsistent with regard to description of boundary in absence of plot number, trace

map and extent of land mentioned in Ext.2. While describing the land in Item No.7, it is very difficult to trace out the land on the basis of inconsistent

description of land boundary by P.Ws.1, 2 and 3. Held so, allowed the appeal.

5. This second appeal was admitted on the following substantial questions of law :

A) As to whether Ext.2 which is a document of more than 30 years and whose genuineness is not in doubt can be negative throwing wrongly the onus on the plaintiff to prove that Ext.2 the Sale Deed covers the suit land.

B) As to whether the error of record committed by the learned lower appellate court vitiates the impugned judgment.

C) As to whether the judgment of the learned lower appellate Court is vitiated when it throws the onus on the plaintiff to prove that the suit land is covered under

Ext.2.

D) When Ext.2 is held genuine whether it confers right, title and interest over the suit property.

E) As to whether the interrupted possession of the plaintiff or her mother or of vendor of her mother confers a right in favour of the plaintiff of having perfected his

title by way of adverse possession.

F) As to whether a previous statement can be used as substantive evidence.

G) Where there is no evidence that the defendant interrupted in the possession of the plaintiff over the suit property, the title of the plaintiff is any way affected.â??

6. Mr. P. K. Patnaik along with Mr. Jagannath Patnaik, learned Senior Advocate for the petitioners and Mr. Swayambhu Mishra, learned Additional

Standing Counsel for the State.

7. Mr. Patnaik, learned counsel for the appellant submits that the vendor of the mother of the plaintiff purchased the suit land in the year 1922 by

means of registered Sale Deed. He was in possession of the same. He alienated the land to the mother of the plaintiff by means of registered Sale

Deed in the year 1944. Plaintiffâ??s mother was in possession of the same. Thereafter plaintiff is in possession of the land peacefully, continuously

and with hostile animus to the Government for more than 30 years. He further submits that the finding of the learned appellate court that the suit land

does not tally with the Sale Deed, Ext.2 is perverse. He further submits that the suit land has been described by boundary in the Sale Deed, Ext.2.

P.Ws.1 to 3 in their depositions clearly stated that the boundary of the suit land tally with the Sale Deed. The Sale Deed, Ext.2 is a 30 years old

document. Itâ??s genuineness is not in doubt. The learned appellate court committed a manifest error in law in holding that Ext.2 does not tally with

the suit schedule land described in the plaint. The finding is perverse.

8. Per contra, Mr. Mishra, learned ASC for the State submits that the suit land is

a government land. In Sale Deed, Ext.2, the description of the suit land has not been given. The same does not tally with the description of the suit land in the plaint. He further submits that plaintiff claimed title by means of a registered Sale Deed, but alternatively pleaded for declaration of title by way of adverse possession. The plea is mutually inconsistent.

9. On a scrutiny of the Sale Deed, Ext.2, it is evident that in the schedule no khata and plot number has been mentioned. The plaintiff has described the suit land as follows :

East : Gadabagudi village Sandhi

West : Lands of Basudev Misra

North : Lands of Rama Gouda and in possession of Raghunath Mishra

South : Lands of Ramanath Raiguru and the lands of plaintiff.

10. Order 7 Rule 3 C.P.C. provides that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

11. The description in the Sale Deed, Ext.2 is vague and indefinite. Thus, no title passes to the plaintiff.

12. The alternate submission of the learned counsel for the appellant that plaintiff has perfected his title by way of adverse possession is difficult to fathom. Claim to title and adverse possession are mutually inconsistent. In Annasaheb Bapusaheb Patil and others Vrs. Balwant alias Balasaheb

Babusaheb Patil (dead) By Lrs. and heirs and others, (1995) 2 SCC 543, the apex Court made an in-depth analysis of claim of title and claim to

adverse possession over the property. The apex Court held :

Where possession can be referred to a lawful title, it will not to be considered to be adverse. The reason being that a person whose possession can be referred to

a lawful title will not be permitted to show that his possession was hostile to

another's title. One who holds possession on behalf of another, does not by mere denial

of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a

lawful title, cannot divest another of that title by pretending that he had no title at all.â??

13. The apex Court in the case of Mohan Lal (deceased) through his LRs. Kachru and others Vrs. Mirza Abdul Gaffer and another, (1996) 1 SCC

639 held:

â??As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and

plead and prove 6 assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter

had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi nec clam nec precario.

Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under

the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.â??

14. The apex Court in the case of L.N. Aswathama and another Vrs. P. Prakash (2009) 13 SCC 229 held :

â??To establish a claim of title by prescription, that is, adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive,

open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself

would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse

possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the

requisite animus to possess the property hostile to the title of the true owner, the period for prescription will not commence.â??

(Emphasis laid)

15. The substantial questions of law are answered accordingly.

16. 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.

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