

(1964) 01 OHC CK 0008

In the Orissa High Court

Case No : Second Appeal No. 196 of 1962

Batakrishna Das Adhikari and Others

APPELLANT

Vs

Malati Das Adhikarini and Another

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Citation : (1965) 31 CLT 361

Hon'ble Judges : Das, J

Bench : Single Bench

Advocate : G. Ranga Rao and G. Narasimham, for the Appellant; R.N. Misra and R.C. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—This is a Defendants' appeal arising out of a suit for recovery of possession and for mesne profits.

2. Plaintiffs' case is that they are the owners of Schedule A property of which B schedule properties form a part. Defendants 1, 3, 5 and 6 filed a suit (Title Suit No. 203 of 1948) in the court of the Munsif, Berhampur, against the present Plaintiffs for declaration of title and for restraining them from interfering with their possession in respect of the suit-property. In that suit, the present Plaintiffs denied the title of the Defendants, claimed the suit-properties as their own and the Defendants who filed the suit lost their case at all stages including the second appeal in the High Court. During the pendency of the appeal at the first appellate stage, both parties to the suit filed a memo on 3-11-1950 mutually agreeing to remain in possession of some portions of the suit-properties without prejudice to their respective rights. By this arrangement, that present Defendants 1, 3, 5 and 7 remained in possession of the land described in Schedule B of the plaint while the Plaintiffs remained in possession of the rest of the lands. After the Defendants lost that suit, the Plaintiffs demanded on them to deliver possession of the same. The Defendants having failed to comply with their demand, the Plaintiff's have filed the present suit for recovery of

possession and for mesne profits amounting to Rs. 240/-.

3. Defendant No. 7 claimed to be only a Bhag tenant having no other interest in the land. The other Defendants denied the allegations made in the plaint, and claimed title to the suit lands by adverse possession.

4. Both the Court found against the Plaintiffs and passed a decree for recovery of possession. They allowed mesne profits to the extent of Rs. 80/- only and directed ascertainment of subsequent mesne profits until recovery of possession. It is against this concurrent decision of the courts below the present appeal has been filed by the Defendants.

5. Mr. Rao, learned Counsel for the Appellants, confined his argument to the question of adverse possession, which he attempted to make out as follows in a previous suit, stated above, Defendant No. 1 was appointed as a receiver. On 17-4-1930 when the judgment was delivered by the learned Munsif, the receiver was discharged, but at the appellate stage before the District Judge a memo was filed by the parties on 3-11-1950 agreeing to keep without prejudice the suit properties in possession of the present Defendants 1, 3, and 6 which was approved by the Court. In the aforesaid suit also the present Defendants raised the plea of adverse permission, but it was negatived by the Court on the ground that they were found to be in possession only since 1948 and by the date of theft suit a period of 12 years did not elapse. The main concoction of Mr. Rao is that the entire period for which the Defendant No. 1 remained in possession either as a receiver appointed by the trial Court or by mutual agreement as approved by the 1st appellate Court on 3-11-1950 in the previous suit, should be counted for the purpose of determining the period of adverse possession by the Defendants and further this period should be reckoned from the year 1943 when the Defendants came into possession of the suit land. This, however, is not permissible in law. It is well-settled that if possession is held by a receiver during the pendency of a suit, such possession shall be deemed to be on behalf of the successful party. Mr. Rao, however, contended that this doctrine cannot be pushed beyond certain limitations and relied upon a decision reported in *E.M. Agency Co. Limited v. It Order. Fazl Karim* 26 Calcutta 385. But it was held by their Lordships in that case also that the property in the hands of the receiver is in custodia legis for the person who can make out a title to it. The title of the real owner is in no way affected either in theory or in principle by his appointment. A receiver is aptly described as a hand of the Court and not as a representative or agent of the party or parties. No doubt, their Lordships also observed that the proposition cannot be universally accepted as correct under all circumstances. In this case, however, no special circumstances have been made out. The question whether the receiver's possession could be treated as the possession of the successful party for determines adverse possession came up for consideration Before the Supreme Court in a case reported in *P. Lakshmi Reddy Vs. L. Lakshmi Reddy*, their Lordships held that a receiver is an officer of the Court and is not an agent of any party, notwithstanding that in law his possession is ultimately

treated as the possession of the successful party on the termination of the suit. Their Lordships observed that the doctrine of the receiver's possession being that of the unsuccessful party, cannot be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of the receiver's possession to his subsequent adverse possession. In view of this position of law, the contention put forward by Mr. Rao, must fail. There is thus no merit in this appeal which is dismissed with costs. Appeal dismissed.