

(2002) 01 OHC CK 0036
In the Orissa High Court
Case No : S.A. No. 212 of 1999

Bhagaban Majhi Samanta and Others	APPELLANT
Vs	
Dinabandhu Singh Samanta	RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2002) 93 CLT 237

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard.

2. Defendants in Title Suit No. 96 of 1992 of the Court of Civil Judge (Jr.Division), Berhampur have preferred this second appeal as against the confirming judgment of the District Judge, Ganjam-Gajapati, Berhampur passed in Title Appeal No. 35 of 1997 vide the impugned judgment dated 30th March, 1999. Plaintiff is the respondent.

3. Plaintiff claimed for right, title, interest and possession over the disputed land on the basis of two registered sale deeds of 1991 vide R.S.D.Nos. 4114 and 4115. He claimed to have purchased the same for consideration from the true owner Nityananda who is the brother of Dibakar and their joint family severed by metes and bound because of an amicable partition in the year 1984, and in that partition the disputed property as well as other properties fell to the share of Harihar, and after his death, his son Nityananda succeeded. In their written statement defendant No. 1 who is the son of Dibakar, and defendants 2 and 3 who are sons of defendant No. 1 not only admitted to the inter se relationship with Harihar and Nityananda but also admitted about the amicable partition in the year 1948. The bone of contention in their defence was that the disputed suit land fell to their share and, therefore, Harihar or his son Nityananda had no

saleable right or interest to alienate that property in favour of the plaintiff. They also claimed exclusive possession over the disputed property.

4. To prove their respective case, both the parties adduced oral as well as documentary evidence. In that respect plaintiff examined himself as P.W.1, whereas defendants examined three witnesses including defendant No. 1 as D.W.1. In course of the trial, defendants also advanced evidence relating to relinquishment of the interest by Harihar in favour of the defendants' family as per Ext.A. Though the trial Court refused to consider the same on the ground that, that was an unregistered deed of relinquishment but on due perusal of the same learned District Judge construed the same to be a memorandum acknowledging previous partition which needs no registration. On assessment of evidence on record, while the trial Court found the case of the plaintiff to have been proved relating to right, title, interest and possession with Harihar and his son Nityananda and, therefore, on the basis of the registered sale deed with the plaintiff, the trial Court disbelieved the plea advanced by the defendants of having any right, title, interest and possession over the suit land. Accordingly, the suit was decreed. The first appellate court also took care to go through the evidence and the contention advanced by the defendants and on a thorough scrutiny of the same learned District Judge concurred with the factual finding recorded by learned Civil Judge (Jr.Division) to record the finding that a valid title and possession passed to the plaintiff with respect to the disputed case land.

5. That being the position, on being asked, learned counsel for the appellants states that the substantial question of law which is involved in this case is non-availability of corroborative evidence to support the evidence of the plaintiff and the overwhelming evidence of the defendants through three witnesses examined. This Court does not find that to be a substantial question of law in as much as for adjudication of the case the Court looks to the quality and. not to the quantity of the evidence.

6. In the case of Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, the Apex Court have held that :

"..... The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which Courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the Courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of Court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition."

For the reasons indicated in the impugned judgments, the evidence of P.W.1 was found corroborating to the documentary evidence and credibility of such acceptable evidence of the plaintiff has not been shattered or rebutted by the defendants or the evidence adduced by them. Similarly, the Courts below on discussion of the evidence on record have concurrently recorded that the plea raised by the defendants is not proved because of non-credible oral and documentary evidence.

7. Feebly though, learned counsel for the appellant also raised the issue of non-joinder of necessary parties, i.e., non-joinder of Nilyananda as a party to the civil proceeding. Such an issue was not raised, framed or decided by the Courts below. Apart from that, under the given facts and circumstances, Nityananda cannot be regarded as a necessary party. Keeping in view the aforesaid facts, this Court does not find that to be a ground to interfere with the impugned judgments or to record that as a substantial question of law.

8. Under such circumstances, the second appeal is not admitted and dismissed accordingly.

9. Second Appeal dismissed.