

(2019) 02 OHC CK 0066
In the Orissa High Court
Case No : R.S.A. No.402 Of 2007

Chintamani Nayak (Since Dead) Through Lrs	APPELLANT
Vs	
State Of Orissa Represented By The Collector, Sundargarh And Another	RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Indian Easements Act, 1882 — Section 60

Citation : (2019) 02 OHC CK 0066

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

Bench : Single Bench

Advocate : B.S. Panigrahi, R.P. Mohapatra

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This appeal at the instance of the plaintiffs assails the affirming judgment dated 21.7.2007 of the learned Adhoc Additional District Judge, Rourkela,

in RFA No.21/7 of 2004-2006 in a suit for declaration of title by way of adverse possession and in the alternative to protect his interest u/s. 60 of the

Indian Easements Act and certain other ancillary reliefs.

2. The case of the plaintiffs was that the suit land was lying fallow. His father reclaimed the suit land in the year 1965. He constructed a Kucha house

over the same. Thereafter he had constructed a residential house over the same in the year 1969. He used to pay holding tax to the Rourkela

Municipality. He is in possession of the suit land without any interruption from any quarter whatsoever. While matter stood thus, Encroachment Case

No.2 of 2001 was initiated against him by the Tahasildar on the basis of a false report of the Amin. He appeared before the Tahasildar and filed

show-cause along with some documents, but the same were not accepted by the Tahasildar. He filed a Mutation Case No.486 of 2001 before the Tahasildar, Rourkela, to mutate the suit land in his name. The R.I. made local inquiry at the spot and submitted a report that he was in possession of the suit land for more than 30 years. The Tahasildar dropped the mutation case. According to the plaintiff, he was in possession of the suit land continuously, uninterruptedly, openly with hostile animus to the defendants from the year 1969 and as such perfected title by way of adverse possession. Initiation of L.E. case was without any jurisdiction. On 13.01.2002, the Tahasildar along with his staff came to the suit land and threatened the father of the plaintiffs to vacate the suit land within 7 to 15 days. With the factual scenario, he instituted suit against the defendants seeking reliefs mentioned supra.

3. The Tahasildar, Rourkela, defendant no.2 filed his written statement denying the assertions made in the plaint. It was pleaded that plaintiff was in unauthorized possession of the government land, for which Encroachment Case No.2 of 2001 was initiated against him. Plaintiff had not filed any show-cause. As the claim of the plaintiff was not genuine, the Tahasildar dropped the mutation case. It is apt to state here that during pendency of the appeal, the appellant died, whereafter his legal heirs have been substituted.

4. Stemming on the pleadings of the parties, learned trial court struck seven issues. Parties led evidence, oral and documentary. Learned trial court came to hold that plaintiff has not perfected title by way of adverse possession. Plaintiff has no right, title and interest over the suit land. Unsuccessful

plaintiffs filed appeal before the ADJ, Rourkela, which was subsequently transferred to the Adhoc Additional District Judge, Fast Track Court,

Rourkela and renumbered as R.F.A. No.21/7 of 2004-2006. A contention was raised before the appellate court that judgments were cited before the

trial court, but the trial court did not refer to those judgments. The appellate court held that opportunity was provided to the plaintiff to place all

citations, but none of the decisions were cited before him. No conclusion has been arrived at by the trial court about adverse possession. From the

Aminâ??s report, it cannot be stated that plaintiff is in possession of the suit land for more than the statutory period. The appeal was eventually

dismissed.

5. Heard Mr. B.S. Panigrahi, learned counsel for the plaintiffs and Mr. R.P. Mohapatra, learned AGA for the State.

6. Adverse possession is not a pure question of law, but a blended one of fact and law. Mere possession of the suit land for long time is not suffice to

hold that the plaintiff had perfected title by way of adverse possession unless the classical requirements of adverse possession *nec vi, nec clam, nec*

precario are pleaded and proved. In *Karnataka Board of Wakf Vrs. Govt. of India and others*, (2004) 10 SCC 779, the apex Court held :

“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 "*nec vi, nec clam, nec precario*", 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.” (emphasis laid)

7. This Court in the case of *Nabin Chandra Mohanta (since dead) through L.Rs. Vrs. State of Orissa and others*, (R.S.A. No.396 of 2004, dismissed

on 22.02.2019) held that

10. In Gurdwara Sahib, the plaintiff-appellant filed the suit for decree of declaration to the effect that it had become the owner of the suit property by adverse

possession, correction of ROR and permanent injunction. The suit was partly decreed by the trial court granting relief of injunction. The first appeal against that part

of the judgment, whereby relief of declaration was denied was dismissed by the Additional District Judge. In the second appeal, the relief of declaration by way of adverse possession was denied holding that such a suit is not maintainable. The second appeal was dismissed. The matter travelled to the Apex Court. The Apex

Court held :

8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence (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. There is no perversity in the said findings. Otherwise also if the plaintiff is found to be in adverse possession, he cannot seek a declaration to the effect that such adverse possession has matured into ownership.

9. In the wake of aforesaid, the appeal is dismissed, since the same does not involve any substantial questions of law. No costs.

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