
(2019) 04 OHC CK 0006
In the Orissa High Court
Case No : R.S.A. No.91 Of 2009

Daitary Sha

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Orissa Prevention Of Land Encroachment Act, 1972 — Section 12, 12(1)

Citation : (2019) 04 OHC CK 0006

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

Bench : Single Bench

Advocate : D.P. Mohanty, Samapika Mishra

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J

1. This appeal at the instance of plaintiff assails the affirming judgment of learned Civil Judge (Sr. Divn.), Anandapur in R.F.A. No.4 of 2006.

2. Plaintiff instituted the suit for declaration of title, declaration that the order passed in Encroachment Appeal No.79/98 is illegal, inoperative and permanent injunction. The case of the plaintiff is that the State of Orissa is the paramount owner of the suit land. His father was in possession of the suit land since 15.10.1958. Since dissensions cropped up in the family, the plaintiff is separated from his father. He is in possession over the suit land peacefully, continuously and with the hostile animus to the defendants for more than the statutory period and as such perfected title by way of adverse possession. While the matter stood thus, the Tahasildar, Anandapur, defendant no.4, initiated Encroachment Case No.15/94 against him. After due inquiry, the land was settled in his favour, since he is a homesteadless person. Defendant no.1, a co-villager, filed Encroachment Appeal No.79/98

before the Sub-Collector, Anandapur, defendant no.3. On the basis of the perfunctory report submitted by the R.I., the defendant no.3 allowed the appeal and set aside the order of settlement passed in Encroachment Case No.15/94. With this factual scenario, he instituted the suit seeking the reliefs mentioned supra.

3. Defendant nos.2 to 4 filed written statement denying the assertions made in the plaint. It was pleaded that in the year 1994, the plaintiff had forcibly encroached upon the suit land. The Tahasildar, Anandapur initiated Encroachment Case No.15/94 against him. Without observing any paraphernalia, the Tahasildar settled the land in favour of the plaintiff. The order was set aside by the Sub-Collector, Anandapur in Encroachment Appeal No.79/98.

The plaintiff is not in possession of the suit land for more than 30 years.

4. Defendant no.1 filed written statement stating therein that the suit land is being used by the villagers for communal purpose. Prior to the settlement of the land, no notice was served on the villagers. After knowing the settlement of land in favour of the plaintiff, the villagers preferred appeal against the order of the Tahasildar, Anandapur before the Sub-Collector, Anandapur. The appeal was allowed.

5. Stemming on the pleading of the parties, learned trial court struck nine issues. To substantiate the case, plaintiff had examined two witnesses and on

his behalf four documents had been exhibited. Learned trial court dismissed the suit holding inter alia that plaintiff had not perfected title by way of

adverse possession. The court has no jurisdiction to declare the order in Encroachment Appeal No.79/98 as illegal and inoperative. Plaintiff is a

trespasser. He cannot claim relief of permanent injunction. Unsuccessful plaintiff filed R.F.A. No.4 of 2006 before learned Civil Judge (Sr. Divn.),

Anandapur, which was eventually dismissed.

6. The appeal was admitted on the following substantial questions of law.

â??(1) Whether the learned trial court committed an error of law in holding that the civil court has no jurisdiction to declare the order of the Sub-Collector in the encroachment appeal as illegal and inoperative and also has no authority to deal with the case and whether the learned lower appellate court has acted contrary to law in confirming the said finding ?

(2) Whether, as admittedly the land was settled in favour of the plaintiff in a case under the OPLE Act, being a Government land earlier, and the Government did

not

prefer an appeal against the said order of settlement, the learned lower appellate court has committed an error in confirming the finding of the learned trial court that

the State Government having better title over the suit land, the plaintiff is not entitled to the relief of permanent injunction as prayed for ?

(3) Whether in view of the materials available on record the learned courts below have erred in holding that there is no cause of action on the part of the plaintiff to institute the suit ?â??

7. Heard Mr. D.P. Mohanty, learned Advocate for the appellant and Miss Samapika Mishra, learned A.S.C. for the respondent nos.1 to 3.

8. Mr. Mohanty, learned Advocate for the appellant submits that the plaintiff is a landless person. He is in possession of the suit land peacefully,

continuously and with the hostile animus to the defendants for more than the statutory period and as such perfected title by way of adverse

possession. Encroachment Case No.15/94 was initiated against him by the Tahasildar, Anandapur. Plaintiff filed an application for settlement of the

land in his favour. Notice was duly published in the locality after observing paraphernalia. The Tahasildar, Anandapur settled the suit land in favour of

the plaintiff. The Government have not preferred any appeal. But then, the defendant no.1, a co-villager, filed appeal after lapse of four years from the

date of settlement. No leave of the court was taken. Learned lower appellate court proceeded to decide the appeal on merit and dismissed the same.

In view of the same, the order passed by the Sub-Collector, Anandapur in Encroachment Appeal No.79/98 is ex facie illegal.

9. Per contra, Miss Mishra, learned A.S.C. for the respondent nos.1 to 3 submits that in Encroachment Case No.15/94, the Tahasildar, Anandapur has

illegally settled the land in favour of the plaintiff. The same has been set aside by the Sub-Collector in Encroachment Appeal No.79/98. She further

submits that plaintiff is not a landless person. Notice was not duly published in the locality.

10. Before adverting the contentions raised by the parties, it is necessary to set out the provisions of Sec.12(1) of the Orissa Prevention of Land

Encroachment Act, 1972, (â??OPLE Actâ??).

â??12(1)â??"An appeal from any decision or order made under this Act by the

Tahasildar shall lie to the Sub-divisional Officer.â??

11. Sub-sec.(1) of Sec.12 of the OPLE Act provides that an appeal shall lie to the Sub-divisional Officer from any decision or order made by the

Tahasildar. Admittedly the suit land originally belonged to the Government. The public has substantial interest over the Govt. property. Any public,

who is essentially aggrieved by the order of settlement, can prefer appeal under Sec.12 of the OPLE Act. In the Encroachment Appeal No.79/98, the

plaintiff was respondent. Argument was advanced on merit in the appeal. The Sub-Collector, Anandapur came to hold that by order dated 17.6.1994,

the Tahasildar, Anandapur directed the plaintiff to file an affidavit. But the plaintiff failed to do so. General notice had not been duly proclaimed. The

father of the plaintiff, namely, Dharani Sa, had other landed properties. He is not a homesteadless or landless person. There is irregular settlement of

land. Thus it is too late in the day to contend that appeal at the behest of the villagers is not maintainable and no leave of the court was taken.

12. The civil court has plenary jurisdiction. Seventy-five years ago, the Privy Council in the case of Secretary of State vs. Mask & Co., AIR 1940 PC

105 held that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed

or clearly implied. It is also well settled that even if the jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the

provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial

procedure.

13. On a vivid analysis of the material on record, the Sub-Collector, Anandapur came to hold that there is irregular settlement of the land in favour of

the plaintiff. Opportunity of hearing was afforded to the plaintiff.

14. Adverse possession is not a pure question of law but a blended one of fact and law. Both the courts below concurrently held that the plaintiff had

not perfected title by way of adverse possession. There is no illegality or infirmity in the said finding. The substantial questions of law are answered

accordingly.

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

â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|â?|.