

(1970) 11 OHC CK 0004

In the Orissa High Court

Case No : Second Appeal No. 120 of 1967

Dinabandhu Sethi and Others

APPELLANT

Vs

Chintamani Sahu and Others

RESPONDENT

Date of Decision : 20-11-1970

Acts Referred:

Transfer of Property Act, 1882 — Section 8

Citation : (1970) 11 OHC CK 0004

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : G. Rath and R.K. Patra, for the Appellant; H.G. Panda and H. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The defendants are in appeal against the reversing decision of the learned Subordinate Judge, Aska in a suit for possession and recovery of mesne profits for the three previous years to the suit.

2. According to the plaintiff, he purchased 70 cents of land in Survey No. 70/3, 18 cents of land in Survey No. 72, and 12 cents of land in Survey No. 72/3 from the defendants 1 and 2 and one Manguli, since deceased, by a registered sale deed dated 15th April, 1953 (Ext. 1) for Rs. 500/-. His vendors delivered possession of 18 cents out of Survey No. 72/2. The plaintiff did not obtain possession in respect of the other properties purchased by him. He, therefore, claimed recovery of possession on the footing of title in Ext. 1 and recovery of mesne profits.

3. The defendants 6 and 11 are the sons of the defendant. No. 1 while the defendants 12 and 13 happen to be the sons of the second defendant. The defendants 3 and 4 are the sons and the defendant No. 5 is the wife of the deceased co-vendor Manguli. The defendants 1, 2, 3, 5 and 6 have filed a joint written statement and admitted the sale deed, but contended that what was

conveyed under Ext. 1 was 18 cents out of Survey No. 71/2, 12 cents out of Survey No. 72/2 and 61 cents out of Survey No. 73 all totalling 91 cents according to the record of rights and one acre by actual measurement. They contended that the plaintiff was not entitled to delivery of possession of Survey No. 70/3 as title therein was never conveyed under Ext. 1. A mistake, however, crept into the document and instead of Survey No. 73, Survey No. 70/3 was incorporated in the sale deed. The boundaries of what was actually intended to be sold have been properly given in the sale deed and delivery of possession in terms of the boundaries has also been given. Survey No. 70/3 having a total area of Ac. 3.54 decs. was purchased by the defendants from one E. Hadu Shorff and ever since then the defendants have been in continuous possession. Survey No. 73 is recorded in the revenue papers as Parityakta Bedakhali and the names of the defendants are put in the final record of rights. Apprehensive of his own title and possession over what was conveyed under Ext. 1, the plaintiff, instead of laying claim to Survey No. 73 has come to claim Survey No. 70/3 by virtue of mistaken incorporation of that survey number in the sale deed.

4. The defendants 4, 11, 12 and 13 who are all minors filed a separate written statement. While reiterating many of the contentions of the other defendants they contended that the disputed property was never sold to the plaintiff and the sale was for no consideration, or at any rate, the consideration money was not spent for the benefit of the minors and the claim in the litigation is barred by limitation.

5. The learned trial judge came to find that the plaintiff's claim was not sustainable. This conclusion was reached on the basis that when the dispute arose about identity of the lands, the boundaries prevailed and going by the boundaries the plaintiff has no claim.

6. The plaintiff appealed.

7. The learned Subordinate Judge in appeal came to find that Survey No. 73 did not belong to the plaintiff's vendor and as such the plaintiff, a bona fide purchaser for value, would certainly not have gone in for such a transaction by paying good money. The other reasoning which appealed to the lower appellate court was that in the sale deed in favour of the plaintiff it had been clearly stated that the disputed properties were acquired from E. Hadu Shorff and admittedly Survey No. 73 was not the property acquired from Shorff. Accordingly, the lower appellate court reversed the decree of the trial court and decreed the plaintiff's suit along with the mesne profits as claimed.

8. The present appeal is by some of the defendants.

9. Mr. Rath, learned counsel for the appellants raises a single contention, namely where there is a bona fide dispute about the identity of the land, whether to adopt the survey number or the boundary, the boundary is always to prevail. The learned appellate Judge did not attach importance to this consideration; on the other hand he relied upon an irrelevant consideration, namely that no prudent

son would ever buy a property like Survey No. 73 which belonged to the State and the vendor was not in possession of. He also contended -- relying on the evidence of the plaintiff himself -- that he was prepared to take delivery of possession according to the boundary given in his sale deed. Mr. Rath seeks to place reliance on a decision of their Lordships of the Supreme Court in the case of Sheodhyan Singh and Others Vs. Musammatt Sanichara Kuer and Others, and contends that in the facts of this case which are in all fours with the facts of the case before their Lordships in the reported decision, the mistake in the plot numbers would be treated as a misdescription and the identity should be established with reference to the boundaries. Their Lordships stated:--

"We are of opinion that the present case is analogous to a case of misdescription. As already pointed out, the area, the khata number and the boundaries -- all refer to plot No. 1060 and what has happened is that in writing the plot number, one zero has been missed and 1060 has become 160. It is also important to remember that there is no plot bearing No. 160 in khata No. 97. In these circumstances we are of opinion that the High Court was right in holding that this is a case of misdescription only and that the identity of the property sold is well established, namely that it is plot No. 1060. The matter may have been different if no boundaries had been given in the final decree for sale as well as in the sale certificate and only the plot number was mentioned. But where we have both the boundaries and the plot number and the circumstances are as in this case, the mistake in the plot number must be treated as a mere misdescription which does not affect the identity of the property sold".

10. The decision in this case would ultimately be on the finding as to what was the true intention of the parties when the sale was made. The feature which was relied upon by the lower appellate court to determine the identity of the property seems to be the really weighty and proper guide line. In Ext. I, it is clearly stated that the property as described in the schedule of Ext. 1 was acquired by the plaintiff from E. Hadu Shorff under a registered sale deed. From the materials on record, the learned appellate Judge has come to find that under the registered sale deed from Shorff Survey No. 73 or a portion thereof was not acquired by the vendor of the plaintiff. This fact goes a long way to determine the dispute and throws enough light to find out what the parties intended to deal with under Ext. 1. I think the learned appellate Judge has come to the right conclusion that the plaintiff is entitled to a decree in this case on the basis of the properties as described in the sale deed with reference to the plot numbers, because they were the very properties which were intended to be sold under Ext. 1. If there is any misdescription, it is in the boundary and not in the survey numbers. Normally, the description of the plot or survey number yields to the boundary when there is discrepancy between the two and the dispute regarding identity of the land arises. But in the present case, the features are quite different and that single important factor of the narration in the sale deed (Ext. 1) would clearly go to show that the vendors intended to convey title to Survey No. 70/3 and not Survey No. 73. Once this conclusion is reached, it emerges that there is no merit

in the second appeal. The appeal must fail.

11. I would accordingly dismiss this appeal and affirm the decree of the lower appellate Court. Both parties to bear their own costs in this Court.