
(2016) 05 OHC CK 0016

In the Orissa High Court

Case No : R.S.A. No. 264 of 2005(From the judgment and decree passed by the learned IInd Additional District Judge, Berhampur in R.F.A. No. 25 of 2004 (T.A. No. 25 of 2001 GDC) confirming the judgment and decree passed by the learned Civil Judge (Jr. Division), Ber

Dunna Bhima Raju & Others

APPELLANT

Vs

State of Orissa & Others

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) 163 AIC 773

Hon'ble Judges : Mr. D. Dash, J.

Bench : Single Bench

Advocate : M/s. S.S. Rao, B.K. Mohanty, N.C. Nayak, & A.P. Rath, Advocate, for the Appellant; M/s. R.K. Mohanty, D. Mohanty, A. Pr. Bose, A Das, S.K. Mohanty, S.N. Biswal, S. Mohanty, P.K. Samantaray, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. D. Dash, J.—This appeal has been filed against the judgment and decree passed by the learned IInd Additional District Judge, Berhampur in R.F.A. No. 25 of 2004 (T.A. No. 25 of 2001 GDC) confirming the judgment and decree passed by the learned Civil Judge (Jr. Division), Berhampur in Title Suit No. 152 of 1981.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to as they have been arraigned in the court below.

3. The original plaintiff having died during the suit, his legal representatives have been substituted in his place. The suit having been dismissed, they as the appellants had carried the first appeal and out of them one having died during the appeal, his legal representatives have also been substituted in that appeal. Thus now all of them are the appellants before this Court in this second appeal, wherein the confirming judgments and decrees of the courts below have been

called in question.

4. The plaintiff's case is that, he being the ex-service man of Indian Defence Service has been in cultivating possession of the suit land as described in the schedule annexed to the plaint comprising an area of Ac. 1.61 cents. It is further stated that in the revenue record, his possession has been noted to have been there for the last 30 years prior to the suit. It is his case that defendant no. 1 forcibly tried to enter upon the suit and destroy the crops standing thereon and defendant no. 2 having also acted in that direction, the suit has been filed seeking the following reliefs:-

(i) issuance of permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff over the suit land;

(ii) declaring the uninterrupted and continuous cultivating possession of the plaintiff for 35 years prior to the date of filing of the suit; and

(iii) seeking a direction to the defendant no. 1, the State to issue Patta of the suit land in favour of the plaintiff.

5. The defendant no. 1 in his written statement denied the factum of possession of the plaintiff for the length of period as averred in the plaint. Similarly, the existence of entry in the revenue record stands denied. It is stated that the plaintiffs having been found to be trespassers, encroachment case had been initiated and then the possession of the suit land being not with him, a portion of the suit land in piecemeal is said to have been settled by the State in favour of the defendant no. 2 and 17 others being displaced persons in RLE case No. 17 of 1976 to 34 of 1976. It is stated that move of the plaintiff is simply to grab the public property and nothing else .

The defendant no. 2 denying the plaint averments asserted to have got a portion of the suit land by way of settlement of the same in his favour by the State and claims to have been in possession of the same.

6. The trial court in view of the above rival case, framed number of issues and then going to decide issue no. 3 regarding the plaintiff's claim of re-claiming suit land since of the year 1943-1946 and as regards the right, title and interest of the plaintiff over the suit land, upon examination of the evidence, has answered it against the plaintiff. Next with regard to issue no. 4 and 5 relating to the claim of title over the suit land by way of a unregistered sale-deed said to have been executed by Abhimanyu Patnaik and his right, title, interest and possession of the land on the basis of the same on evaluation of evidence the answer has also gone against the plaintiff.

Lastly addressing the issue regarding the right, title interest and possession over the suit; as claimed by acquisition of the same by adverse possession and the entitlement to the relief of permanent injunction answer has also been returned against the plaintiff. On detail examination of evidence and upon their assessment, the answers to the other issues have accordingly followed the suite.

The suit thus stood dismissed.

In the appeal filed by the unsuccessful plaintiff, the lower appellate court besides going to examine the sustainability of the findings of the trial court has further found the plaintiffs to be not in possession of the suit land and holding that the said aspect is not required to be decided afresh as urged by the appellants before it, has finally concurred with the verdict of the trial court in non-suiting the plaintiff.

7. Learned counsel for the appellants attacking the findings of the courts below submits that the documentary evidence concerning the possession of the plaintiff being in custody of the State and those having not been traceable as reported by the State Authority, the oral evidence on the factum of possession of the suit land by the plaintiff over the period as asserted in the plaint ought to have been accepted by the courts below and for such open, peaceful, continuous and long period of possession of the suit land by the plaintiffs for upward of the period prescribed, a finding ought to have been rendered that the plaintiff has acquired title over the suit land by adverse possession and as such he ought to have been held to be entitled to the relief of injunction. These according to him are the substantial questions of law which arises in the case.

Learned counsel for the State placing the entire plaintiff's averments submits that there arises no substantial question of law in this appeal so as to be certified for its admission. He also submits that the claims of the plaintiff are not entertainable in law and even accepting the pleadings which are highly contradictory and which fall far short of the legal requirements even without looking at the evidence, the ultimate result of dismissal of the suit cannot be said to be a faulty one for being interfered with.

8. In addressing the rival submission and searching out the substantial question of law if so arises in this case, let me first of all look at the case set up by the plaintiff in the pleading. Para -4 of the plaint, relevant for the purpose, is to the effect that the plaintiff has been in cultivating possession of the suit land for the last 35 years and there remains entry in the revenue records about such possession spreading over a period of 30 years. It is next stated in Para -5(a) that the plaintiffs re-claimed the suit land and cultivated the same again. It is further stated that he acquired another portion of land extending to Ac. 1.61 cents in the name of his son who is now appellant no. 1 who was then a minor having purchased it from one Abhimanyu Patnaik. However, the interesting feature stands that, it is not stated as to what was the total extent of land under the sabik survey no. 37 of 2002.

On the other hand the suit land is stated to be measuring Ac. 1.61 cents and the land claimed to have been purchased from Abhimanyu is also stated as of the same extent. Nowhere, it is pleaded that these two portions of lands are separate from one another and as such distinct. Again, it is stated that the plaintiff's son is continuing to be in possession and enjoying the whole extent

including the suit land for more than statutory period on the principle of tacking. The plot number is stated to be the same. The Hal plot number is again shown to be the same. Be that as it may, at the end it is stated that the plaintiff has acquired title by adverse possession. On the factum of possession of the suit land by the plaintiff, the courts below have returned concurrent finding in the negative that the plaintiffs have failed to prove the factum of reclamation of suit land as asserted in the plaint and that being the basis of flow of possession to the plaintiff's hand in my considered view, the claim of possession of the suit land is per se not acceptable.

9. The settled position of law is that even mere possession of a piece of immovable property by a person for any length of time whatever it may be, does not give rise to a case of acquisition of title by adverse possession. The possession must be shown to have been open, peaceful and continuous and more importantly by exhibition of hostile animus denying the title of true owner and claiming the same unto himself, to the knowledge of the true owner.

In the present case, if just a glance is given to the Ext. 1 which is an application filed by the appellant no. 1 before the Tahasildar, the claim as alleged in the plaint with regard to the possession falls flat on the ground. An application had been filed in Encroachment Case No. 02 of 1976. Even if, it is stated that the application has been filed at the beginning of the year 1976, the period of possession as claimed, therein to be about 14 years by then which goes to show that the appellant no. 1 had claimed his possession over the suit land from the year 1966. The unregistered sale-deed has been proved from the side of the plaintiff as Ext. 10. A careful reading being given to the same, the description of the land made therein does not go to refer to the suit land and it is dated 15.04.1955. The vendor has also not made any mention therein as to since when he was in possession of the same. In the documents of encroachment cases such as LEC No. 21 of 1976 and 559 of 1993 proved from the side of the plaintiffs marked as Ext. 1 to 9; it is found that there has been payment of penalty for such illegal encroachment of the suit land which in turn clearly leads to say that the ownership and title over the suit land as to have been resting with the State stands admitted. Therefore, the possession of the suit land even if is said to be continuing to be with the plaintiffs thereafter, the same does not come to their rescue, favouring grant of any of the reliefs as prayed for in the suit. The courts below although have not touched the above aspects yet they, having made elaborate examination of evidence, being alive to the settled position of law when have non-suited the plaintiff at the ultimatum, this Court that there arises no such substantial question of law for being answered in this appeal. The aforesaid thus leads to conclude that the appeal does not merit admission.

10. The appeal is accordingly dismissed. No order as to cost. No order as to cost.