

(1963) 12 OHC CK 0026
In the Orissa High Court
Case No : Second Appeal No. 261 of 1962

Hadu Sahu and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 2, Order 2 Rule 3

Citation : AIR 1964 Ori 159

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : R.N. Misra, R.C. Patnaik and B. Harichandan, for the Appellant; A.G. (for No. 1), for the Respondent

Judgement

G.K. Misra, J.—The plaintiffs are the appellants against a judgment of reversal. Their case is that they are in enjoyment of the disputed lands which constitute part of survey plot No. 1288 in village Jhadenkuli in the district of Ganjam. An order of eviction has been passed by the Board of Revenue against the plaintiffs as en-croachers, u/s 7 of the Orissa Act XV of 1954. They allege that they have acquired title to the disputed lands by adverse possession by being in continuous exclusive possession for more than 60 years in their own right, title and interest. The case of the State of Orissa is that there was no acquisition of title by adverse possession.

2. The learned trial court decreed the plaintiffs' suit. But the learned lower appellate Court dismissed the suit holding that "the suit is bad on; account of multi-fariousness. He recorded a further finding stating,

"The oral evidence in this respect is also not cogent to arrive at a conclusion that the plaintiffs have been using the suit lands since more than 60 years. At any rate as per above discussions some of the plaintiffs might have acquired some such right and not all the plaintiffs and from the evidence of a few all cannot be benefited so as to get a decree in common."

3. In all there are 28 plaintiffs. Each of the plaintiffs set up a claim to a land in which the other plaintiffs are not interested. In order to succeed in the suit each plaintiff must establish that he has acquired a title to the disputed portion which he claims by adverse possession by continuous and exclusive possession in his own right, title and interest for more than 60 years. There is clearly a case of misjoinder of causes of action and misjoinder of parties in this suit. Mr. Misra placed reliance on *Radha Rani Dasi and Another Vs. Sukdeb Bhattacharjee and Others*, which lays down that subject to the control of the Court, persons can unite as plaintiffs though seeking individual reliefs in cases where the investigation would to a great extent be identical in each individual case and that the policy of the rule is to avoid needless expense where it can be done without injustice to anyone and it carries out its object. This principle is correct as far as it goes, but is not a panacea for all cases arising before the Court. Order 1, Rule 1 C. P. C. lays down; that all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions, is alleged to exist, whether jointly, severally or in the alternative where, if such persons brought separate suits, any common question of law or fact would arise. In the present case there is no common question of fact. Each plaintiff must establish acquisition of title by adverse possession and that is not common to any other plaintiff as all of them are not interested in any particular land. Even in the very case *Ext. 5* dated 9-9-1895 might take back one of the plaintiffs to a period of more than 60 years before the suit. But other plaintiffs who are not interested in this document cannot get any advantage out of it. Each plaintiff has separately to prove his own possession for more than 60 years. Clearly therefore in this case the joinder of all the plaintiffs amounts to mis-joinder. There is also mis-joinder of causes of action. The order of eviction passed against one plaintiff does not serve as a cause of action against another plaintiff in respect of another land. The learned Subordinate Judge took a correct view in holding that the suit is bad on account of multifariousness. *Radha Rani Dasi and Another Vs. Sukdeb Bhattacharjee and Others*, is clearly distinguishable on facts as both the plaintiffs interested in different plots of land inducted the same sets of tenants who claim similar rights against both the plaintiffs. *Atchi Reddi v. Venkatarangacharlu* AIR 1926 Mad 1140 relied upon by the learned Advocate General is more in point. Though the facts are not exactly identical, the principle applies.

4. The question arises as to whether the learned Subordinate Judge was right in dismissing the suit. Order 1, Rule 2 C. P. C. prescribes that where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient. The learned Subordinate Judge should have applied Order 1 Rule 2 C. P. C. and given the plaintiffs election as to which single plaintiff would be permitted to continue the suit and which other plaintiffs would file separate suits. I accordingly set aside the judgment of the learned Subordinate Judge and remand the case to the trial Court who would ask

the plaintiffs to make election under Order 1, Rule 2 C. P. C, and proceed in accordance with law thereafter. The State has been taking this objection all through. The plaintiffs are therefore liable to pay the costs of this Court to the State of Orissa.

Costs of the two lower Courts will abide the result.