
(1994) 07 OHC CK 0039
In the Orissa High Court
Case No : Second Appeal No. 279 of 1984

Harihar Mishra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : (1994) 78 CLT 703 : (1995) 2 OLR 101

Hon'ble Judges : D.M. Patnaik, J

Bench : Single Bench

Advocate : S.D. Das, for the Appellant; M.G.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

D.M. Patnaik, J.—The main question for determination before this Court is whether the plaintiff's suit based on adverse possession in respect of the suit land should be allowed since by the reversing order, the lower appellate Court has decided the case against the plaintiff and hence this second appeal.

2. The plaintiff claims that his late father Artatrana Misra had been adversely possessing the Government land bearing Sabik plot No. 2595 under Khata No.1167 of 1928 settlement measuring an area of 0.46 decimals corresponding to Hal Settlement plot No. 2040, Khata No. 77 of 1977 settlement measuring 0.43 decimals of mouja Biramchandrapur In the district of Puri. It is the further case of the plaintiff that although in 1928 settlement this land was recorded as "Sarba Sadharana", yet in the year 1930 his father late Artatrana Misra reclaimed the land and made it fit for cultivation and grew paddy crops and since then the father of the plaintiff had been possessing the suit land in his own right, title and interest which subsequently came into the possession of the plaintiff. In the Hal Settlement although the note of forcible possession of his father Artatrana Misra was mentioned, yet in the R. O. R. the nature of land was recorded as "Gochar" and the R. O. R. was prepared showing Government as the owner of the land. Aggrieved by this recording the plaintiff filed the suit for

declaration of his title, confirmation of possession and permanent injunction over the suit land.

3. In the written statement, the State of Orissa, the sole defendant in the case, admitted that Hal plot No. 2040 corresponds to Sabik plot No. 2595. It is admitted by the State that one Artatrana Misra had been in forcible possession of the land, but it denied the relation of the plaintiff as son of said Artatrana Misra.

4. The lower Court framed as may as 7 issues but, the main issue was Issue No. 4 under which after discussing the evidence on record it arrived at the conclusion that plaintiff had acquired title by adverse possession.

This finding of the trial Court was reversed by the lower appellate Court on the ground that the evidence of PWs 1, 2 and 3 was not credible. With regard to the evidence of PW 1, the plaintiff, the lower appellate Court observed that he was not born by 1930 when as alleged, his father Artatran Misra reclaimed the land. PW 2's evidence was disbelieved on the ground that there was no evidence before the Court to hold that the said witness had his land at or near the disputed land. PW 3's evidence was discarded on the ground that he could not have any knowledge about the possession of Artatran Misra in 1930 because of his tender age by that time.

5. Mr. S.D. Das, learned counsel appearing for the plaintiff-appellant, with reference to the evidence on record, submits that in view of the nature of claim and evidence lead with regard to adverse possession there was no reason for the lower appellate Court to reverse finding so given by the trial Court.

Countering the argument of Mr. Das, Mr. G. K. Mohanty, learned Standing Counsel, submits that there is nothing wrong in the Judgment of the lower appellate Court inasmuch as the lower appellate Court has given adequate reasons for not accepting the evidence of the witnesses.

6. Having gone through the evidence on record I do not find any reason for which the appellate Court should have taken a different view than the one taken by the trial Court.

The lower appellate Court committed an error in not taking into considerate the forcible possession of said Artatrana Misra as mentioned in the remarks column of the ROR of the year 1977 in which the disputed land was recorded as "Gochar" and was kept in the Anabadi Khata of the Government. Even assuming, as held by the lower appellate Court, the evidence of the PWs was incredible, yet this note of forcible possession of Artatrana Misra from the year 1945, was an important piece of evidence of possession in favour of the plaintiff. This aspect of the evidence by the appellate Court is found conspicuously absent. No doubt, the appellate Court has rightly observed that this ROR of the year 1977 did indicate the nature of land and the proprietary right of the State, but the main issue with regard to the question of adverse possession has been amply proved by this document which is a public document. Even if the forcible possession is counted

from the year 1945 as indicated in Ext. 5, the ROR, by the time of filing of the suit in the year 1980 the plaintiff had perfected his title by adverse possession for having possessed the suit land for more than 30 years.

7. The lower appellate Court for no justifiable reason discussed the point relating to the vesting of the suit land with the Government under the Orissa Estates Abolition Act and the rights of the parties there under. This was wholly uncalled for. The Government did not raise this point in the written statement. Appropriately therefore the lower Court did not frame any issue. It was not proper for a Court to bring out a case not pleaded by a party. Courts are only supposed to decide the point at issue between the parties. It is not the function of the Courts to plead a case for the party. Further the lower appellate Court was totally oblivious to the legal proposition that in arriving at a conclusion whether a particular estate had vested with the State or not, one has to travel a bunch of facts such as, whether the particular estate is an estate, whether the person concerned is an intermediary and whether there has been a notification under the OEA Act and so many other things. By giving a finding that the estate had vested with the Government, the lower appellate Court seems to have come to a conclusion as if these facts had been proved. This was wholly erroneous.

Therefore, the finding of the trial Court that the plaintiff did perfect his title by adverse possession is correct and is affirmed.

8. It is submitted by Mr. G. K. Mohanty, learned Standing Counsel, that nothing has been borne out in the record to connect the present plaintiff as a successor of said Artatrana Mishra. It is further stated that since no issue was framed in this regard the case should be remanded

I am not inclined to accept this contention of Mr. Mohanty since this is well settled that once parties have led evidence touching the issues in question, the question of framing issue remains merely academic. The plaintiff himself stated in his evidence to be the son of Artatrana Misra and this was not challenged in the cross-examination. PW 2 stated that there was no other Artatrana Misra in village Biramchandrapur except the father of the plaintiff. This was also not challenged in the cross-examination. There was nothing which prevented the Government to adduce evidence to the contrary. Hence the finding of the Courts below in that regard cannot be assailed.

9. In the result, there is merit in the second appeal and the same is allowed. The Judgment of the lower appellate Court is set aside and that of the trial Court is affirmed. In the peculiar facts and circumstances of the case parties to bear their own cost throughout.