

(1963) 12 OHC CK 0033
In the Orissa High Court
Case No : Second Appeal No. 319 of 1962

Laksbman Das and Others	Vs	APPELLANT
Jagannath Das and Others		RESPONDENT

Date of Decision : 24-12-1963

Acts Referred:

Citation : (1965) 31 CLT 288

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Advocate : A.B. Roy and S.C. Palit, for the Appellant; H. Sen, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is an appeal from, the judgment of the Subordinate Judge of Sambalpur confirming the judgment of the Munsif of Bargarh and dismissing the Plaintiff's suit for declaration of title and I recovery of possession of the suit property.

2. The Plaintiff claimed to be the sole owner of Hamid Settlement plot No. 999 having an area of 8.20 acres and Hamid Settlement plot No. 298 having an area of 3.02 acres in village, Guda Sera, and prayed for recovery of possession from the Defendants and for other consequential reliefs. The Defendants are none else but his own brothers and their sons. The Plaintiff's case was that after the death of his father, Ghasi Das, there was partition amongst the brothers sometime in 1907 or 1908 and since then each of the brothers was in separate possession of the lands allotted to his share. The Plaintiff was given 8.02 acres of Hamid Settlement plot No. 400 which was their ancestral property but he applied for exchange to the Deputy Commissioner in Revenue Case No. 5/1(a) 34 of 1932-33 and the Deputy Commissioner permitted exchange of that plot for plot No. 999 having an equivalent area. He thus claimed exclusive title to plot No. 999. As regards plot No. 298 his case was somewhat inconsistent. In the plaint it was admitted to be ancestral property but it was stated that it felt to his share

but while giving evidence the Plaintiff claimed that this was his own self-acquisition after partition. The Defendants however urged that the Plaintiff was entitled only to half of plot No. 999 (eastern half) having an area of 4.10 acres the remaining half belonging to Defendant No. 1. They denied the Plaintiff's title to any portion of plot No. 298.

3. As the Plaintiff clearly admitted in his plaint that he was dispossessed and brought the suit for recovery of possession, it was clearly his duty to prove subsisting title, i.e. possession within 12 years of the commencement of the suit. For that purpose, he relied mainly on Hamid Settlement entries, the land acquisition proceeding in which a small portion of the disputed properties was acquired by Government, the rent receipts and the oral evidence of his witnesses. The Defendants however contended that in the Settlement records the name of the Plaintiff alone was recorded in plot No. 298 because he was the eldest brother and that their rights arising out of the previous partition were not in any way affected. Similarly, as regards payment of rent their case was that all the co-sharers used to make contributions and the rent was paid in the name of the Plaintiff. As regards the land acquisition proceedings also they stated that the Revenue Officers issued notice in the name of the Plaintiff. because his name was recorded in the Settlement entry.

4. In this dispute amongst co-sharers, the question of actual possession is of paramount importance because admittedly the family had separated by metes and bounds long ago. The trial Court after an exhaustive scrutiny of the evidence, oral and documentary, held that though there were unsatisfactory features in the evidence of both parties, nevertheless, the Plaintiff failed to establish possession within 12 years of the suit and the Defendants' possession "when read in the light of circumstances appears probable and nearer the truth". The lower appellate Court's discussion of the evidence is not satisfactory, but he has completely endorsed the finding of the trial Court.

5. Mr. Roy for the Appellant could not give any satisfactory reason for this Court, in second appeal, to interfere with the concurrent findings of fact on the question of possession. This is a pure question of fact. Merely because the appellate Court's discussion is not as thorough as that of the trial Court, I will not be justified in interfering with his finding. Once it is held that the Plaintiff has failed to prove his possession within 12 years except in respect of the eastern half of plot No. 999, his suit for declaration of title and recovery of possession must fail.

The appeal is therefore dismissed but without costs.