
(2019) 03 OHC CK 0023
In the Orissa High Court
Case No : RSA No.130 Of 2008

Mandardhar Sahu

APPELLANT

Vs

Government Of Orissa & Others

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Orissa Prevention Of Land Encroachment Act, 1972 — Section 16

Citation : (2019) 03 OHC CK 0023

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : R.K. Mohanty, Swapnesh Mishra, R.P. Mohapatra

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This is a plaintiff's appeal against confirming judgment in a suit for declaration of title, orders dated 3.1.2001 and 29.5.2002 passed by the Tahasildar, Baramba in Encroachment Case No.1 of 2001 and Sub-Collector, Athagarh in

Encroachment Appeal No.2 of 2001 respectively are null and void and permanent injunction.

2. Case of the plaintiff is that the suit land is a part of Sabik Plot No.1803, Ac.0.07 dec. of Mouza-Maniabandha. He is in possession of the suit land from Dusehera, 1969. He had constructed two rooms over the suit land and opened an

Ayurvedic shop on Kartika Purnima day of the year 1969. While matter stood thus, Tahasildar, Baramba, defendant no.3, initiated Encroachment Case No.1 of 2000 against his son in respect of Ac.0.10 dec. of land though he is in possession

of Ac.0.02 dec. of land. Order of eviction was passed. He assailed the same in Encroachment Appeal No.2 of 2001 before the Sub-Collector, Athagarh, which was dismissed. According to the plaintiff, he is in possession of the suit land

peacefully, continuously and with hostile animus to the defendants and, as such, perfected title by way of adverse possession.

3. Defendants entered contest and filed a written statement denying the assertions made in the plaint. It was pleaded that the plaintiff was not in possession over the suit land. Encroachment Case No.1 of 2000 was initiated against the son of

the plaintiff in respect of Plot No.25. Order of eviction was passed, which was confirmed in Encroachment Appeal No.2 of 2001.

4. On the inter se pleadings of the parties, learned trial court struck six issues. To substantiate the case, plaintiff had examined five witnesses and on his behalf, eighteen documents had been exhibited. No evidence was adduced by the

defendants. On an analysis of the evidence on record and the pleadings, learned trial court came to hold that the plaintiff had not acquired title by way of adverse possession. Unsuccessful plaintiff filed RFA No.62 of 2004 before the learned

1st Addl. District Judge, Cuttack, which was eventually dismissed.

5. Heard Mr. Ramakanta Mohanty, learned Senior Advocate along with Mr. Swapnesh Mishra, learned counsel for the appellant and Mr. R.P. Mohapatra, learned Addl. Government Advocate for the State.

6. Mr. Mohanty, learned Senior Advocate for the appellant submits that the plaintiff is in possession over the suit land since 1969. He had constructed two rooms over the suit land and opened an Ayurvedic shop. He is in possession of the land

peacefully, continuously and with hostile animus to the defendants and, as such, perfected title by way of adverse possession. Initiation of encroachment case is bad in law. Notwithstanding the order of eviction, the suit is maintainable.

7. Per contra, Mr. Mohapatra, learned AGA supports the judgments passed by the courts below.

8. The question does arise as to whether the plaintiff can institute the suit for declaration of title on the basis of adverse possession ?

9. Taking a cue from the decision of the apex Court in the case of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669, this Court in Nabin Chandra Mohanta v. State of Orissa (R.S.A. No.396 of 2004 disposed

of on 22.02.2019) held :

10. In Gurdwara Sahib, the plaintiff-appellant filed the suit for decree of declaration to the effect that it had become the owner of the suit property by adverse possession, correction of ROR and permanent injunction. The suit was partly decreed by the trial court

granting relief of injunction. The first appeal against that part of the judgment, whereby relief of declaration was denied was dismissed by the Additional District Judge. In the second appeal, the relief of declaration by way of adverse possession was denied holding

that such a suit is not maintainable. The second appeal was dismissed. The matter travelled to the Apex Court. The Apex Court held:

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured

into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a

shield/defence.”

The same is ratio decidendi. The High Court is bound under Article 141 of the Constitution of India.

(emphasis laid)

11. In no uncertain terms, the Apex Court held that even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant

and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence. The same is ratio decidendi. The High Court is bound under Article 141 of the Constitution of India.

xxx

xxx

14. In *State of Orissa vs. Bhanumali (Dead) Nurpa Bewa and others*, AIR 1996 ORISSA 199, a question arose that whether the decision of the Revenue Officer in the proceeding under the Orissa Prevention of Land Encroachment Act will operate as res judicata in the

subsequent suit filed by the plaintiff for declaration of title and recovery of possession. This Court held that the decision of the Revenue Officer in the proceeding under the Orissa Prevention of Land Encroachment Act can neither operate as res judicata nor Sec.16

thereof can stand as a bar relating to the question of title in the subsequent civil suit by the plaintiffs. But then, in view of the decision of the Apex Court in the case of Gurdwara Sahib (supra), the plaintiff cannot maintain the suit for declaration of title by way of

adverse possession.â??

10. The matter may be examined from another angle. The date of entry into the suit land has not been mentioned. Mere possession of the suit land for long time is not suffice to hold that the plaintiff had perfected title by way of adverse

possession, unless the classical requirements of adverse possession nec vi, nec clam, nec precario are pleaded and proved. Both the courts, on a threadbare analysis of the evidence on record as well as pleadings, negated the plea of adverse

possession. There is no perversity or illegality in the findings of the courts below.

11. Resultantly, the appeal fails and is dismissed, since the same does not involve any substantial question of law.

â?|â?|â?|â?|â?|â?|â?|â?|..