

(2018) 04 OHC CK 0001
In the Orissa High Court
Case No : SA No.226 of 1991

MANGUTU BHOTRA AND ANOTHER APPELLANT
Vs
BONU BHOTRA AND ANOTHER BONU BHOTRA AND ANOTHER RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 145

Citation : (2018) 04 OHC CK 0001

Hon'ble Judges : Dr. A.K. RATH

Bench : Single Bench

Advocate : Jyoti Ranjan Das, N.K. Barik

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J.

1. Defendants are the appellants against a confirming judgment. Â

2. Plaintiffs- respondents instituted the suit for declaration of title over the suit property and recovery of possession. Plaintiff nos.2 and 1 are related as father and son. The case of the plaintiffs was that the suit land was recorded in the names of Mitu Bhotra, father of plaintiff no.2 and his brothers, Madhu and Mangra. During lifetime of the recorded tenants, there was a family settlement. The suit land fell to the share of Mitu. The plaintiffs succeeded to the suit land after death of Mitu. They are in possession of the suit land. Â The defendants have no semblance of right, title and interest over the suit land. They created disturbance in their peaceful possession. Thereafter, the plaintiffs initiated a proceeding under Sec.145 Cr.P.C. before the Executive Magistrate. The said proceeding was terminated in favour of the defendants, who claimed to have purchased the land from the previous

owner by means of registered sale deeds.

3. The defendants entered contest and filed a written statement stating, inter alia, that the suit land with boundaries, which is described in the plaint

schedule, was called as Pakhanamunda. The same was recorded in the name of Dasamanta Mirgan. Â Dasamanta sold a portion of Pakhanamunda

land to defendant no.1 by means of a registered sale deed in the year 1965 and delivered possession. The name of defendant no.1 was mutated.

Subsequently, defendant no.2 purchased the remaining portion of the suit land from Lachu Mirgan, son of Dasamanta by means of a registered sale

deed in the year 1972. His name was mutated. They are in possession of the land.

4. Stemming on the pleadings of the parties, learned trial court struck seven issues. Parties led evidence, oral and documentary, to substantiate their

case. The suit was decreed on contest. Aggrieved by the judgment and decree of the learned trial court, the defendants filed T.A. No. 34/89 before

the learned District Judge, Koraput, Jeypore, which was subsequently transferred to the court of learned Additional District Judge, Koraput, Jeypore

and re-numbered as T.A. No. 34/37 of 1989. The judgment and decree were set aside and the suit was remitted back to the learned trial court for

fresh disposal with a direction to appoint a civil court commissioner for measurement of plot nos.1431, 1468 and 1469 and to find out the plot numbers

and boundaries on four sides of each plot and whether mango trees are standing over plot no.1431 or bit stones of 5 ft. and 10 ft. height. Liberty was

granted to the parties to adduce evidence. After remand, learned trial court deputed a civil court commissioner for measurement of the land. The

commissioner submitted the report. The same was accepted and marked as exhibit. The parties adduced further evidence. Learned trial court, on an

analysis of the evidence, both oral and documentary, came to hold that the suit plot given in the plaint is covered under the boundary as mentioned in

the plaint. The sale deed executed by Dasamanta and Lachu in favour of the defendants are not with respect to the suit land, but with respect to plot

nos.1468 and 1469 appertaining to Khata No. 57. The defendants have not acquired title over the suit land. The plaintiffs have right, title and interest

over the same. Held so, it decreed the suit. Feeling aggrieved, defendants filed T.A. No. 10 of 1991 before the learned Additional District Judge,

Koraput, Jeypore, which was eventually dismissed.

5. The Second Appeal was admitted on the following substantial questions of law:-

â??Whether the judgments of the courts below have been vitiated for non-consideration of material evidence on record which, the learned counsel for the appellants point out, are Exts.7, G and K ?â??

6. Mr. Jyoti Ranjan Das, learned counsel on behalf of Mr. P.K. Pattnaik, learned Senior Advocate for the appellants submitted that the learned

appellate court fell into patent error of law in accepting the report of the commissioner. The commissioner has not adopted the established procedure

of survey. Without scrutinising the same, learned appellate court accepted the report mechanically. The lands purchased by the plaintiffs and

defendants are contiguous. Learned appellate court committed a manifest illegality and impropriety in relying on the report of the commissioner

without scrutinising the documentary evidence on record.

7. Per contra, Mr N.K. Barik, learned counsel for the respondents submitted that the commissioner has adopted a proper procedure while measuring

the land. The report was accepted. Considering the evidence on record and pleading, learned trial court allowed the suit. There is no perversity in the

findings of the courts below.

8. On a threadbare analysis of evidence on record as well as pleadings, learned appellate court came to hold that the defendants had purchased

Ac.1.93 cents of Pakhanamunda land, out of Ac.2.14 appertaining to plot nos. 1468 and 1469 from the recorded owners by means of registered sale

deeds, vide Exts.A and C. Plaintiff no.2 had purchased Ac.0.60 cents of land out of the said plots by means of a registered sale deed vide Ext.3.

Learned trial court deputed a civil court commissioner for measurement of the land. The commissioner measured the land including the suit plot and

submitted a report. The defendants filed objection to the same. The commissioner was examined as a court witness. The writ of commission, service

copy of notice, spot measurement map, field book, spot trace map and the report had been marked as Exts.I to VI respectively. The report was

accepted by the learned trial court. The report revealed that the boundaries of suit plot no.1431 and plot nos.1468 and 1469 of the defendants differ

from each other. The report further revealed that the boundaries of the suit plot

no.1431 tally with the boundaries of the suit land given in the plaint.

There was no stone of 5 ft. and 10 ft. height on suit plot no.1431, but there was a mango tree on the northern side of the said plot. It further held that

in view of the report of the commissioner and the admission of D.Ws.2 and 3, the suit land with the boundaries mentioned in the schedule of the plaint

belongs to the plaintiffs. The suit land appertains to plot no.1431 under Khata No.116 and not the land of the defendants appertaining to plot nos.1468

and 1469 under Khata No.57. Learned appellate court concurred with the findings of the learned trial court and dismissed the appeal. There is no

perversity in the findings of the courts below. The substantial question of law is answered accordingly.

9. In the wake of aforesaid, the appeal, sans merit, deserves dismissal. Accordingly, the same is dismissed. There shall be no order as to

costs.Â Â Â Â Â Â Â Â Â Â Â