
(2024) 02 OHC CK 0067
In the Orissa High Court
Case No : R.S.A. No.320 Of 2016
Md. Mumtaz Vs Mustaque Ahamad ?

Date of Decision : 08-02-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 96, 100

Citation : (2024) 02 OHC CK 0067

Hon'ble Judges : D.Dash;J

Bench : Single Bench

Advocate : Sidhartha Mishra 1

Final Decision : Dismissed

Judgement

D.Dash,J

1. The Appellant, by filing this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and preliminary decree dated 31st March 2016 and 8th April 2016 respectively passed by the learned 1st Additional District Judge, Rourkela in R.F.A. No.09 of 2015.

The Respondent as the Plaintiff had filed Civil Suit No.233 of 2012 in the Court of learned Civil Judge (Senior Division), Rourkela arraigning the Respondent as the Defendant. The suit is for partition of the suit property in allotting equal share to the Respondent (Plaintiff) and the Appellant (Defendant).

The suit having been preliminarily decreed on contest the Appellant (Defendant) being aggrieved had carried Appeal under Section-96 of the Code, which has also been dismissed. Hence, the present Second Appeal is at the instance of Appellant who has remained as the unsuccessful Defendant in both the Courts below having failed to non-suit the Respondent (Plaintiff).

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's case is that he and the Defendant purchased the suit land on 30.10.2001 by contributing equal amount and accordingly, the record of right was prepared jointly in their names. It was having the status as Ghara and four rooms with two latrines and two bedrooms with RCC roofs were standing over the same.

The Defendant constructed the house by spending equal amount of money. The Plaintiff was using one room out of four rooms. In the year 2012, the Plaintiff asked the Defendant for partition of the property to have half share over the same so as to make his separate ROR. The Defendant did not come forward to do so and created other problems for Plaintiff. So, the Plaintiff filed suit for partition.

4. The Defendant's plea in the written statement is that the suit land was not purchased jointly by the Plaintiff and himself and they too had jointly not constructed the house. It is stated that the Defendant purchased the suit land by paying of Rs.54,000/- although the consideration shown in the sale-deed was Rs.22,500/-. The Defendant paid all expenses for preparation of the sale-deed and its registration. The Plaintiff was then residing outside and he expressed his intention to buy one decimal of land out of that. But having no means to pay the consideration; he requested the Defendant to purchase the land jointly in his name undertaking that he would pay price for one decimal of land to the tune of Rs.13,500/-. The Defendant accordingly purchased the land. The Plaintiff thereafter declined to pay Rs.13,500/-. The Defendant claims to have constructed the house over the suit land by spending a sum of Rs.2,70,000/- from his pocket and allowed the Plaintiff to stay in one room. Thus, it is stated that the Plaintiff has no right, title and interest over the land and house and Defendant is exclusive owner of the same. Therefore, according to the Defendant, the Plaintiff cannot claim partition of the said property.

5. The Trial Court on the above rival pleadings having framed seven (7) issues, upon examination of the evidence and their evaluation has answered the core issue in favour of the Plaintiff holding that the suit property has been jointly purchased and possessed by the Plaintiff and the Defendant who are entitled to equal share over the same.

6. The defendant being aggrieved by the said judgment and preliminary decree for partition passed by the Trial Court entitling the Plaintiff as to half share over the suit land and house having carried First Appeal, has failed.

7. Learned Counsel for the Appellant submitted that the Courts below have committed serious error of law in holding that the Defendant is estopped to challenge the joint sale-deed followed by mutation in the absence of any documentary evidence to support his plea. He submitted that the oral evidence let in by the Defendants having not been properly appreciated, the finding that the Plaintiff and Defendant are joint owners of the suit land and house and as such entitled to equal share over the same having been returned the same is

liable to be set aside as it suffers from the vice of perversity.

8. Keeping in view the submission made, I have carefully read the judgments passed by the Courts below and have also perused the pleadings and the cited documents.

9. Admitted position stands that the registered sale-deed in question which is the source of title in respect of the property coming from the hands of erstwhile owner stands in favour of the Plaintiff and the Defendant who are the joint vendees. The deed is of the year 2001 and the suit has been filed for partition by the Plaintiff one of the vendees under that registered sale deed in the year 2010. The sale deed is silent as to the extent of interest of each of the vendees. Therefore, the presumption in law stands that both the vendees have got equal right over the purchased property. The Defendant has not taken any step to declare his title in respect of the suit land to the exclusion of the Plaintiff on the ground as he has projected in the written statement that the name of the Plaintiff even though finds mention in the registered sale deed, as one of the vendees under the said transaction, he has not been clothed with the title in respect of an inch of the purchased property.

Be that as it may as per own pleading of the Defendant, when he has stated that the Plaintiff undertook to pay part consideration later and requested him to get the sale deed also in his name and the Plaintiff had expressed to purchase one decimal of land; as the sale deed does not find mention of any of such fact and that too when in the sale deed there is no allotment of the areas over the purchased property in favour of the vendees, as already stated the presumption stands that by such registered sale deed, the Plaintiff and Defendant jointly acquired the property and therefore the possession of the said purchased land even if is taken to be in favour of one or to the extent having inequality, it would be deemed in respect of that both became co-owners in the property covered under the said sale deed. The Defendant's evidence being gone through, the same is found to be wholly insufficient to dislodge the presumption.

10. In the wake of aforesaid discussion and reasons, the submission of the learned Counsel for the Appellant (Defendant) cannot be countenanced with to say that there arises any substantial question of law for being answered, meriting admission of this Appeal.

11. In the result, the Appeal stands dismissed. However, there shall be no order as to cost.

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