

**(1956) 11 OHC CK 0008**  
**In the Orissa High Court**  
**Case No : Second Appeal No. 442 of 1952**

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| Nami Satyanarayana and Others | Vs | APPELLANT  |
| Jayaram Shibaji and Others    |    | RESPONDENT |

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**Date of Decision :** 08-11-1956

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 145  
Transfer of Property Act, 1882 — Section 53A

**Citation :** (1957) 23 CLT 368

**Hon'ble Judges :** Das, J

**Bench :** Single Bench

**Advocate :** P.C. Chatterjee, for the Appellant; D.V.N. Rao, for the Respondent

**Final Decision :** Allowed

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## Judgement

Das, J.—This is a Plaintiffs' appeal against the judgment of the learned Subordinate Judge of Berhampur, dated 22-8-1952, dismissing the Plaintiffs' suit. The Plaintiffs filed a suit for declaration of title and for recovery of possession. The dispute relates to two contiguous sites situated in village Russelkonda. The Plaintiffs' case was that one N. Krishna Rao had purchased these sites from the original owners by two sale-deeds, Ext. 1 dated 5-2-1886 and Ext. 2 dated 17-2-1897. Krishna Rao died in about the year 1934. After the death of Krishna Rao his widow Vishalakamma came to possess the suit-sites as owner thereof. She, on 3.12.47, sold the entire suit-lands by Ext. 3 to one N. Satyanarayana, the Plaintiff. Plaintiff-I in his turn sold portions of the disputed property to one C. Krishna Rao (Plaintiff-2) by sale-deed, Ext. 5, & to one Mohan Behera (Plaintiff-3) by another sale-deed, Ext. 4. Plaintiffs' case was that the Defendants subsequently trespassed into the suit-property and constructed temporary sheds thereon. As a result, a proceeding u/s 145, Code of Criminal Procedure Was initiated, but before the termination of the said proceeding, the Plaintiffs filed the suit on 30-4-1948. Defendants 2 and 3 are the brothers of Defendant. Defendants 1, and 6 are the cosharers of Defendant-4, and

Defendants 7 and 8 are the purchasers of portions of land to the south from Defendant-4. Therefore, there are two groups of Defendants in this case, in the first group Defendants 1, 2 and 3 and in the second, Defendants 4, 5, 6 and 7. Their defence in short was that the suit lands appertaining to survey No. 129 (1, of Gamundi was a part of the village Porambok and that neither the Plaintiffs, nor their predecessors-in-interest had any title or possession thereof. They denied the title of N. Krishna Rao and consequently of his widow and her possession. They further averred that Defendant-1 had his lorry shed and workshop in the southern portion of the suit site covering an area of 32 x 70 cubits and had" his gateway through the disputed land, which is vacant site and he had been in possession of it by constructing a lime grinding mill etc. The defence of Defendant-I was that they were in possession of 35 x 75 cubits on the southern side and they also had their sheds thereon. Defendant-4, before the institution of the present suit on 8.12-1947 had sold 16 ? 70 cubits out of his portion of the lands to Defendants 7 and 8. So the Defendants being in possession of the suit-sites for over 20 years are entitled to possession, and the Plaintiffs" suit for ejectment ought to fail. They further averred that the suit- sites being village Parombok, the Government should have been added as a party.

2. The trial court, on a consideration of the evidence both oral and documentary, came to the conclusion that the Plaintiffs had proved the title of their predecessors-in-interest to the suit sites, and that the Plaintiffs and their vendors were in possession within the statutory period of 12 years and that they have been dispossessed by the Defendants subsequently. The trial court also came to the conclusion that the State of Orissa is not a necessary party to this suit, and accordingly he decreed the Plaintiffs" suit. On appeal, the learned Subordinate Judge held that the Plaintiffs had no title and they had failed to establish their prior possession, and therefore, are incompetent to claim restoration of possession. Accordingly, he dismissed the suit. It is against "this decision that the Plaintiffs have preferred this second appeal.

3. Mr. P.C. Chatterjee, learned Counsel for the Appellants, contended that the learned Subordinate Judge has made serious confusion with regard to both facts and the position in law, and consequently his judgment is vitiated. On a fair reading of the judgment of the learned Subordinate Judge, I am inclined to think that the case had not received the consideration it deserved. The learned Subordinate Judge after coming to a finding that neither Visalakshamma nor the Plaintiffs have any title to the disputed property, and Ext. 3 does" not create any Interest in favour of the Plaintiffs, stated that: "This being the position, the question whether or not the title of the Plaintiffs subsisted during a period of 12 years prior to the institution of the suit would not strictly speaking arise for consideration." True, the Defendants challenged the title of N. Krishna Rao, the original holder of the suit-site since 1886, and 1897 as well as of the Plaintiffs" vendor who derived title from her husband. Krishna Rao. But they have not been able to substantiate it at the trial. Therefore, the trial court proceeded on the footing that Vishalakshamma"s husband Krishna Rao had the title in him. The

learned Subordinate Judge, however, came to the conclusion that Vishalakshamma being a member of the joint family, could not have acquired absolute interest in the suit-sites. It is obvious that Act, XVIII of 1937 (Hindu Women's Rights to Property Act) has no application to this case, as the husband of Vishalakshamma died in the year 1934, that is, long before the Act came into force. The learned Subordinate Judge further found that the suit-sites were the separate property of N. Krishna Rao. It may be that by virtue of some arrangement his widow came into possession of the disputed lands. Doubtless this being a suit in ejectment the onus is on the Plaintiffs to prove their title and possession within 12 years of the suit. The learned Munsif after a careful consideration of the evidence came to the conclusion that: "It has to be held that the suit-site belonged to Visalakshamma and not to her son". The learned Subordinate Judge as I have stated above, came to a different finding. Be that as it may, apart from title, we are concerned with the possession of the Plaintiffs' vendor. The main question, therefore, is whether or not the Plaintiffs and their vendor were in possession of the suit properties within 12 years of the suit. The finding arrived at by the learned Munsif on this point is in the following terms:

I find that the Plaintiffs predecessors-in-interest had also possession over the suit-sites till at least 1945-46." The learned Subordinate Judge, however, came to the finding that. "Apart from this, even the evidence adduced on behalf of the Plaintiff would show that she left the disputed land in or about the year 1940-41. This shows that she was not in continuous possession of the disputed land for a period of 12 years after 1934. P. W. 4 deposed in March, 1949, that 8 to 9 years prior to his deposition the house of Visalakshamma on the suit-site gave way by the fall of a tree, and so she was remaining in the house of the first Plaintiff on payment of rent. This shows that Visalakshamma had no more actual physical possession of the site in dispute since after 1940-41" The learned Subordinate Judge seem to think that the 12 year period ought to be calculated from after the year 1934. I fail to understand how, when the suit was instituted on 30-4-1948, the period of 12 years would be calculated from the year 1934. The learned Munsif has referred to the evidence of P. W. 1, one of the Plaintiffs, and P. Ws. 2, 3 and 4, and relying upon their evidence came to the conclusion that the Plaintiffs were in possession unit 11945.46. The learned Munsif- has also referred to Exts. 6 and 9 in this connection. Ext. 6 is dated 7-12.1946, which is an order passed by the Collector of Ganjam on a petition filed by the third Plaintiff. The order runs as follows:

A perusal of the reports of the R.D.O. and Tahasildar, Ghumsur reveals that the alleged encroachment of 0.09 in survey number 129141 booked in the name of Jairam Sivaji and another extent of 0.09 in the name of Suryanarayan Das are in reality no encroachments. The lands in question are palpably private plots to which the provisions of L.E. Act cannot apply. So the eviction proceedings passed by the R.D.O., Ghumusur are quashed. The Subordinate Revenue Officials need not book these cases as encroachments. As regards the title to the land, the parties can seek redress in a court of law if so advised.

Reference was made to this document, because the defence took the plea that it was the Parambok land, and Ext. 6 proves that it was not Porambok land, but private land. Mr. D.V.N. Rao, learned Counsel for the Respondents, contended that from Ext. 6 it does not appear that either Plaintiff-3 or his vendor was in possession of the suit-sites at any time and the only question is whether there was or was not any encroachment and since the names mentioned in Ext. 6 are Jairam Shivaji and Suryanarayan Das, the trial court should not have relied upon this document, Ext. 6. The Defendants never challenged the sale-deeds filed by the Plaintiffs by any other counter-deed. From Ext. 7, the plan of the suit sites, it is obvious that they were in possession of Vishalakshamma and D. W. 4, the President of the Panchayat Board deposed that it was in possession of N. Krishna Rao. The Revenue Inspector charged these sites as Porambok lands and the Tahsildar assessed it as such. It is against this assessment that the "third Plaintiff carried an appeal to the Collector of Ganjam who passed the order Ext. 6. Therefore, when Ext. 6 is read with Ext. 7 and 7(a), it, no doubt, establishes the possession of Vishalakshamma and her husband. The court of appeal, it appears, had lost sight of these documents. The next document relied upon by the learned Munsif is Ext. 9, dated 30-7.143 which is a letter of permission given by N. Sabhapati Rao the brother's son of N. Krishna Rao to Plaintiff-3. That does not according to Mr. Rao's contention show that Vishalakshamma was in possession either. That permission, it was contended was given by N. Sabhapati Rao during the absence of Vishalakshamma. Though he has described himself as the owner of the land in question, there is no evidence on record to connect him with the same. It may be he being a member of the family described himself as such. On the contrary, the evidence of P. W. 1 goes to show that Sabhapati had no right to the said lands. Mr. D.V.N. Rao also referred me to, the evidence D. Ws. 3 and 4 and contended that they should have been believed. This being a second appeal is difficult for me now to sift the evidence on either side at this stage. The findings of fact are doubtless binding on this Court.

4. Mr. Chatterjee, in support of his contention, relied upon three decisions of the Patna High Court, the first one being the Case in Bodha Ganderi v. Ashloke Singh AIR 1927 Patna 1, wherein it was held that as between two persons who are unable to make out a valid title where a person is in possession and has been in possession for several years and is suddenly dispossessed by another who had no better title than the person whom he dispossesses the former is entitled to be restored to possession. The next case relied upon by him is Lilku Mahto and Others Vs. Amar Mahto, , where it was decided similarly that where a person enters into possession loudly under an alienation made by a Hindu widow, and is dispossessed by a third person, the person so dispossessed is entitled to restoration of possession on the principle that his ostensible title must be presumed to be good title until displaced by some one having a better title and on the principle that the alienation in his favour by the Hindu widow is in fact good and valid unless and until the nearest reversioners elect to treat it as not binding upon them. In coming to the said conclusion, their Lordships relied upon

two decisions of the Privy Council reported in AIR 1927 227 (Privy Council) . The third case relied upon by Mr. Chatterjee is Ram Keshwar Mahton and Others Vs. Hari Charan Mahton and Others, , and it was held therein that the Plaintiff's peaceful possession for a number of years since 1925 was prima facie evidence of title sufficient to enable him to recover possession unless the Defendant could show a better title. The fact that the Plaintiff had a defective title as against his landlord in view of the fact that the patna was not registered was of no avail to the Defendant who was a mere trespasser. Even if the landlord had sued the Plaintiff for ejectment on the ground that he had no title, he could have resisted the suit successfully by the operation of Section 53-A of the Transfer of Property Act. The Plaintiff had therefore, a good title not only against whole world, but even against the landlord to remain on the property, and was entitle to recover possession. I would in this connection also refer to a decision of this Court in E. Nagava v. P. Raghunath ILR 1954 Court 461, where Mohapatra, J. held that a person who sues in ejectment alleging that the relationship of landlord and tenant has existed between himself and the Defendant and fails to prove that relationship is nevertheless entitled to recover possession on the basis of his title. The further requisite in such a case would be that the Plaintiff has been able to prove his possession within 12 years of the suit. In this case, none of the reversioners of Krishna Rao had at any time, asserted title to the disputed properties. The Plaintiffs having entered into possession lawfully, their ostensible title must be presumed to be good title until displaced by the Defendant with a better title. The Defendants have signally failed to prove their title. Thus, it is obvious that not only that the Plaintiffs' vendors had the title, but they were also In peaceful possession at least until 1945.46 which would bring the vendors of the Plaintiffs in possession of the disputed land within 12 years of the suit which was filed on the 30th of April, 1948. I would, therefore, set aside the judgment and decree of the learned Subordinate Judge dated 22-8-1952, and restore those of the learned Munsif dated 8-4-1949.

In the result, this appeal is allowed with costs throughout. Appeal allowed.