
(2008) 02 OHC CK 0025

In the Orissa High Court

Natabara Mohanty (dead) by L.Rs.

APPELLANT

Vs

Adhikari Moharana and Others

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Citation : (2008) 105 CLT 383 : (2008) 1 OLR 579 Supp

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard further argument. The Second Appeal is disposed of in the following manner.

2. Plaintiff in Title Suit No. 9 of 1978 of the Court of Additional Munsif, Khandapara is the Appellant in this Second Appeal. He filed the suit for partition of the suit schedule land amongst the Defendants No. 2 to 4 and to allot the land purchased by him under registered sale deed dated 04.09.1976 from Defendant No. 2 to the share of the said Defendant and to grant recovery of possession in favour of the Plaintiff. Plaintiff alleged forcible act of dispossession by Defendant Nos. 1 to 3. Each of the Defendants 1, 2 and 3 filed their separate written statement. Defendant No. 3, the eldest of the brothers amongst Defendants 2, 3 and 4 claimed himself to be the "Karta" of the family and supported the case of Defendant No. 1 of a sale transaction of the entire suit plot measuring Ac.0.06 decimals through a registered deed of sale on 24.12.1975. Defendant No. 3 further pleaded that for the legal necessity, i.e., to repay the loan incurred for payment of the Municipality dues of the ancestral properties situated at Cuttack town, that he sold the suit schedule land in favour of Defendant No. 1. The purchaser, i.e., Defendant No. 1 also defended the suit on the basis of right, title and interest acquired by him through the registered sale deed dated 24.12.1975. Defendant No. 2 filed a separate written statement contending therein that by amicable arrangement Ac.0.02 decimals of land sold by him to the Plaintiff had fallen to his share which was under his possession and therefore Plaintiff should

succeed to get that plot of land partitioned and delivery of possession be given through Court. Defendant No. 4, the 3rd brother of the family of Defendants 2 to 4 neither filed any written statement nor contested the suit. On the basis of the pleadings though as many as 12 issues were framed, but the sum total of the findings recorded by the Trial Court on such issues is that the property alienated by Defendant No. 3 on 24.12.1975 in favour of Defendant No. 1 is as the "Karta" of the family and for legal necessity. He further recorded the finding that there was no proof of partition amongst the three brothers before the said sale transaction and, under such circumstance Plaintiff is not entitled to the relieves claimed.

3. Plaintiff challenged that Judgment and decree dated 13.05.1982 in Title Appeal No. 14 of 1982 in the Court of Subordinate Judge, Nayagarh. The Appellate Court after re-assessing the evidence and considering the argument advanced by the parties, adopted the findings recorded by the Trial Court and accordingly rejected the argument of the Plaintiff. In the Second Appeal though various grounds have been taken and determined as substantial questions of law as per order No. 3 dated 03.02.1987, but on 22.01.2003 while arguing the appeal Mr. D. Mohapatra, Learned Counsel for the Appellant fairly submitted that the substantial question of law arises is as to whether Defendant No. 3 could have been accepted as the "Karta" and what was the inter se relationship amongst Defendants 2 to 4, i.e., whether as tenants in common or joint tenants and accordingly the sale transactions entered into by Defendants 3 and 2 respectively in favour of Defendant No. 1 and the Plaintiff in the year 1975 and 1976 has to be decided.

4. The factual controversy having been assessed and determined by the Courts below, on perusal of the evidence on the status of the family of Defendant Nos. 2 to 4 this Court perused the evidence of Defendant No. 2 as D.W. 6 and Defendant No. 3 as D.W. 5. On perusal of their evidence it is apparent on record that though each of the brothers were living separately at different places of their services but the family properties remained joint with them. There is clear-cut admission by both the brothers. Therefore, whether Defendant No. 3 had the status of "Karta" or not makes no difference in as much as if Defendant No. 3 did not alienate the property as the "Karta" of the family, then also Ext. A, the sale deed executed by him in the year 1975 and the property transferred thereunder has to be adjusted to his share. On the other hand, if Defendant No. 3 transacted as the "Karta" and sold the property in 1975, then Plaintiff and Defendant No. 2 with their contentions have no legs to stand to challenge that alienation. Therefore, there is no necessity to determine the aforesaid aspect nor their status as tenants in common or joint tenants on the face of the statement made in course of their evidence that the family properties still remain joint.

4.1 Learned Counsel for the Appellant makes an attempt to capitalize on the evidence of D.W.s.5 and 6 on their saying of living separately and dealing with day-to-day life separately, getting the shares from the usufructs separately as

the conduct of severance of status, and in that respect he relies on the case of Kalyani (Dead) by Lrs. Vs. Narayanan and Others, . Their Lordships taking into account the fact which was available in that case, found the separate living as the sine qua non of the severance of status. But such is not the case here. The evidence of P.Ws.5 and 6 gives rise to a different fact situation which is in support of the jointness of the family and, therefore, by merely living separately at different places with separate kitchen and sharing the income from the joint family properties (cultivable land) ipso facto does not prove severance of status, that to when both the witnesses have stated that the -property still remains joint.

5. Regard being had to the facts and circumstances discussed above, this Court finds no reason to interfere with the findings recorded and decree drawn by the Courts below, and accordingly the Second Appeal is dismissed. Since there was no contest by the Respondents, therefore, there is no order on cost.