
(2001) 03 OHC CK 0050
In the Orissa High Court
Case No : Second Appeal No. 220 of 1982

Padmalochan Hota

APPELLANT

Vs

Haricharan Singh and others

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9, 100

Citation : (2002) 1 CivCC 74 : (2001) 92 CLT 360 : (2001) 1 OLR 653

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

Bench : Single Bench

Advocate : M/s Basudev Pujhari, T. Parida and A.K. Jena, for the Appellant; M/s B.B. Ratho, P.K. Bhuyan, Manoj Misra and R.P. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Plaintiff is the appellant against a confirming decision in a suit for declaration of title and for recovery of possession. The plaintiff's case is as follows :--

The plaintiff had purchased Ac.0.10 decimals of land appertaining to Plot No. 457, Khata No. 94 in mouza Mahulpali by a registered sale deed dated 30-12-1964. Even though, the plaintiff had purchased Ac.0.10 decimals, Ac.0.12 1/2 decimals of land had been settled and the plaintiff remained in possession of the same. The plaintiff had sold a portion of the land. On the eastern side of the land a pucca house was constructed and on the western-northern side a tin shed was raised. In the year 1966 defendant No. 1 had encroached upon Ac.0.2 1/2 decimals of land on the southern side of the tin shed taking advantage of the temporary absence of the plaintiff. Hence, the suit.

2. The defendant in the written statement while denying the allegations made in the plaint claimed that he had purchased the house standing on Plot Nos. 452 and 457 from Kartar Singh who, in turn, had purchased Ac.0.10 decimals of land by oral sale from Brundaban Panda, who had purchased the same from Gopal

Dwibedi.

3. The trial court while discarding the case of the defendant, dismissed the suit on the findings that the suit was hit by non-joinder of parties and the plaintiff had failed to prove the identity of the disputed land and as such, had failed to prove his title over the same.

4. In appeal, the said decision having been confirmed, the present second appeal has been filed.

5. It is apparent from the decisions of both the courts below that the suit was dismissed on two grounds, namely on the ground of non-joinder of parties and secondly on the ground of non-specification of the disputed property and failure on the part of the plaintiff to prove title over the disputed property.

6. So far as the question of non-joinder of parties is concerned, there is no doubt that the decisions of the courts below are not sustainable. Both the courts below have observed that the plaintiff should have impleaded his vendors. Since the dispute was between the plaintiff and another person, I do not think there was any necessity for the plaintiff to implead his vendors. Moreover, it appears that though initially the vendors of the plaintiff had not been impleaded as parties, subsequently, by way of amendment they had been impleaded as defendants 2 and 3 and both the courts below ignoring the aforesaid aspect, have illegally observed that the suit was bad for non-joinder of parties.

7. At the time of admission of the appeal the only substantial question of law which was indicated related to question of non-joinder of parties and no other question had been raised. The learned counsel appearing for the appellant submitted that even though no other question had been certified by the Court to be substantial question of law, the appellant can challenge the decision on other substantial questions of law at the time of hearing. He has contended that both the courts below have not appreciated the question relating to identity of the land and boundary properly and have discarded the case of the plaintiff on untenable grounds.

8. Even there is no bar for the court in the second appeals to take up other substantial questions of law at the time of hearing, I do not find any weight in the submission made by the learned counsel for the appellant in the present case. The questions as to whether the identity of the disputed land had been established and as to whether the plaintiff had proved his title over the same are questions of fact. It is the admitted case of the plaintiff that he has purchased Ac. 0. 10 decimals of land, but he claims to be in possession of Ac. 0. 12 1/2 decimals of land. The courts below have referred to various materials on record and observed that the plaintiff had failed to prove his right over the disputed land and the identity of the disputed land had not been properly established. The learned counsel appearing for the appellant has tried to attack such finding by inviting a fresh look upon various evidence on record, However, the law is well-settled that in a second appeal the High Court is not entitled to re-appreciate the

evidence to come to a different conclusion.

9. For the aforesaid reasons, I do not find any scope for interference in the second appeal which is accordingly dismissed. However, there will be no order as to costs of the present appeal.

10. Second Appeal dismissed.