
(2017) 02 OHC CK 0021
In the Orissa High Court
Case No : 37 of 2006

Pravuram Das @ Kar

APPELLANT

Vs

State of Orissa and another

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Citation : (2017) 02 OHC CK 0021

Hon'ble Judges : A.K. Rath

Bench : SINGLE BENCH

Advocate : N.P. Parija, P.C. Panda

Final Decision : Dismissed

Judgement

1. The plaintiff is the appellant against a confirming judgment in a suit for declaration of title and for declaration that the proceeding initiated against her under the Orissa Prevention of Land Encroachment Act (hereinafter referred to as "OPLE Act") is a nullity.

2. The dispute pertains to area Ac.4.05 decimals of land appertaining to Hal Plot Nos.776, 780 and 782 under Hal Khata No.401 of mouza-Kankadahada. The kissam of land is Gramya Jungle. The case of the plaintiff is that her father Ajaya Kumar Kar was functioning as a forester at Khunta in the district of Mayurbhanj in the year 1964. He was the disciple of Abhiram Paramhansa. Her mother Nirupama Kar followed the foot-steps of her father. When her mother was 30 years old, she had a dream to install the deity, namely, Millhadeswari. Thereafter her parents travelled from pillar to post in quest of the appropriate site to install the deity. Ultimately, they reached at the suit land, which was inaccessible to all. On the Fagu Dasami day of 1965, they installed the deity. The further case of the plaintiff is that her father being a Government servant was posted in different places and visiting the suit land only on holidays. He handed over the suit land to the plaintiff for spiritual activities while she was a minor. Her mother was the custodian of the suit land. With the passage of time, her parents at their own

expenses bounded the suit land by fence, dug a well, built chaunra, a puja pandal, a cowshed, two tiled roofed house and another two room houses, a bijesthali. Finally her mother became Sanyasi in the year 1982. Thereafter the plaintiff took up the management of the suit land with the assistance of her father. After death of her father in the year 1988, she took exclusive charge of the suit land. She is in peaceful and continuous possession of the suit land for more than the statutory period and as such perfected title by way of adverse possession. While the matter stood thus, the Tahasildar, Kamakhyanagar initiated proceeding under the OPLE Act against her for encroachment of the suit land and imposed penalty. The said proceeding is bad in law. With this factual scenario, the suit was filed.

3. Pursuant to issuance of summons, the defendants entered appearance and filed written statement denying the assertions made in the plaint. The specific case of the defendants is that the suit land has been recorded in Rakhita Khata. The kissam of land is Gramya Jungle recorded in the ROR published in the year 1982. The plaintiff has no semblance of right, title and interest over the same. Since the plaintiff was in illegal occupation of the Government land, Encroachment Case No.170/2002-03 was initiated against her wherein penalty was imposed and she paid the same.

4. Stemming on the pleadings of the parties, learned trial court struck six issues. They are: "(1) Is there any cause of action to file the suit ?

(2) Whether the suit is maintainable according to law ?

(3) Whether the eviction proceeding in Encroachment Case No.170/2002-03, under O.P.L.E. Act is nullity ?

(4) Whether plaintiff has perfected her title over the suit land through adverse possession ?

(5) Whether the plaintiff is entitled to relief of permanent injunction as prayed for ?

(6) To what other relief the plaintiff is entitled ?"

5. To substantiate the case, the plaintiff had examined ten witnesses and on her behalf seventeen documents had been exhibited. On behalf of the defendants, one witness had been examined and six documents had been exhibited.

6. Learned trial court came to hold that the revenue authorities have jurisdiction to initiate proceeding under the O.P.L.E. Act and there is no violation of any statutory provision. The plaintiff participated in the proceeding. Pursuant to the order, she paid the fine. No appeal was filed before the appellate authority. Accordingly, answered issue no.3 in negative. With regard to issue nos.4 and 5, learned trial court came to hold that plaintiff being a rank trespasser is not entitled to the relief of permanent injunction. Accordingly answered issue nos.4 and 5 in negative. Held so, learned trial court dismissed the suit. The plaintiff has

unsuccessfully challenged the judgment and decree of the learned trial court before the learned Adhoc Additional District Judge, Kamakhyanagar in R.F.A. No.1 of 2005/R.F.A. No.54 of 2003, which was eventually dismissed.

7. Heard Mr. N.P. Parija, learned counsel for the appellant and Mr. P.C. Panda, learned Additional Government Advocate for the respondents.

8. Mr. Parija, learned counsel for the appellant argued with vehemence that the plaintiff is in peaceful and continuous possession of the suit land for more than the statutory period and as such perfected title by way of adverse possession. He further submits that initiation of the proceeding under the O.P.L.E. Act is bad in law. According to him, the civil court has ample jurisdiction to examine the order passed by the Tahasildar, if there is any violation of principle of natural justice. Though a plea was raised, but the learned trial court did not delve into the same.

9. Per contra, Mr. Panda, learned Additional Government Advocate for the respondents submits that both the courts negated the plea of adverse possession. The plaintiff is a rank trespasser. The kissam of land is Gramya Jungle. It is a vast patch of land surrounded by forest and river. Since the plaintiff was in unauthorised occupation, proceeding under the O.P.L.E. Act was initiated against her and fine was imposed. She paid the fine and as such admitted title of the defendants.

10. The civil court has plenary jurisdiction. Seventy-five years ago, the Privy Council in the case of Secretary of State vs. Mask & Co., AIR 1940 PC 105 held that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if the jurisdiction is so excluded, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

11. The instant appeal may be examined on the anvil of the decision cited supra. In encroachment proceeding, penalty was imposed. The appellant paid the penalty. It amounts to admitting title of the landlord. A person who bases her title on adverse possession must show by clear and unequivocal evidence that her possession was hostile to the real owner and amounted to a denial of her title to the property claimed. Burden lies on her to prove by clear and unequivocal evidence that her possession over the suit property was hostile to the State and amounted to denial of title of the State and such possession was more than 30 years by the date of filing of the suit. The plaintiff is a rank trespasser for which the Government started encroachment case against her. Both the courts have negated the plea of adverse possession. There is no perversity in the judgments of the courts below. Mere possession of the suit land for long time is not suffice to hold that the plaintiff has perfected title by way of adverse possession, unless the classical requirements of adverse possession *nec vi*, *nec clam*, *nec precario* are pleaded and proved.

12. Adverse possession is a mixed question of fact and law. In *Karnataka Board of Wakf vs. Govt. of India and others*, (2004) 10 SCC 779, the apex Court observed as under :-

"In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Nonuse of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous.

The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession." (emphasis laid)

13. The father of the plaintiff was a forester. The duty of the forester is to guard the forests. But then, her father encroached upon a vast patch of forest land and depleted the forest in the name of "God". Strange. Bibel says "if the salt loses its flavour, how shall it be seasoned?" (Mathew 5:13 of the New Testament). Romans say, "who will guard the Praetorian Guard."

14. In the ultimate analysis, the appeal is dismissed, since the same does not involve any substantial question of law.