
(2019) 04 OHC CK 0009
In the Orissa High Court
Case No : R.S.A.No.562 Of 2003

Puspa Nayak And Others

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Constitution of India, 1950 — Section 141

Citation : (2019) 04 OHC CK 0009

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Tapan Kumar Mandal, Ram Prasad Mohapatra, Samapika Mishra, Deba Ranjan Ray

Final Decision : Dismissed

Judgement

Dr.A.K.Rath, J

1. Plaintiffs are the appellants against the confirming judgment in a suit for declaration of title by way of adverse possession and permanent injunction.
2. An area ad measuring Ac.2.10 dec. of land appertaining to sabak khata no.24, plot no.234/1, Ac.0.60 dec., sabak plot no.235, Ac.1.10 dec. and sabak plot no.236/1, Ac.0.40 dec. of mouza-Sendha, Dist-Deogarh is the subject matter of dispute.
3. The case of the plaintiffs is that Kartikeswar Nayak, husband of plaintiff no.1 and father of plaintiff nos.2 to 4 reclaimed the suit land in the year 1965. The Tahasildar, Deogarh initiated Encroachment Case no.507/74 against him and realized back rent and penalty for nine years. After his death, the plaintiffs are in possession of the same. Again an Encroachment Case no.36/81-82 was initiated by the Tahasildar against them. They are in possession of the suit land peacefully, continuously and with the hostile animus

to the defendants for more than statutory period and, as such perfected title by way of adverse possession.

4. State of Orissa-defendant no.1 entered contest and filed written statement denying the assertions made in the plaint. It is pleaded that the plaintiffs are not in possession of the suit land. Kartikeswar Nayak paid back rent and penalty. He admitted title of defendant no.1. The villagers of Sendha are using the suit land as their playing field. The suit land is adjacent to the school. Kartikeswar Nayak had properties in his native village. Kartikeswar Nayak had been evicted on 15.10.1982 in L.E.Case No.36/81-82.

5. Defendants 2 to 6, the villagers, filed a written statement pleading inter alia that Kartikeswar Nayak had vast landed properties in his native village.

He was not a landless person. He had not reclaimed the suit land. The villagers are using the suit land as their play ground. They have excavated the tank over a portion of the suit land. The plaintiffs have not acquired title by way of adverse possession.

6. Stemming on the pleadings of the parties, learned trial court struck five issues. Parties led evidence, oral and documentary. Learned trial court dismissed the suit holding inter alia that in Encroachment Case no.36/81-82, the Tahasildar came to a conclusion that the plaintiffs were not in possession of the suit land and, accordingly, dropped the case. Kartikeswar Nayak was not in possession of the suit land for more than thirty years.

Kartikeswar Nayak was working as a Clerk in Chhendipada High School. He left the job in the year 1970. Thus, the question of reclamation of the suit land by him in the year 1965 appears to be doubtful. In Ext.A/1, Kartikeswar Nayak admitted that he possessed the suit land in the year 1975.

There is no evidence on record that Kartikeswar Nayak was in possession of the suit land for more than thirty years. The plaintiffs have not acquired title by way of adverse of possession. Unsuccessful plaintiffs filed T.A.No.8 of 2002 before the learned Additional District Judge, Deogarh, which was eventually dismissed.

7. Heard Mr.Tapan Kumar Mandal, learned Advocate for the appellants and Mr.Ram Prasad Mohapatra, learned A.G.A. along with Miss.Samapika Mishra, learned A.S.C. for respondent no.1, Mr.Deba Ranjan Ray, learned Advocate for respondent nos.2 to 5.

8. Mr.Mandal, learned Advocate for the appellants submits that Kartikeswar

Nayak was in possession of the suit land peacefully, continuously and with the hostile animus to the defendant no.1 for more than statutory period and, as such, perfected title by way of adverse possession. L.E.Case No.36/81-82, Ext.C, was exhibited after closure of evidence without providing opportunity of hearing to the plaintiffs. The plaintiffs had also been prevented to file appeal against the order of eviction. The plaintiffs are landless schedule castes persons. Under the provision of the Orissa Government Land Settlement Act, the land ought to have settled in their favour. The plaintiffs made an application on 15.10.1982, Ext.1 before the Tahasildar in L.E.Case No.36/81-82 for settlement of the land, but the same was not considered.

9. Per contra, Mr.Mohapatra, learned Additional Government Advocate for respondent no.1 submits that in Encroachment Case no.36/81-82, the plaintiffs have paid penalty. They applied for settlement of the land, vide Ext.1. Thus, the element of hostile animus is absent.

10. Mr.Ray, learned Advocate for respondent nos.2 to 5 submits that the suit for declaration of title by way of adverse possession is not maintainable.

11. The seminal question that hinges for consideration before this Court as to whether the suit for declaration of title by way of adverse possession is maintainable?

12. The subject matter of dispute is no more res integra. Taking a cue from the decision of the apex Court in the case of Gurdwara Sahib v. Gram

Panchayat Village Sirthala and another, (2014) 1 SCC 669, this Court in Nabin Chandra Mohanta v. State of Orissa (R.S.A. No.396 of 2004 disposed of on 22.02.2019) held :

“10. In Gurdwara Sahib, the plaintiff-appellant filed the suit for decree of declaration to the effect that it had become the owner of the suit property by adverse

possession, correction of ROR and permanent injunction. The suit was partly decreed by the trial court granting relief of injunction. The first appeal against that part

of the judgment, whereby relief of declaration was denied was dismissed by the Additional District Judge. In the second appeal, the relief of declaration by way of adverse possession was denied holding that such a suit is not maintainable. The second appeal was dismissed. The matter travelled to the Apex Court. The Apex

Court held:

8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence. (emphasis laid)

11. In no uncertain terms, the Apex Court held that even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such

adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this

adverse possession as a shield/defence. The same is ratio decidendi. The High Court is bound under Article 141 of the Constitution of India..

13. The matter may be examined from another angle. Though learned counsel for the appellants submits that the relevant case record of L.E. Case

No.36/81-82, Ext.C, was exhibited after closure of evidence and no opportunity was provided, but then the plaintiffs have filed the order dated

15.10.1982 passed in L.E. Case No.36/81-82, Ext.1. It is too late in the day to contend that no opportunity of hearing was provided to the plaintiffs. In

the said case, the plaintiffs had paid penalty. They had applied to the Tahasildar for settlement of the land. Thus, the element of hostile animus is

absent.

14. Resultantly, the appeal fails and is dismissed, since the same does not involve any substantial question of law. There shall be no order as to costs.

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