
(1994) 08 OHC CK 0011
In the Orissa High Court
Case No : S.A. No. 304 of 1984

Rajib Lochan Patel

APPELLANT

Vs

Sapneswar Pandey and Others

RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Limitation Act, 1963 — Article 64 , 65

Citation : AIR 1995 Ori 70

Hon'ble Judges : D.M. Patnaik, J

Bench : Single Bench

Advocate : S.S. Basu and G.P. Dutta, for the Appellant; N.K. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Patnaik, J.—This second appeal is by the plaintiff against the judgment dismissing the suit for declaration of title and recovery of possession in respect of the area measuring Ac. 1.45 decimals of land under the Sabak Plot No. 569 corresponding to current settlement plot No. 2928 in village Beheramal in the district of Sambalpur.

2. Plaintiff's case is, he purchased Ac. 2.89 decimals of land appertaining to Hamid Settlement plot No. 569 from its not them side and also other lands under different plots by registered sale-deed dated 20-7-59 from one D. Suja and took delivery of possession of the same. The defendants who did not have any right, title and interest over the suit land managed to get their names recorded in the remarks column of the finally published record of rights as possessing the land adversely and, therefore, he filed a suit for declaration.

3. The defendants' plea is, when they purchased the land from the same vendor under different plot Nos. by registered sale-deed dated 20-7-59, the vendor while giving delivery of possession of the land under the sale-deed also gave delivery of possession of the disputed land. Since that date they have been

forcibly possessing the same.

4. The lower appellate Court in para 5 of the judgment discussed the point relating to the possession of the defendants with regard to this plot. He has discussed the evidence particularly, the documentary evidence (Ext. B) the Yad-dast as well as Ext. B/1, the report of the Amin during the Khanapuri operation. This report shows that on the date of measurement by the settlement Amin, the respondents were found to be in possession of the land. This possession has further been confirmed as is found to have been noted in the remarks column of the finally published record-of-rights. This piece of evidence clearly established the forcible possession of the defendants. The lower appellate Court has also taken note of the fact that from the note of possession in the Yad-Dast as on 13-4-1966 the respondents have been in possession of the land for about 16 years and, therefore, the suit having been filed beyond 12 years the plaintiff has lost his title to the property, if any.

5. Mr. Basu, on the other hand, strenuously urged that Ext. 1, the Parcha was issued in the name of the plaintiff during the settlement operation and that proved his possession which the lower appellate Court did not take note of.

It may be pointed out, even though the Parcha was issued in favour of the plaintiff, this has only a presumptive value with regard to possession as on the date the Parcha was issued and no presumption would be available for such possession thereafter once there is a finally published record-of-rights which is there in the present case. Presumption with regard to purcha as advanced by learned Counsel is a rebuttal presumption. Once there is found to be an entry about the forcible possession of the defendants in the remarks column, The plaintiff is always entitled to prove his case of possession by rebuttal evidence. This has not been so done by the plaintiff.

The lower appellate Court having accepted the documentary evidence and the oral evidence as conclusively proving the adverse possession of the defendants and that finding having been based on the correct appreciation of the evidence on record, the same is not liable to be interfered with in the second appeal.

6. In the result, there is no merit in the second appeal and the same is dismissed, but without any cost.