

(1979) 07 OHC CK 0002

In the Orissa High Court

Case No : Second Appeal No. 95 of 1976

Rupa Merli and Others

APPELLANT

Vs

Krupa Padhan and Others

RESPONDENT

Date of Decision : 25-07-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1979) 48 CLT 287

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : R.C. Patnaik and P.K. Mirra, for the Appellant; S.S. Misra, H.B. Swain, B.P. Tripathy and P.C. Kar and S.S. Swain, A.S., for the Respondent

Final Decision : Dismissed

Judgement

S. Acharya, J.—The Plaintiffs have preferred this appeal against the reversing decision of the District Judge in Title Appeal No. 22 of 1972.

2. Plaintiffs 1 to 4 are the sons of Bedi, the deceased daughter of Ghana Padhan, and Plaintiff No. 5 is the son of Plaintiff No. 2. Krupa Padhan (the Defendant) is the son of Ghana Padhan. The Plaintiffs filed the suit for declaration of title and recovery of possession of the suit lands which admittedly belonged to Ghana Padhan. According to the Plaintiffs, Ghana by about 1916, fell out with the Gountia of the village. So in August, 1918 he executed a plain paper deed of gift in respect of the suit lands in favour of Asharam, the husband of Bedi (daughter of Ghana) and left the village and went to Boudh. Since the execution of the said deed Asharam and after his death the Plaintiffs remained in possession of the suit lands. In 1951 the Defendant came to the village and from that time he started various proceedings in respect of the suit lands. In 1966 the Defendant initiated a proceeding u/s 145, Code of Criminal Procedure and that proceeding, and another proceeding u/s 145, Code of Criminal Procedure initiated later, terminated in favour of the Defendant in 1967. So the Plaintiffs instituted this suit.

3. The Defendant in his written statement denied the execution of the gift deed and challenged, the same as a sham transaction. According to him, he continued in possession of the suit lands all along, and Asharam, being the son-in-law of Ghana, was merely helping Ghana in cultivating the suit lands during Ghana's life time. Asharam's surreptitious efforts to get the lands mutated in his name during the temporary absence of Ghana and Krupa from the village proved futile. After the death of Ghana, the Defendant for all Intents and purposes remained in possession of the suit lands, but the Plaintiffs at times created disturbance in his possession.

4. The trial Court inter alia arrived at the finding that the gift deed executed by Ghana did not confer any title on the Plaintiffs but the Plaintiffs by possessing the suit lands from 1950 onwards acquired title to the same by adverse possession. On that finding the Plaintiffs' suit was decreed.

5. The appellate Court on a reappraisal of the evidence on record has arrived at the finding that Asharam was not in exclusive possession of the suit lands but was in possession of the same jointly with the Defendant or with his help or permission, and that the Plaintiffs have signally failed to prove acquisition of title to the suit lands by adverse possession.

6. The finding of the appellate Court that the Plaintiffs have not perfected their title to the suit lands by adverse possession is based purely on consideration and assessment of the oral and documentary evidence on record. In arriving at that finding the Court has taken into consideration the candid admission of Asharam in Ext. D, of the year 1936, that after the departure of Ghana from the village he (Asharam) was cultivating Ghana's lands with Krupa (Defendant) jointly, and he (Asharam) prayed that the name of Ghana be recorded in respect of the suit lands in the settlement records, and those lands were recorded accordingly. From that it is evident that the possession of Asharam of the suit lands even after Ghana left the village was merely permissive.

From that document (Ext. D) it also transpires that he was jointly possessing the said lands with Ghana, indicating thereby that Ghana was at times coming to the village to look after the lands. That falsifies the Plaintiffs' case that after the execution of plain paper gift deed Asharam exclusively possessed the suit lands. Ext. G shows that in the year 1952 Asharam tried to get the suit lands mutated in his name, but as the Defendant opposed the same he did not press his said petition. Ext. 6 indicates that the Defendant had complained before the Revenue authorities that Asharam and his successors-in-interest were creating disturbance in the peaceful possession of the Defendant over his ancestral lands. From Ext. F series it appears that rent for the suit lands from 1952 to 1965 was paid by the Defendant. Though the said rent receipts are not conclusive proof of possession of the lands, the payment of rent for so many years lends some support to the Defendant's assertion of possession of the said lands. The Panchayat Faisala Ext. 3, dated 21-7-1950, which shows the Plaintiffs agreed to allow the Defendant to possess some lands out of the suit lands, militates

against the Plaintiff's claim of exclusive possession of the suit lands after the execution of the aforesaid gift deed. It is also seen from Exts. A and B that the said two proceedings u/s 145, Code of Criminal Procedure in respect of the suit lands were decided in favour of the Defendant.

Apart from the above materials on record, the Court below has also taken into consideration several other facts which appear from the oral and documentary evidence on record, and on a discussion and consideration of the same it has arrived at the above-mentioned finding.

7. It is contended by the learned Counsel for the appellants that in view of the categorical finding that Ghana executed an invalid deed of gift, in 1918 in favour of Asharam, and that there is evidence to show that Asharam was in possession of the suit lands, it must be held that Asharam started acquiring adverse possession over the suit lands from the date of the execution of the said invalid, deed of gift. A man does not acquire adverse possession over immovable properties merely because a deed of conveyance in respect thereof is executed in his favour and the said deed turns out to be an invalid one. The man, who seeks to assert adverse possession on the basis of an invalid deed of conveyance, must prove that he acquired exclusive possession of the property under or in consequence of the said deed, and that he continued in possession of the said property from that time in the manner in which adverse possession is acquired. The classical requirement for acquiring adverse possession is that the possession must be *nee vi*, *nee clam*, *nee precario*, and it must be shown that possession was overt and hostile against the person against whom time was running - AIR 1935 36 (Privy Council) .

In this case admittedly Ghana was the father-in-law of Asharam. Undisputedly, Ghana left the village as he fell out with the Gountia of the village. It is also in evidence that while Ghana was in the village Asharam was helping Ghana to cultivate the suit lands. So possession of Asharam of the suit lands was not under the invalid gift deed, but his possession was under Ghana, either jointly with him or with his permission and/or consent. Accordingly, in the facts and circumstances of this case, it cannot be said that Asharam's possession of the suit lands was overt and/or hostile against Ghana, or it became so merely because an invalid gift deed was executed in his favour. Moreover, there is no satisfactory evidence on record to establish Plaintiffs' exclusive and continuous possession over the suit lands for the prescribed period. On the above consideration I do not see any merit in the above contention put forward on behalf of the Appellants.

8. On a perusal of the judgments of, both the Courts below and on hearing the counsel appearing for both the parties. I am satisfied that the decision of the Court below in this case does not call for any in reference.

9. The second appeal accordingly is dismissed. Each party to bear his own costs of this appeal.