
(2016) 09 OHC CK 0048

In the Orissa High Court

Case No : RSA No. 313 of 2012 (From a judgment and decree dated 5.11.2011 and 19.11.2011 respectively passed by Shri B.N. Mishra, learned District Judge, Gajapati at Paralakhemundi in R.F.A. No. 1 of 1998 reversing the judgment and decree dated 27.11.2009 and 30.11

Sani Dalai @ Pradhan and another - Appellants @HASH Draupadi Beheradalai and Others

Date of Decision : 22-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Specific Relief Act, 1963 — Section 34, Section 37, Section 38

Citation : (2016) 167 AIC 830

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

Bench : Single Bench

Advocate : Mr. Prasanna Ku. Mishra, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J. - This is an appeal against the judgment and decree dated 5.11.2011 and 19.11.2011 respectively passed by the learned District Judge, Gajapati at Paralakhemundi in R.F.A.No.1 of 1998 reversing the judgment and decree dated 27.11.2009 and 30.11.2009 respectively passed by the learned Additional Civil Judge (Jr.Division), R. Udayagiri in Title Suit No.1 of 1998.

2. The plaintiffs are the appellants. They instituted the suit along with respondent no.2 for a declaration that the registered sale deed no.294 dated 20.6.1995 and mutation R.O.R. made in favour of defendant no.1 are null and void, declaration of right, title, interest over the suit land and for permanent injunction. The case of the plaintiffs, in brief, is that the parties are Hindus. Rama Dalai was the common ancestor of the parties. He had three sons; Kunia, Gangadhar and Giridhar. Kunia was issueless. Paramananda and Sani, plaintiff No. 2, are son and daughter of Gangadhar through his first wife Netri. Paramananda was given in adoption to Kunia. After death of Netri, Gangadhar married to Luli, who gave birth to a daughter, namely, Pano, plaintiff No. 3. After death of Luli, Gangadhar remarried to Banki, the divorced wife of one Gaudo

Beherdalai of Kuapada near Mahendragrah. Draupadi, defendant No. 2, is the daughter of Banki and Gaudo Beherdalai. Draupadi is no way related to the family of Gangadhar. Kuri, plaintiff no.1 is the wife of Paramananda. She has four sons, namely, Mohan, Kamal, Somnath and Santosh, defendant nos.3 to 6. Since Banki was issue-less, she duly adopted Biswanath, defendant no.1. All the three sons of Rama Dalai, were living joint and were possessing joint family properties. After death of Rama, they partitioned the suit properties orally and lived separately possessing their respective shares. During last settlement, the Settlement Authority inadvertently recorded the name of Banki in respect of the suit land without recording the names of plaintiff Nos. 2 and 3 and their brother Paramananda in the R.O.R., even though the plaintiffs and defendant Nos.3 to 6 were in joint possession and enjoyment of the said property. The defendant Nos. 1 and 2 have no semblance of right, title, interest and possession over the suit land. With an ulterior motive, defendant no.2 executed a sale deed covering the suit land in favour of defendant no.1. Possession of the land was not delivered. The defendant no.1 in collusion with defendant no.2 managed to mutate the land in his favour.

3. Pursuant to issuance of summons, defendants 1 and 2 entered appearance and filed written statement denying the assertions made in the plaint. The specific case of the defendants was that Kunia, Gangadhar and Giridhar were living jointly till their death and were possessing the joint family properties. After their death, Paramananda, being the "karta" of the family, managed the affairs of the family. Paramananda divided the family properties into three unequal shares. He kept a major share for himself and allotted one share to Raghunath, son of Giridhar and another share to Banki. In the said partition, the suit land fell to the share of Banki. During settlement, Paramananda, Banki and Raghunath, father of defendant no.1 were present and got their names recorded in respect of their separate shares as per direction and dictation of Paramananda. The further plea of the defendants was that defendant no.2 is the daughter of Banki and Gangadhar. Since the suit property was the absolute property of Banki, after her death, defendant no.2 inherited the same. For legal necessity, she sold the suit property to her cousin brother defendant no.1, who is in possession of the same. Defendant Nos. 3 to 6 were set ex parte.

4. On the inter se pleadings of the parties, the learned trial court framed as many as twelve issues. To prove the case, the plaintiffs had examined five witnesses and on their behalf, one document was exhibited as Ext. 1. Defendants had examined five witnesses and on their behalf, five documents were exhibited. The learned trial court came to hold that Draupadi, defendant no.2 is not the daughter of Gangadhar through Banki. Gangadhar died intestate leaving behind plaintiff nos.2 and 3 and Banki and, as such, each of them has 3rd interest in the suit property left by Gangadhar. Held so, the learned trial court decreed the suit. Assailing the judgment and decree passed by the learned trial court, Draupadi, defendant no.2, filed R.F.A. No. 1 of 2010 before the learned District Judge, Paralakhemundi, which was allowed.

5. Heard Mr. P.K. Mishra, learned Advocate for the appellants. Criticizing the judgment of the appellate court, Mr. Mishra, learned Advocate for the appellants, submits that the learned trial court has assigned valid and cogent reasons and arrived at a conclusion that Draupadi, defendant no.2, is not the legitimate daughter of Gangadhar. The learned appellate court committed a manifest illegality in upsetting the same. Finding of the learned appellate court is based on surmise and conjectures. He further submits that if the learned trial court has given cogent and detailed reasons for not accepting the testimony of a witness, the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the learned trial court. He cites the decision of the apex Court in the case of T.D. Gopalan v. Commissioner of Hindu Religious and Charitable Endowments, Madras, A.I.R. 1972 SC 1716.

6. In Radha Prasad Singh v. Gajadhar Singh and others, AIR 1960 SC 115, the apex Court in paragraph-14 of the report held as follows:-

"(14) The position in law, in our opinion, is that when an appeal lies on facts it is the right and the duty of the Appeal Court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the trial Judge's conclusion that the evidence of a particular witness should be believed or should not be believed particularly when such conclusion is based on the observation of the demeanour of the witness in Court. But, this does not mean that merely because an appeal court has not heard or seen the witness it will in no case reverse the findings of a trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the Appeal Court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the trial Judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that the view taken by the trial Judge is wrong, the Appeal Court should have no hesitation in reversing the findings of the trial Judge on such questions. Where the question is not of credibility based entirely on the demeanour of witnesses observed in Court but a question of inference of one fact from proved primary facts the Court of Appeal is in as good a position as the trial Judge and is free to reverse the findings if it thinks that the inference made by the trial Judge is not justified."

7. The sole question arises for consideration is as to whether Draupadi is the daughter of Banki through Gangadhar or Gaudo Beherdalai ? Plaintiffs admit that Gangadhar married to Banki after death of his second wife. On an anatomy of the pleadings and evidence, both oral and documentary, the learned lower appellate court came to hold that Gangadhar had three wives, namely, Netri, Luli and Banki. Netri has one son, namely, Paramananda and one daughter, Sani. Luli has one daughter, namely, Pano and Banki has one daughter, namely, Draupadi.

It further held that P.W.3 in his evidence has stated that Banki married Gangadhar 40 to 50 years back and Draupadi was aged about 40 to 45 years. According to P.W. 4, Gauda Beherdalai died since 50 years. If actually Gouda Beherdalai died 50 years back defendant no.2, who was aged about 42 to 45 years, cannot be his daughter as asserted by the plaintiffs. It further held that the learned trial court, while analysing the available evidence, has rightly found the absence of documentary proof as well as the oral evidence with regard to the matter in issue. The learned trial court analysed the averments of the written statement and erroneously jumped over to a conclusion that Draupadi, defendant no.2, is not the legitimate daughter of Gangadhar and such finding is palpably wrong and is not supported with any evidence on record. The learned appellate court delved deep into the matter, analysed the evidence of the witnesses and arrived at a conclusion that the learned trial court erroneously jumped over to a conclusion that Draupadi, defendant no.2, is not the legitimate daughter of Gangadhar and such finding is not supported by evidence on record and wrong.

8. The judgment of the learned lower appellate court reflects its conscious application of mind. It recorded findings supported by reasons on all issues. It came into close quarters with the reasons assigned by the learned trial court and assigned reasons while reversing the finding of fact. Pure findings of fact are immune from challenge in a second appeal. The view taken by the learned lower appellate court cannot be said to be perverse. The learned appellate court is justified in holding that the view of the learned trial court is not based on any evidence. A belated attempt has been made by the plaintiffs to deprive Draupadi, defendant no.2 of her legitimate share over the properties of Gangadhar.

9. The appeal does not involve any substantial question of law and, accordingly, the same is dismissed.