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(2013) 07 OHC CK 0072

In the Orissa High Court

Case No : Regular Second Appeal No. 360 of 2003

Smt. Ashabati Gupta (dead) after her, her L.Rs. Smt. Mithilesh Gupta and Others — APPELLANT

Vs

Ram Pratap Agarwal — RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2014) 117 CLT 60 : (2013) 2 OLR 621

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : R.K. Mohanty, A.K. Das, S. Mohanty and P. Jena, for the Appellant; L. Mishra, H.M. Singh and D. Naik, for the Respondent

Judgement

M.M. Das, J.—This Second Appeal has been preferred against the judgment and decree passed in T.A. No. 9/15 of 2001-2002 by which the learned appellate Court reversed the judgment and decree passed by the learned trial Court in T.S. No. 5 of 1993 and the counter claim registered as T.S. No. 85 of 1997. The appellants are the original defendants and the legal heirs of one of the defendants, who expired during pendency of this case. The respondent as plaintiff filed T.S. No. 5 of 1993, where the suit property covers the area measuring Ac. 0.14 decimals with shop rooms standing thereon. The case of the plaintiff-respondent is that he possessed the suit land (shop room) with due permission of the owner thereof, namely, Dulari Toppo (now deceased). But one Brij Bhusan Gupta (defendant No. 7) with his brothers fell out with the plaintiff-respondent and demanded rent of the suit house from the plaintiff. The plaintiff-respondent not only questioned the ownership of defendant No. 7 over the suit shop house, but also refused to pay any rent. The plaintiff-respondent also pleaded that T.S. No. 33 of 1976 in the Court of the learned Munsif, Panposh filed by the defendant No. 7 ended in a compromise in which the plaintiff-respondent agreed to pay monthly house rent in respect of the suit house at the rate of Rs. 150/- to the defendant No. 7 regularly without any default. The plaintiff-respondent also pleaded that he continued to pay the monthly rent regularly, but

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stopped paying rent when he received a notice from the Court of the Revenue Officer, Panposh under the provisions of Orissa Scheduled Areas Transfer of Immovable Property (by Schedule Tribes) Regulation, 1956 for his eviction from the suit property. The plaintiff-respondent appeared in the said case and represented in Court that by virtue of the compromise decree in T.S. No. 33 of 1976, he was paying rent to the defendant No. 7 and as such, his name should be deleted from the case record and should proceed against the defendant No. 7 and his father. The Misc. Case was dropped against the plaintiff-respondent and proceeded against the defendant No. 7. The defendant No. 7 filed show cause in the said Revenue Misc. Case before the Revenue Officer taking the plea that he had purchased the disputed plot measuring an area of Ac. 0.09 decimals by virtue of an oral sale with due delivery of possession against payment of total consideration of Rs. 95/- in the year 1955 and has been possessing the same till date. But subsequently, due to non-appearance of the defendant No. 7 before the Revenue Officer, an ex parte order was passed on 19.3.1979 directing the defendant No. 7 to make over possession of the suit land in favour of the recorded tenant Dulari Toppo in the said case registered as R.M.C. Case No. 4/226 of 1972-78. Subsequently, the plaintiff-respondent and Dulari Toppo jointly filed a memo in the Court of the said Revenue Officer on 1.5.1979 to the effect that there has been attornment of tenancy by Dulari Toppo in favour of the plaintiff-respondent in respect of the suit house. The memo was accepted by the Revenue Officer and an order was passed by the Revenue Officer to the effect. Long thereafter, the defendant No. 7 filed appeal before the Collector (Revenue Appeal No. 13 of 1979) against the ex parte order of the Revenue Officer dated 19.3.1979 passed in R.M.C. No. 4/226 of 1972/78. The Collector, while considering the appeal remanded the case to the Court below for fresh consideration.

2. After remand of the case, a fresh order was passed on 11.5.1987 with a direction to drop the eviction case in view of the changing circumstances that the suit property was validly sold by Dulari Toppo after obtaining due permission from the competent authority in favour of the plaintiff-respondent making him owner of the suit property on the basis of a registered sale deed. It is also averred in the plaint that during the appellate stage some penalty was imposed against the defendant No. 7 for illegal occupation of Adivasi Property and the defendant No. 7 on 9.1.1984 deposited the penalty amount. The plaintiff has further alleged that in the year 1981 the defendant No. 7 and his father had filed H.R.C. Case against the plaintiff-respondent for his eviction from the suit shop rooms in which an eviction order was passed against the plaintiff-respondent, but in the appeal, the said eviction order was set aside against which a writ petition was filed in this Court by defendant No. 7 and this Court quashed the order of the appellate Court and confirmed the eviction order passed in H.R.C. Case No. 4 of 1981. The plaintiff-respondent asserts that under a limited jurisdiction vested in the Writ Court, the title of the plaintiff-respondent over the suit land has not been decided and the civil Court being competent, the plaintiff-respondent has

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filed the suit for the above reliefs.

3. The defendants appeared in the suit and filed their written statement and also made a counter claim, which was registered as T.S. No. 85 of 1997. While denying the plaint allegations, the defendants in their counter claim prayed for declaration of their right and title over the suit property, which they described as Schedule-B in their counter claim and prayed for eviction of the plaintiff-respondent from the said Schedule-B property as per the counter claim. The defendants also prayed for recovery of arrear house rent and also prayed for grant of mesne profit. The defendants pleaded that in the year 1955 by way of oral sale the suit plot was not only purchased by the father of defendants 2 to 7, namely, Shyamal Gupta comprising a total area of Ac. 0.09 decimals for a consideration of Rs. 95/- but also got due delivery on possession of the said land from one Christian person, namely, late Joseph Chrestia alias Joseph Toppo. The defendants also pleaded that their father Shyamal Gupta had constructed the shop room over the purchased land (Schedule-B of counter claim), which was let out to one Maniraj Singhal and his son Basudev. Subsequently, Basudev not only defaulted to pay the house rent to the defendants but also in collusion with the plaintiff-respondent tried to forcibly occupy the Schedule-B property of the counter claim for which defendants in the Court of Munsif, Panposh in which the present plaintiff-respondent was a party, filed T.S. No. 33 of 1976. The said suit ended in a compromise and the plaintiff-respondent agreed to remain as a tenant under defendant No. 7 and his father on payment of monthly rent of Rs. 150/- in respect of the suit shop room. The compromise decree was also passed accordingly. The defendants further pleaded that in the last Major Settlement operation, the purchased land covering an area of Ac. 0.09 decimals was renumbered as Plot Nos. 941 and 943 and note of possession was recorded in the name of defendant No. 7. Subsequently, the purchased areas under two plots were renumbered as Plot Nos. 1870, 1871 and 1873. But the plaintiff-respondent long after coming into force of regulation (II) of 1956, which prohibited transfer of land by any member of Scheduled Tribe, colluded with Dulari Toppo and the revenue staff and got a notice issued against the defendants without stating the correct facts. The defendants also pleaded that the R.M.C. No. 4 of 1972 was first initiated against one Kishore Deo Agrawal for an order of 1/4th decimal and in the said proceeding on the strength of the report of the Amin, the name of Ram Pratap Agarwal was introduced to be in occupation of one decimal of land as a tenant. The defendants however, pleaded that by then Shyamal Gupta, father of the defendant No. 7 had already perfected his title over the suit land by way of adverse possession. But the Revenue Officer considered Dulari Toppo as the owner of the Schedule land even though the defendant took a positive plea to the effect that in order to avoid future vexatious litigation the defendants got a sale deed executed by Dulari Toppo. The defendant also pleaded that the plaintiff-respondent in collusion with the revenue staff and Dulari Toppo obtained permission for sale of only one decimal of land out of plot No. 445 without following due procedure on the strength of which the plaintiff-respondent

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fraudulently got two registered sale deeds executed by Dulari Toppo. The defendants, however, specifically pleaded that the plaintiff-respondent was estopped from challenging the title of the defendants over Schedule-B land of the counter claim. The defendants also pleaded to have served notice u/s 106 of the Transfer of Property Act terminating the tenancy of the plaintiff-respondent. By filing their counter claim, which was registered as T.S. No. 85 of 1997, the defendants claimed eviction of the plaintiff-respondent with other reliefs.

4. The learned trial Court framed as many as sixteen issues and gave the following findings:

(a) Defendant No. 7 has acquired valid title over the suit land by virtue of the oral sale in the year 1954-55.

(b) Compromise decree in T.S. No. 33 of 1976 was valid and not obtained by misrepresentation of fact.

(c) Lease deed Ext. A cannot be deemed to be invalid for want of registration.

(d) Plaintiff duly acknowledged defendant No. 7 as landlord.

(e) Eviction order of the competent authority passed in R.M.C. No. 4/72 (after remand) was non est.

(f) Plaintiff was estopped to challenge the title of defendant over Schedule-B properties in view of the compromise decree and the bar contained u/s 116 of the Eviction Act. (Exception clause)

(g) Possession of defendant over the suit land has been perfected and the plea of adverse possession has been established.

(h) Dulari Toppo had no alienable interest to transfer the property in favour of the plaintiff over which the defendants have perfected their title by adverse possession. The learned trial Court also held that the plaintiffs suit is barred by limitation in view of provisions of Article 65 of the Limitation Act and, accordingly dismissed the suit.

5. In Title Appeal No. 9/15 of 2001-2002 filed by the plaintiff-respondent, the learned lower appellate Court allowed the appeal with the following findings:

(i) Oral sale was disbelieved by the lower appellate Court.

(ii) Defendants acknowledged the title of Dulari in the Revenue case and, as such, plea of adverse possession is not available to them.

(iii) Payment of penalty by defendant is an adverse circumstances appearing against the case of the defendant.

(iv) The memo filed in the R.M.C. No. 4/226 of 1972-78 that was duly accepted tantamount to eviction of defendant No. 7 from the suit house.

(v) Dulari Toppo had better title than defendant No. 7.

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(vi) Civil Court has no jurisdiction to examine the correctness of the order passed by the Revenue Court and accordingly, held that the defendant has no right, title and interest over the suit property.

(vii) Transfer of suit land in Ex-State of Gangpur by oral sale in favour of the defendants was illegal in view of restriction clause and without the prior permission of S.D.M. as contemplated in section of Merger State (Laws) Act, 1950.

(viii) Defendant No. 7 was not in actual physical possession of the suit land.

(ix) Defendant No. 7 being a party in the R.M.C. was supposed to have knowledge of attornment of tenancy by Dulari in favour of the plaintiff.

(x) The purchased land covering an area of Ac. 0.08 decimals by defendant appertaining to plot No. 445, Khata No. 98 is not the suit land and the plaintiff was not liable to be evicted.

The learned appellate Court also observed that the mutation record and the Municipal record also stand recorded in the name of the plaintiff-respondent in respect of the suit land and, accordingly, allowed the plaintiffs appeal and reversed the judgment and decree passed by the learned trial Court. Being aggrieved by the judgment and decree of the learned lower appellate Court, the appellants have preferred this appeal, which has been admitted on the following substantial questions of law.

(1) Whether the lower appellate Court has considered extraneous materials while deciding the appeal by relying upon the orders passed in the proceeding under Regulation-II in coming to the conclusion that the respondent-plaintiff has acquired valid title over the disputed property?

(2) Whether in view of the earlier compromise decree between the parties where the plaintiff admitted the appellant to be the landlord, the suit was hit u/s 116 of the Evidence Act?

6. Coming to the first substantial question of law, on which this Second Appeal has been admitted, it appears that while answering issue No. IV, the learned trial Court, believing the oral sale by Joseph Toppo in favour of Shyamal Gupta, who is the husband of the defendant No. 1 and father of the defendants 2 to 7 in 1954-55, held that there was no restriction in the year 1954-55 for sale of immovable property by a Schedule Tribe person in favour of a non-Scheduled Tribe. The above finding of the learned trial Court was based on a judgment of the Board of Revenue reported in Vol. 56 (1983) CLT (B.R.D.) 25, Collector, Bolangir v. Arnapurna Kuanr and others. (The said decision of the Board of Revenue has no precedence value for a civil Court). Finding thus, the learned trial Court concluded that the father of the defendant No. 7 had acquired a valid title to the suit land in the year 1954-55 by oral sale from Joseph Christia @ Joseph Toppo.

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7. The learned lower appellate Court, on discussing the evidence adduced by the appellants, has disbelieved the story of oral sale. Relying upon the administration of the Orissa State Orders, 1948 and the provisions of the Orissa Merge State Laws (Act), 1950, the learned lower appellate Court has come to the conclusion that the oral sale in favour of the predecessor of the defendants, even if believed, was an illegal sale, being without prior permission of the Sub Divisional Magistrate, as per the provisions of the aforesaid administration of Orissa State Orders, 1948 as well as Orissa Merge State Laws Act, 1950.

8. This Court finds the approach of the learned Lower appellate Court to be correct and as a matter of fact, the learned lower appellate Court has not taken into consideration any extraneous matters for coming to the above conclusion. Reliance placed by the learned lower appellate Court on the orders passed in the proceeding under Regulation-II of 1956 cannot be stated to be extraneous, in view of the fact that the certified copies of the order sheet of the said proceeding was filed before the learned trial Court and admitted into evidence being public documents.

9. This Court, therefore, finds that the learned lower appellate Court has not considered any extraneous material while deciding the appeal by relying upon the orders passed in the proceeding under Regulation-II of 1956 while holding that the respondent-plaintiff has acquired valid title over the disputed property.

10. With regard to the second substantial question of law enumerated above, it is seen that, when the learned lower appellate Court has come to a correct finding that the plaintiff acquired title under the registered sale deed executed by Dulari Toppo on 11.05.1987 after permission was granted on 14.12.1985 by the competent authority under Regulation-II of 1956, the above second substantial question no more remains to be answered. Further, as it is found that Dulari was a recorded tenant, from whom the plaintiff purchased the suit land under a valid sale, question of estoppel u/s 116 of the Evidence Act operating against the plaintiff does not arise any more. In view of the aforesaid finding, this Court finds no merit in this Second Appeal, which is accordingly dismissed, but in the circumstances, there shall be no order as to cost.

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