
(2018) 01 OHC CK 0057

In the Orissa High Court

Case No : 139 of 1994

Smt. Sashikala Nayak and another

APPELLANT

Vs

Nabakishore Jena and others

RESPONDENT

Date of Decision : 15-01-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7Rule 7](#)

Citation : (2018) 01 OHC CK 0057

Hon'ble Judges : A.K. Rath

Bench : Single Bench

Advocate : Ramakanta Mohanty, K.K. Mohapatra, Anam Charam Panda

Final Decision : Dismissed

Judgement

1. Plaintiffs are the appellants against a confirming judgment in a suit for declaration of title, confirmation of possession, demolition of structure over the suit land and permanent injunction.

2. The case of the plaintiffs was that the suit land originally belonged to defendant nos.3 and 4. The same fell to the share of defendant no.3 in a family partition. Plaintiffs purchased Ac.0.02 1/2 dec. out of Ac.0.04 dec. appertaining to khata no.203, plot no.1/2504 of mouza-Jalasarapur. In the year 1983, the defendant no.1 made unauthorized construction over a portion of the suit land. With this factual scenario, they instituted the suit seeking the reliefs mentioned supra.

3. Defendant nos.1 and 2 entered contest and filed a written statement denying the assertions made in the plaint. The case of the defendant nos.1

and 2 was that they purchased Ac.0.02 dec. of land out of Ac.0.04 dec. appertaining to khata no.203, plot no.1/2504 from defendant no.3 by

means of a registered sale deed dated 17.11.1980. They are in possession of the land. In between the two plots, there is an intervening plot of

Laxmidhar Jena and as such interference of the possession of the plaintiffs does not arise.

4. On the interse pleadings of the parties, learned trial court struck eight issues. Both parties led evidence, oral and documentary. Learned trial

court came to hold that the land purchased by the defendants is intervened by the land of Laxmidhar Jena. Defendant no.1 had encroached upon

the land of the plaintiffs. Held so, it dismissed the suit. The plaintiffs unsuccessfully filed T.A. No.4 of 1988 before the learned Civil Judge (Sr.

Divn.), Anandapur, which was eventually dismissed.

5. The second appeal was admitted on the following substantial question of law.

Are the courts below justified in dismissing the plaintiffs' suit for title when defendants have not disputed the same ?

6. Mr. Ramakanta Mohanty, learned Senior Advocate for the appellants submitted that there is only one suit plot, i.e., plot no.1/2504 having area

of Ac.0.04 dec. There cannot exist any buffer plot between the two plots of the parties. The court in exercise of power under Order 7 Rule 7

C.P.C. can mould the relief and direct partition, where there was no dispute that the plaintiffs are entitled to Ac.0.02 1/2 dec. and defendants are

entitled to Ac.0.01 1/2 dec. out of Ac.0.04 dec. out of plot no.1/2504.

7. Per contra, Mr. Anam Charan Panda, learned counsel on behalf of Mr. Asoke Mukherji, learned Senior Advocate for the respondents

submitted that both the courts concurrently held that the suit plot and the defendants' land are intervened by another plot, which is essentially a

finding of fact.

8. Plaintiffs instituted the suit pleading inter alia that they purchased Ac.0.021/2 dec. of land appertaining to khata no.225, plot no.34/2504 of

mouza-Jalasarapur from defendant no.3 by means of a registered sale deed dated 17.9.1979. During pendency of the suit, a civil court

commissioner was appointed. He submitted report stating that there is no plot bearing no.34/2504. The suit plot no.34/2504 does not find place in

the hal settlement map. The same is plot no.1/2504. Thereafter the plaintiffs amended the plot number from plot no.34/2504 to plot no.1/2504.

Learned trial court came to hold that the schedule of land described in the sale

deed, Ext.1, does not tally with the plaint schedule. Plot no.34/2504

described in the sale deed, Ext.1, is a wrong number. There is no such plot in the settlement map as per the report of the civil court commissioner.

The land possessed by the plaintiffs and defendant nos.1 and 2 are intervened by the land of one Laxmidhar Jena, D.W.1. It further held that

though Ac.0.02 dec. of land has been sold to defendant no.1 vide Ext.A, but actually delivery of possession was made in respect of Ac.0.011/2

dec. There is absolutely no evidence on record that the defendant no.1 has encroached upon the land of the plaintiffs. In view of the same, the

question of partition of the property does not arise. Further, on a cursory perusal of the settlement map, Ext.2, it appears that plot nos.1, 2 and

2504 are three different plots. There is no perversity or illegality in the findings of the courts below. The substantial question of law has been

answered accordingly.

9. In the result, the appeal fails and is dismissed. There shall be no order as to costs.