

(2024) 02 OHC CK 0264
In the Orissa High Court
Case No : S.A. No.124 Of 2000

Smt Tamalo Das @ Sethi And Another APPELLANT
Vs
Smt. Sefali Pradhan (Since Dead) Through Her Lrs RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 9, 100, 107, Order 41 Rule 27

Citation : (2024) 02 OHC CK 0264

Hon'ble Judges : A.C. Behera, J

Bench : Single Bench

Advocate : S. S. Rao, S. E. Haque, L. Samantaray

Final Decision : Dismissed

Judgement

A.C. Behera, J

1. This Second Appeal has been preferred against the reversing judgment.
2. The respondent of this Second Appeal was the sole plaintiff before the Trial Court in the suit vide T.S. No.13 of 1992 and she was the appellant before the First Appellate Court in the First Appeal vide T.A. No.37 of 1999.

The appellants of this Second Appeal were the defendants before the Trial Court in the suit vide T.S. No.13 of 1992 and they were the respondents before the First Appellate Court in the First Appeal vide T.A. No.37 of 1999.
3. The suit of the plaintiff before the Trial Court vide T.S. No.13 of 1992 was a suit for declaration and recovery of possession.
4. The case of the plaintiff (who is the respondent in this Second Appeal) before the Trial Court in the suit vide T.S. No.13 of 1992 was that, she (plaintiff) purchased total 23 x 74 cubits land from her two vendors i.e. Juddhistira Sahu and Dibakar Subudhi on dated 21.12.1972 through two registered sale deeds. As the plaintiff was staying with her husband in the service place of her husband, for which, she (plaintiff) engaged her uncle, namely, Bidhan Nayak to look after

her purchased properties including the suit site, to which, she had purchased on 21.12.1972 through two registered sale deeds from Juddhistira Sahu and Dibakar Subudhi. In order to construct a building upon her said purchased properties in the year 1981, she (plaintiff) collected building materials and engaged defendant No.1 to watch her purchased properties on payment of Rs.60/- per month and constructed a thatched house on the northern portion of her purchased properties, to which portion, she (plaintiff) had purchased from Juddhistira Sahu. Accordingly, by staying in the said thatched house on the suit land i.e. on the suit site, the defendant No.1 was looking after the construction works of the building of the plaintiff on the rest portions of the purchased land of the plaintiff. But, since the year 1988, the defendant No.2 started staying with the defendant No.1 in the suit site as per the permission of plaintiff and her husband. In the year 1990 i.e. on 12.08.1990, the plaintiff and her husband told the defendants to vacate the suit house, because, the suit house was required for their own use. Though, the defendants were agreed initially for vacation of the suit house, but on dated 14.01.1991, the defendants refused to vacate the same, for which, without getting any way, the plaintiff approached the civil Court by filing the suit vide T.S. No.13 of 1992 praying for declaration of her title over the suit properties and for recovery of possession of the suit house from the plaintiff along with other reliefs, to which, she (plaintiff) is entitled for.

5. Having been noticed from the Trial Court in the suit vide T.S. No.13 of 1992 filed by the plaintiff, the defendants contested the same by filing their joint written statement denying the averments made by the plaintiff in her plaint by taking their stands inter alia therein that, she (plaintiff) has never taken the possession of the suit site at any point of time and she (plaintiff) has never engaged defendant No.1 to watch the suit site for any purpose.

The specific case/plea of the defendants in their joint written statement was that, the defendant No.2 had purchased the suit site from his vendors, namely, A. Kambara Achari and Magata Das through two separate sale deeds dated 20.08.1980 and 19.03.1981 respectively. The vendors of the defendant No.2 were the owners over the suit properties by perfecting their title on the same through adverse possession. When the owners of the suit properties i.e. the above two vendors of the defendant No.2 sold the suit properties to the defendant No.2, then the defendant No.2 has become the owner over the suit properties.

After purchasing the suit site from A. Kambara Achari and Magata Das, through the above two sale deeds dated 20.08.1980 and 19.03.1981 respectively, the defendant No.2 had constructed a thatched house on the same and he (defendant No.2) has been residing in the said thatched house. He (defendant No.2) has also constructed boundary walls around his purchased properties, which is completely different from the so called suit house of the plaintiff. For which, the plaintiff has no locus standi to file the suit against them (defendants). Therefore, suit of the plaintiff is liable to be dismissed.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 3 (three) numbers of issues were framed by the Trial Court in the suit vide T.S. No.13 of 1992 and the said issues are:-

Issues

(i) Whether the plaintiff was possessing the suit land after purchasing in the year 1972?

(ii) Whether the defendants are in permissive possession of the suit house or they are occupying the same in their own right?

(iii) Is the plaintiff entitled for declaration and recovery of possession of the suit house?

7. In order to substantiate the aforesaid reliefs sought for by the plaintiff and against the defendants, she (plaintiff) examined, seven (7) numbers of witnesses on her behalf including herself as P.W.5 and relied upon series of documents from her side vide Exts.1 to 10.

But, on the contrary, the defendants examined three (3) numbers of witnesses from their side including defendant No.2 as D.W.2 and exhibited documents vide Exts.A to H on their behalf.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the Record, the Trial Court answered all the three issues against the plaintiff and in favour of the defendants assigning the reasons that, the defendants are in possession over the suit land as their own rights and the suit site was never under the possession of the plaintiff or her vendors, for which, they (defendants) cannot be evicted from the suit site. Therefore, the plaintiff is not entitled for the decree of declaration of title and recovery of possession against the defendants.

9. Basing upon the aforesaid findings and observations made by the Trial Court in the issues, the Trial Court dismissed the suit of the plaintiff vide T.S. No.13 of 1992 on contest against the defendants without cost as per its judgment and decree dated 29.03.1997 and 31.03.1997 respectively.

10. On being dissatisfied with the aforesaid judgment and decree of the dismissal of the suit vide T.S. No.13 of 1992 of the plaintiff passed by the Trial Court against the plaintiff and in favour of the defendants, the plaintiff challenged the same by preferring the First Appeal vide T.A. No.37 of 1999 being the appellant against the defendants by arraying them (defendants) as respondents.

11. After hearing from both the sides, the First Appellate Court allowed that First Appeal vide T.A. No.37 of 1999 of the appellant (plaintiff) on contest against the defendants as per its judgment and decree dated 21.02.2000 and 10.03.2000 respectively and set aside the judgment and decree dated 29.03.1997 and 31.03.1997 respectively passed by the Trial Court in the suit vide T.S. No.13 of 1992 and decreed the suit of the plaintiff vide T.S. No.13 of 1992 on contest

against the defendants in part and directed the defendants to give vacant possession of the suit land to the appellant (plaintiff) or her authorized agent within two months by removing the thatched house there from assigning the reasons that, as during trial, vendor of the defendant No.2, namely, A. Kambara Achari as D.W.1 deposed in his examination in chief that, on 04.08.1960, he had purchased the suit land from Natabara Das and Udaya Das in the name of his brother-in-law Maleswar Rao through unregistered deed of sale vide Ext.B and had constructed a thatched house on the same and thereafter, he sold the suit land on 20.08.1980 to the defendant No.2 through a registered sale deed vide Ext.A and as by that time, the house on the suit site was demolished, but when A. Kambara Achari admitted in his evidence through cross-examination on behalf of the plaintiff that, his vendor Maleswar Rao died unmarried, for which, the title of the defendant No.2 cannot be better than that of his vendor A. Kambara Achari, to which, he had derived through Ext.B (deed of unregistered sale in favour of the Maleswar Rao, who was a minor boy of 15 years) and as Maleswar Rao being a minor boy of 15 years was incapable under law to execute the sale deed of the suit site in favour of the defendant No.2 and as there is no evidence, whether Maleswar Rao died with or without leaving any successor, for which, defendant No.2 is not entitled to get any interest in the suit properties.

The First Appellate Court also further held that, when the defendants have specifically pleaded in their written statements that, their vendors had perfected their title over the suit properties by way of adverse possession without stating about the name of the person against whom, they had perfected their title through adverse possession, for which, it can be held that, defendant No.2 is not sure against whom, the title over the suit properties was perfected through adverse possession and as such, when the defendants are fully confused regarding the true nature and as well as the original owner of the suit properties, then at this juncture, the claim of title of the defendant No.2 over the suit properties has become unacceptable under law. On the other hand, the plaintiff has established that, she was in possession over the suit properties by purchasing the same in the year 1972 and as per her permission, the defendants were residing on the suit properties since the year 1981 and 1988 respectively and when the defendants are not vacating the suit site in spite of the demand of the plaintiff, then at this juncture, the plaintiff is entitled for the decree of recovery of possession of the suit properties against the defendants.

12. On being aggrieved with the aforesaid judgment and decree dated 21.02.2000 and 10.03.2000 respectively passed by the First Appellate Court in T.A. No.37 of 1999 in setting aside the judgment and decree of the Trial Court in T.S. No.13 of 1992 and in passing the decree of recovery of possession of the suit properties in favour of the plaintiff and against the defendants, they (defendants) challenged the same by preferring this Second Appeal being the appellants against the plaintiff by arraying her (plaintiff) as respondent.

13. When, during the pendency of this Second Appeal, the appellant No.2 (who

was defendant No.2 before the Trial Court in the suit vide T.S. No.13 of 1992) expired, then his LRs have been substituted in his place as appellant No.2(a) to 2(c).

14. This Second Appeal was admitted on formulation of the following substantial questions of law i.e.:-

(i) Whether in a suit for declaration of title and recovery of possession, the plaintiff can succeed to get a decree without giving the identity of the land and the measurement of lands correctly?

(ii) Whether in the absence of any patta showing the nature of lands to be of raiyat status, rejection of the application under Order 41 Rule 27 of the CPC with a public document i.e. Adangal to show the lands to be of Gramakantha Poramboka status is justified?

(iii) Whether the suit for declaration of title is maintainable in the absence of Government as necessary party, when the suit land is of Government land?

15. I have already heard from the learned counsels of both the sides.

16. In order to have a better appreciation and so also for just decision of this Second Appeal, the above three formulated substantial questions of law are required to be answered serially and chronologically one after another according to the materials available in the Record.

17. So far as the First substantial question of law i.e. Whether in a suit for declaration of title and recovery of possession, the plaintiff can succeed to get a decree without giving the identity of the land and the measurement of lands correctly is concerned;

here in this suit at hand, undisputedly, the suit properties are Gramakantha Poramboka land, which is the properties of Government. Parties of both the sides are claiming possession over the suit properties against each other without having title of any of the parties thereon.

18. It is the clarified propositions of law that, when there is fighting for possession over the suit properties between the plaintiff and defendants without having their title on the same, in that situation, whose possession was earlier is entitled to be restored to possession.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

(i) 2005 (II) OLR-330—Pragnya Rout Vrs. Hemaprava Ray and others—(Para 6)—Suit for possession by two persons having no title—As between two persons, who are unable to make out valid title, one who is in possession and has been in possession for several year, if dispossessed by another, who had no better title than the person whom he dispossesses, the person, who was in possession earlier is entitled to be restored to possession.

(ii) 2023 (II) Civ.C.C.—322 (S.C.)—Shivshankara and ors. Vrs. H.P. Vedavyasa Char—(Para 30)—Possession— fighting between two persons claiming possession without title—When the facts disclose no title in either party, at the relevant time, prior possession alone decides the right to possession of land in the assumed character of owner against all the world except against rightful owner.

(iii) 62 (1986) C.L.T.-692—Sundar Oram Vrs. Budhua Oram and another—(Para 9) —When plaintiff and defendants fight for possession of the land without title of anybody on the same, then the plaintiff is entitled for the decree of eviction against the defendants on the basis of prior possession of the plaintiff.

In view of the propositions of law enunciated in the ratio of the aforesaid decisions, when in this suit at hand, there is fighting between plaintiff and defendants over the suit properties for declaration of title and recovery of possession having their no title on the same, then under this situation, whose possession was earlier, his possession is to be protected through the adjudication of the suit. For which, it cannot be said that, the suit filed by the plaintiff is not maintainable under law on the ground of improper identity of the suit properties. Because, in this suit at hand, parties of both the sides are claiming possession over the suit properties making their rival claims against each other. As such, the parties of both the sides are fully aware about the identity of the suit properties. Because, by admitting the identity of the suit properties, they are claiming their possession on the same. For which, it cannot be held that, suit of the plaintiff is bad for improper identity of the suit properties.

The conclusion drawn above that, the suit of the plaintiff is not bad for any improper identity of the suit properties finds support from the ratio of the following decision:-

2015 (II) OLR-504—Rebati Khuntia & others Vrs. Sri Debi Prasad Rath—(Para 9)— Parties having fought out the suit having clear idea with regard to the space forming the subject matter of the suit, there remains no further scope for the defendants to raise the said question as in this case there was no surprise at all to the defendants and the parties are well aware of the identifiable suit space.

Therefore, the first substantial question of law is answered in negative against the appellants (defendants).

19. So far as the second formulated substantial question of law i.e. whether in the absence of any patta showing the nature of lands to be of raiyat status, rejection of the application under Order 41 Rule 27 of the CPC, 1908 with a public document i.e. Adangal to show the lands to be of Gramakantha Poramboka status is justified is concerned;

undisputedly, the suit properties belong to Government. When there is fighting for possession between the parties over the suit properties without having any title of any of the parties on the same, then, at this juncture, in view of the principles of law enunciated by the Hon'ble Courts and Apex Court in the ratio of

the aforesaid decisions indicated in the foregoing paragraph No.18 of this judgment, it cannot be held that, in absence of the patta of the suit properties, the suit filed by the plaintiff is not maintainable, as it is the admitted case of both the parties that, the status of the suit properties is Gramakantha Poramboka, which is the Government land and none of the parties has R.o.R. in his/her favour.

So, the aforesaid formulated second substantial question of law is also answered in negative against the appellants (defendants).

20. So far as, the third substantial question i.e. whether the suit for declaration of title is maintainable in the absence of Government as necessary party, when the suit land is of Government land is concerned; the plaintiff has sought for the reliefs i.e. for declaration of his title over the suit properties and also for recovery of possession of the suit properties.

So far as, the relief i.e. declaration over title of the suit properties is concerned;

it is the settled propositions of law that, in absence of owner of the land i.e. State, the prayer for declaration of title cannot be granted. For which, the suit of the plaintiff for the relief i.e. for declaration of title cannot be held as maintainable under law.

But, so far as the prayer of the plaintiff for recovery of possession of the suit properties is concerned;

in view of the propositions of law enunciated by the Hon'ble Courts and Apex Court in the ratio of the decisions referred to supra in paragraph No.18 of this judgment, when there is fighting between the parties over the suit properties without having title any of the parties thereon, then, under this situation, the person, whose possession was earlier, he/she is to be restored to his/her possession in the suit properties, if he/she has been dispossessed by the other party/parties.

21. It is very fundamental in civil law as per Section 9 of the CPC, 1908 that, when the Civil Court has jurisdiction to decide one relief, the suit is maintainable in civil Court irrespective of the fact, whether other reliefs can be granted or not.

On this aspect, propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:-

(i) 1987 (II) OLR-126, (1987) 64 CLT 14—Rusi Kumar Sahu and others Vrs. Sri Sri Rasa @ Rahas Behari Thakura and others—(Para8)—CPC, 1908—Section 9—When the Civil Court has jurisdiction to decide one relief, the suit is maintainable in Civil Court irrespective of the fact, whether other reliefs can be granted by it or not.

(ii) AIR 1978 Goa 1—Dr. Adolfo Braulio Cesario Rodrigues Fernandes and others Vrs. Narayan Sidapa Kadam—(Para-5)—Section-9—Composite suit for eviction and other reliefs—Even if the relief of eviction could not be granted, the other

reliefs could be granted by the Civil Court. Undoubtedly, the Trial Court had jurisdiction to decide the other issues involved and to grant some of those reliefs.

22. When the plaintiff has sought for two reliefs i.e. declaration of title and recovery of possession, but when as per the discussions and observations made above, the plaintiff is not entitled for the declaration of title, in absence of the State, still then, in view of the principles of law enunciated in the ratio of the aforesaid decisions, referred to supra, the suit of the plaintiff in respect of her prayer for recovery of possession is maintainable. For which, it cannot be held that, the entire suit of the plaintiff is not maintainable for non-impletion of Government as a party.

So, the suit of the plaintiff for the relief i.e. declaration of title is not maintainable. But, the suit of the plaintiff for the relief i.e. for recovery of possession is maintainable. Therefore, it cannot at all be held that, suit of the plaintiff was not maintainable under law.

23. Now it will be seen, whether the findings of the First Appellate Court regarding the earlier possession of the suit properties and for passing the decree of recovery of possession in favour of the plaintiff and against the defendants is acceptable under law?

The First Appellate Court being the last Court for giving findings on facts having been invested with all the powers of the Trial Court as per Section 107 of the CPC, 1908 has come to the conclusion in the judgment and decree of T.A. No.37 of 1999 after appreciating the oral and documentary evidence of the parties that, the plaintiff was possessing the suit properties since 21.12.1972 after purchasing the same from her vendors i.e. from Juddhistir Sahu and Dibakar Subudhi and the defendant Nos.1 and 2 were residing in the house on the suit properties constructed by the plaintiff as per the permission of the plaintiff and the claim of possession of the defendant No.2 over the suit properties by purchasing the same through the sale deeds dated 20.08.1980 and 19.03.1981 are baseless. The perfection of title by the vendors of defendant No.2 over the suit properties has become unacceptable under law.

As such, when the First Appellate Court after appreciating the oral and documentary evidence of both the sides has come to the conclusion that, the plaintiff had her possession over the suit properties since 21.12.1972 and the defendants were staying thereon as per the permission of the plaintiff and when the defendants are not vacating the suit premises in spite of the repeated requests of the plaintiff, then at this juncture, the decree for recovery of possession granted by the First Appellate Court through its judgment and decree passed in T.A. No.37 of 1999 after setting aside the judgment and decree of the dismissal of the suit passed by the Trial Court in T.S. No.13 of 1992 cannot be held as erroneous.

Because, the conclusion drawn above finds support from the ratio of the following decisions:-

(i) 2023 (3) Civil Court Cases 653 (Raj.)—Mahaveer & others Vrs. Omprakash—CPC, 1908—Section 100—Finding of fact recorded by the First Appellate Court after appreciation evidence not to be interfered with the findings in the Second Appeal.

(ii) AIR 2019 (Mad.) 3—D. Selvaraj Vrs. Palaniswami and another—(Para 24)—CPC, 1908—Section 100—Second Appeal—High Court has no jurisdiction in the Second Appeal to interfere with the finding of fact given by the First Appellate Court based upon appreciation of relevant evidence.

(iii) AIR 2018 (SC) 340—Ramathal Vrs. Maruthathal and others—CPC, 1908—Section 100—Second Appeal—High Court cannot interfere in a Second Appeal on a question of fact, unless and until there is absolute perversity.

24. Here in this suit at hand, when the findings and observations made by the First Appellate Court about the earlier possession of the plaintiff over the suit properties are based upon appreciation of relevant evidence and no perversity is found on such appreciation made by the First Appellate Court on facts for arriving at the conclusion about the earlier possession of the plaintiff over the suit properties and for passing of the decree for recovery of possession of the suit properties against the defendants, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, the question of interfering with the judgment and decree passed by the First Appellate Court through this Second Appeal filed by the Appellant does not arise.

As such, there is no merit in this Second Appeal of the Appellants (defendants). The same must fail.

25. In the result, this Second Appeal filed by the appellants (defendants) is dismissed on contest, but without cost.

The judgment and decree dated 21.02.2000 and 10.03.2000 respectively passed by the First Appellate Court in T.A. No. 37 of 1999 in setting aside the judgment and decree dated 29.03.1997 and 31.03.1997 respectively passed by the Trial Court in T.S. No.13 of 1992 are confirmed.

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