
(2019) 04 OHC CK 0008
In the Orissa High Court
Case No : R.S.A.No.294 Of 2006

Smt.Bejjupuram Haimabati APPELLANT
Vs
State Of Orissa And Others RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Constitution of India, 1950 — Section 141

Citation : (2019) 04 OHC CK 0008

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

Bench : Single Bench

Advocate : Pragyana Parmita Mulia,

Final Decision : Dismissed

Judgement

Dr.A.K.Rath, J

1.Â This appeal by the plaintiff assails the affirming judgment passed by the learned Ad hoc Additional District Judge (FTC), Gunupur in

R.F.A.No.10 of 2005.

2. Case of the plaintiff is that the suit land was recorded in the name of the defendants. One Sasibhusan Bebarta was in possession of the suit land

since 1940. He constructed a thatched house over the same. After his death, his son Krishna Prasad Bebarta leased out that thatched house in favour

of P. Nileeya, grandfather of the plaintiff, by means of a lease deed dated 14.1.1968 and delivered possession. P.Nileeya along with his daughter and

son-in-law was residing in the suit house. He used to pay monthly rent to Krishna Prasad Bebarta. After death of P.Nileeya, his daughter, mother of

the plaintiff, remained in possession of the suit house. After death of her mother, she is residing therein with his family members. She has acquired title

by way of adverse possession. She has constructed a pucca house over the same. She used to pay holding tax to the N.A.C. The defendants have no semblance of right, title and interest over the same. While matter stood thus, the Tahasildar, Gunupur, defendant no.2 initiated an Encroachment Case

no.136/83 against her. On 30.1.2004, defendant no.2 threatened her to vacate the same. With this factual scenario, she instituted the suit for declaration of title by way of adverse possession and permanent injunction.

3. Defendant no.2 entered contest and filed written statement pleading, inter alia, that the plaintiff has no semblance of right, title and interest over the suit house. She is not in continuous possession of the suit land. The suit land has been recorded in the Government khata. The plaintiff has illegally encroached upon the suit land for which encroachment case was initiated against her. Order of eviction was passed.

4. On the inter se pleadings of the parties, learned trial court framed five issues. Parties led evidence, oral and documentary. Learned trial court came to hold that the plaintiff failed to prove that she was in possession of the suit land for more than statutory period. She had not acquired title by way of adverse possession. Held so, it dismissed the suit. Felt aggrieved, the plaintiff filed R.F.A.No.10 of 2005 before the learned Ad hoc Additional District Judge (FTC), Gunupur, which was eventually dismissed.

5. Heard Ms.Pragyana Paramita Mulia on behalf of Mr.T.K.Pattnaik, learned Advocate for the appellant.

6. Ms.Mulia, learned Advocate for the appellant submits that the grandfather of the plaintiff was in possession of the suit land since 1968 by means of a lease deed dated 14.1.1968 executed in his favour. After death of her mother, the plaintiff is residing with her family members in the house constructed over the suit land peacefully, continuously and with the hostile animus to the defendants for more than statutory period and, as such, perfected title by way of adverse possession.

7. The question does arise as to whether the plaintiff can institute the suit for declaration of title by way of adverse possession ?

8. Taking a cue from the decision of the apex Court in the case of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC

669, this Court in Nabin Chandra Mohanta v. State of Orissa (R.S.A. No.396 of 2004 disposed of on 22.02.2019) held :

10. In Gurdwara Sahib, the plaintiff-appellant filed the suit for decree of declaration to the effect that it had become the owner of the suit property by adverse

possession, correction of ROR and permanent injunction. The suit was partly decreed by the trial court granting relief of injunction. The first appeal against that part

of the judgment, whereby relief of declaration was denied was dismissed by the Additional District Judge. In the second appeal, the relief of declaration by way of adverse possession was denied holding that such a suit is not maintainable. The second appeal was dismissed. The matter travelled to the Apex Court. The Apex

Court held:

8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence. (emphasis laid)

11. In no uncertain terms, the Apex Court held that even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such

adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this

adverse possession as a shield/defence. The same is ratio decidendi. The High Court is bound under Article 141 of the Constitution of India..

9. The matter may be examined from another angle. Krishna Prasad Bebarti had no title over the suit land. Thus, no title has passed pursuant to the execution of lease deed dated 14.1.1968.

10. On a threadbare analysis of the evidence on record and pleadings, learned trial court came to hold that the plaintiff is not in possession of the suit

land for more than statutory period and negated the plea of adverse possession. There are findings of fact. There is no perversity in the said findings.

11. Resultantly, the appeal fails and is dismissed, since the same does not involve any substantial question of law. There shall be no order as to costs.

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