

(2016) 11 OHC CK 0040
In the Orissa High Court
Case No : RSA No. 248 of 2011

Sri Srikrishna Ramanuj Das

APPELLANT

Vs

Collector, Ganjam

RESPONDENT

Date of Decision : 25-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2017) 169 AIC 877

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

Bench : Single Bench

Advocate : Addl. Standing Counsel, for the Respondents; Mr. P.K. Das, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Dr. A.K. Rath, J. - This is an appeal against the judgment and decree dated 26.4.2011 and 10.5.2011 respectively passed by the learned 2nd Addl. District Judge, Berhampur in R.F.A No. 27 of 2011/RFA No.77 of 2007 G.D.C confirming the judgment and decree dated 29.8.2007 and 13.9.2007 respectively passed by the learned Civil Judge (Senior Division), Chhatrapur in C.S. No.17 of 2006.

2. Appellant as plaintiff instituted C.S. No.17 of 2006 in the court of learned Civil Judge (Senior Division), Chhatrapur for declaration of title over the suit land and correction of ROR. Case of the plaintiff is that Jagnya Narayana Math was established by Thanapati Ramanuja Narayan Das in the village Govindapur in the year 1930. The founder had constructed a temple and installed the deity Sri Jagnaya Narayan Swamy. The Math is situated over the suit schedule land. Thanapati Ramanuja Narayana Das had executed and gifted the deed in favour of Madhab Prapana Ramanuja Das on 8.8.1946 along with other lands to do Seva Puja and Nitikrantis of the deities and festivals of the Math. During last settlement operation, the suit land was recorded in the Rakhita Khata with a note of possession of Madhab Prapana Ramanuja Das. During consolidation operation, the plaintiff had taken steps to record the land in the name of Math. But then,

the same was recorded in the Rakhita Khata. While the matter stood thus, an encroachment case being L.E.C No.71 of 1989 was initiated by the Tahasildar, Purushottampur. The Tahasildar rejected the claim of the plaintiff to settle the land in favour of the Math under Section 8-A of the OPLE Act. The Math is in possession of the land from 1930 peacefully, continuously and to the hostile animus of the true owner. When all attempts of the plaintiff before the revenue authorities ended in a fiasco, the suit was filed.

3. Pursuant to issuance of summons, the defendants entered appearance and filed a written statement denying the assertions made in the plaint. The case of the defendants is that final record-of-right was published in the year 1976. The suit land was recorded as Gochara in Rakhita Khata. The plaintiff had never paid the rent. The plaintiff had paid penalty to the Government, which amounts to recognition of title of the Government. Further, the consolidation authorities have recorded the suit land in Rakhita Khata for developmental purpose. The same has attained finality. The decision of the consolidation authorities will operate as *res judicata*.

4. On the inter se pleadings of the parties, learned trial court struck eight issues, which are as follows:

"1. Whether the suit is maintainable ?

2. Whether there is cause of action to file the suit ?

3. Whether the suit is barred by principle of *res judicata* ?

4. Whether the suit is time bared ?

5. Whether the plaintiff or the Monastery known as "Jagnya Narayana Matha of Mouza-Govindapur, as the case may be, has been in possession of the suit lands since 1930 ?

6. Whether the so-called possession of the plaintiff or the said monastery as the case may be, has been adverse to the title of the State Government for more than thirty years ?

7. Whether the plaintiff or the said monastery as the case may be, has got right, title and interest over the suit lands ?

8. To what reliefs, the plaintiffs or the monastery, as the case may be, is entitled ?"

5. To substantiate the case, the plaintiff had examined one witness and on his behalf, five documents had been exhibited. Learned trial court came to hold that the suit is not maintainable in absence of any valid notice as contemplated under Section 80 CPC. The suit is hit by the principle of *res judicata*. The plaintiff has failed to prove the title over the suit land. Held so, the learned trial court dismissed the suit. Assailing the judgment and decree passed by the learned trial court, the plaintiff filed R.F.A No. 27 of 2011/RFA No.77 of 2007 G.D.C before the

learned 2nd Addl. District Judge, Berhampur. Learned Addl. District Judge affirmed the findings of the learned trial court and dismissed the appeal.

6. Heard Mr. P.K. Das, learned counsel for the appellant and the learned Addl. Standing Counsel for the respondents.

7. Mr. Das, learned counsel for the appellant, submitted that Jagnya Narayana Math was established by Thanapati Ramanuja Narayan Das in the village Govindapur in the year 1930. The founder had constructed a temple and installed the deity Sri Jagnaya Narayan Swamy. The Math is situated over the suit schedule land. Thanapati Ramanuja Narayana Das had executed and gifted the deed in favour of Madhab Prapana Ramanuja Das on 8.8.1946 along with other lands to do Seva Puja and Nitikrantis of the deities and festivals of the Math. During last settlement operation, the suit land was recorded in the Rakhita Khata with a note of possession of Madhab Prapana Ramanuja Das. During consolidation operation, the plaintiff had taken steps to record the land in the name of Math. But then, the same was recorded in the Rakhita Khata. While the matter stood thus, an encroachment case being L.E.C No. 71 of 1989 was initiated by the Tahasildar, Purushottampur. The Tahasildar rejected the claim of the Math of the plaintiff to settle the land in favour of the Math under Section 8-A of the OPLE Act. The Math is in possession of the land from 1930 peacefully, continuously and to the hostile animus of the true owner.

8. In the celebrated judgment, the Privy Council in the Secretary of State v. Debendra Lal Khan, AIR 1934 PC 23 held that the classical requirement of adverse possession is that the possession should be *nec vi nec clam nec precario*. Their Lordships quoted with approval the decision in the case of Radhamoni Devi v. The Collector of Khulna and others, Indian Appeals 1900 Vol. XXVII at page 140 that "the possession required must be adequate in continuity, in publicity, and in extent to shew that it is possession adverse to the competitor".

9. Adverse possession is a mixed question of fact and law. Both the courts below concurrently held that the plaintiff has failed to prove the title over the suit land. Further, the consolidation operation in the area, where the land falls, started. The consolidation authorities have adjudicated the right, title and interest and recorded the land in the Rakhita Khata. Accordingly, ROR was published. The same has attained finality.

10. In the case of Srinibas Jena and others v. Janardan Jena and others, AIR 1981 Orissa 1, a Full Bench of this Court in uncertain terms held that a decision of the consolidation authorities on the questions of right, title and interest which are matters within their jurisdiction would operate as *res judicata* and that being so, the civil courts will have no jurisdiction to hear and decide the suit afresh.

11. In view of the authoritative pronouncement of this Court in the case of Srinibas Jena (*supra*), the inescapable conclusion is that the suit is hit by the principle of *res judicata*.

12. "Math" in ordinary language signifies an abode or residence of ascetic. In legal parlance, it connotes a monastic institution presided over by a superior. It is established for the use and benefit of ascetics belonging to a particular order who generally are disciples of the superior. The Hindu Maths were established for the first time by Shankar. The practise of setting up of Maths as centres of theological learning, which was followed by almost all the religious institutions since then. Religious discourses are given in the Math. It is highly inconceivable that a Math will encroach upon a Government property.

13. The logical sequitur of the analysis made in the preceding paragraph is that the appeal does not involve any substantial question of law and deserves dismissal. Accordingly, the same is dismissed.