
(2018) 04 OHC CK 0043
In the Orissa High Court
Case No : SA No.225 of 1987

SRIMATI CHITRALEKHA MOHANTY

APPELLANT

Vs

CHANDRAMANI BEWA AND OTHERS

RESPONDENT

Date of Decision : 09-04-2018

Acts Referred:

Orissa House Rent Control Act, 1967 — Section 7(iv)

Citation : (2018) 04 OHC CK 0043

Hon'ble Judges : DR. A.K. RATH

Bench : Single Bench

Advocate : Asok Mohanty, Lopamudra Pradhan

Final Decision : Allowed

Judgement

Dr. A.K.Rath, J.

1. This appeal is by the plaintiff. The suit was for declaration of title, confirmation of possession and permanent injunction.

2. The land appertaining to Khata No.144/80, Plot No.325, Ac.0.38 dec. and Plot No.326, Ac.0.170 dec. in Puri town is the subject-matter of dispute.

Plot No.325 situates adjacent north of plot no.326. The land originally belonged to two brothers Arnada Charan Rai and Durga Charan Rai. The case

of the plaintiff is that in an amicable partition, Durga got Ac.0.40 dec. of land from western side of plot no.326 and Ac.0.40 of land from western side

of plot no.325. Arnada got Ac.0.66 of land from eastern side of plot no.326 and Ac.0.40 of land from eastern side of plot no.325. Durga sold his entire

share to Ramesh Chandra Das. He has constructed a residential building and is staying therein. Arnada sold his share to Saudamini Mitra by means of

a registered sale deed dated 25.11.1955 vide Ext.7. Thereafter, Saudamini sold western half to defendant no.3. She was in possession of the eastern

half. Thereafter, defendant no.3 sold western half to the plaintiff by means of a registered sale deed dated 29.8.1977 vide Ext.3. When defendants 1

and 2 threatened to dispossess her, she instituted the suit seeking the reliefs mentioned supra.

3. Defendants 1 and 2 entered contest and filed a written statement stating that in the partition between Durga and Arnada, the later got his share

from the eastern half of plot Nos.325 and 326. He was in possession of the same. Ext.7 is a sham transaction. The same had not been acted upon.

After death of Arnada, his share devolved on his widow Kumudini. She was in possession of the land. Kumudini had executed a will in favour of

Dayanidhi, son of Defendant no.1. Letters of administration was granted in favour of Dayanidhi on 17.4.1969. Defendant no.4 had instituted a suit

against Dayanidhi, which was subsequently substituted by defendant nos.1 and 2. The same was dismissed in terms of compromise by which

defendants 1 and 2 were recognized as the owners of the eastern half of plot no.325 and 326, which constituted the share of Arnada. The defendants

have perfected their title by way of adverse possession.

4. Defendant no.3, vendor of the plaintiff, supports the case of the plaintiff. Since defendant no.4 died prior to institution of the suit, her name was

deleted.

5. Stemming on the pleadings of the parties, learned trial Court struck nine issues. Parties led evidence, oral and documentary to substantiate their

case. Learned trial court came to a conclusion that Ext.7 is a sham transaction and has not been acted upon. The plaintiff has not acquired right, title

and interest on the basis of Ext.3. The defendants have perfected title by way of adverse possession. Held so, it dismissed the suit. Unsuccessful

plaintiff appealed before the learned District Judge, Puri, which was transferred to the court of the learned 2nd Addl. District Judge, Puri, Ganjam and

renumbered as T.A No.1/89 of 1987/1981. The same was eventually dismissed.Â

6. The second appeal was admitted on the substantial questions of law enumerated in Ground Nos.2 A, C,D and E of the appeal memo. The same are

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â??A. Whether the findings of both the courts below that the defendant nos.1 and 2 have perfected their title by way of adverse possession can be

sustained in absence of any definite pleading on the part of the defendant nos.1

and 2 as to when and how their possession became adverse to the original owner.

C. Whether the courts below have acted against law by relying upon Ext.G, an alleged compromise entered into by one Gajendranath Mitra on behalf

of deceased defendant no.4 with defendant nos.1 and 2. When neither the plaintiff nor the vendor/s of the plaintiff defendant no.3 were parties to the suit or compromise after the property was sold under Ext.1 and 7.

D. Whether the learned courts below committed serious error of record by coming to the conclusion that the defendant no.1 and 2 were in possession

of the disputed plot when the admitted case is that they were tenants in respect of the residential house situated on the eastern portion of plot no.325

and 326 from which they were evicted in a House Rent proceeding as evidenced from Ext.4 and 5 by deceased defendant no.4.

E. Whether in view of the judgment in H.R.C. Case No.23 of 1968 by defendant no.4 and writ of delivery of possession Ext.5 filed by defendant no.4

as landlord against defendant Nos.1 and 2 the learned courts below findings that the defendant nos.1 and 2 were in hostile possession of the entire

portion consisting of disputed land is sustained in the eye of law.â??

7. Heard Mr. Asok Mohanty, learned Senior Advocate along with Ms. Lopamudra Pradhan, learned counsel for the appellant. None appeared for the respondents.

8. Mr. Mohanty, learned Senior Advocate for the appellant argued with vehemence that there was no pleading or evidence on record that defendants

1 and 2 have perfected title by way of adverse possession. The date of entry into the suit land has not been mentioned. Neither the plaintiff nor her

vendor was a party to the compromise entered into by one Gajendranath Mitra on behalf of defendant no.4 with defendant nos.1 and 2. The courts

below committed an illegality in relying upon Ext.G. Defendants 1 and 2 were in possession of the house situated on the eastern portion of Plot No.325

and 326. They had been evicted in H.R.C. Case No.23 of 1968 as would be evident from Exts.4 and 5. Delivery of possession was made to the

landlord.

9. Registered sale deed dated 25.11.1955 vide Ext.7 shows that Arnada sold the land to Saudamini. Thereafter, Saudamini sold the western half of the

land to defendant no.3. She was in possession of the eastern half. Thereafter, defendant no.3 sold the western half to the plaintiff by means of a registered sale deed dated 29.8.1977 vide Ext.3. While the matter stood thus, Saudamini instituted H.R.C. Case No.23 of 1968 under Sec. 7(iv) of the Orissa House Rent Control Act, 1967 before House Rent Controller, Puri for eviction of Dayanidhi. The case was allowed on 3.12.1969. Possession was delivered to the landlord as would be evident from Ext.5. The finding of the courts below that the sale deed vide Ext.1 and 7 have not been acted upon is based on surmises and conjectures. There is no material on record to come to such a conclusion.

10. Adverse possession is not a pure question of law but a blended one of fact and law. In *Karnataka Board of Wakf v. Govt. of India* (2004) 10 SCC

779, the apex Court observed as under :-

“In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the

owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a

right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled

principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and

continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must

start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.”

The court further observed that plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who

claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum

of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person

pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and

establish all facts necessary to establish his adverse possession.”

11. The date of entry into the suit land has not been mentioned. Mere possession

of the suit land for long time is not suffice to hold that the plaintiff has perfected title by way of adverse possession, unless the classical requirements of adverse possession nec vi, nec clam, nec precario are pleaded and proved. Learned appellate court abruptly came to a conclusion that the defendants have perfected title by way of adverse possession. The substantial questions of law are answered accordingly.

12. Resultantly, the appeal is allowed. The impugned judgments are set aside. Consequently, the suit is decreed. There shall be no order as to costs.

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