
(2018) 03 OHC CK 0091
In the Orissa High Court
Case No : S.A.No.174 of 1987

STATE OF ORISSA

APPELLANT

Vs

HALDHAR BARIK AND OTHERS HALDHAR BARIK AND OTHERS

RESPONDENT

Date of Decision : 29-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0091

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

Bench : Single Bench

Advocate : R.P.Mohapatra, S.D.Das

Final Decision : Dismissed

Judgement

Dr.A.K.RATH, J.

1. This appeal is by the State of Orissa against a reversing judgment.

2. Jagannath Barik, the predecessor-in-interest of respondents 1 to 6 as plaintiff instituted the suit for declaration of title and permanent injunction. The case of the plaintiff was that his father Bitu Barik had taken a piece of land measuring an area Ac.7.48 dec. at village Tantulinanda from the ex-state authorities in B.T.Case No.4 of 1947 for excavation of a tank. His father was in possession of the tank as well as adjoining land. Properties were partitioned amongst his six sons. The tank and suit schedule land fell to the share of the plaintiff. Though land has been recorded jointly in the current settlement record of right, but he is the owner of the same. The suit land measuring 0.62 dec. adjoins to the tank. Defendants 2 to 10 filed an application against him, whereafter the Revenue Amin measured the land. During measurement, it was found that the land settled in B.T.Case No.4 of 1947 was pathuria hudi. The tank excavated over patita land belongs to

Government. Encroachment Case No.58 of 1970-71 was initiated against him.

He filed objection. The case was dropped. Defendants 2 to 10 thereafter cut the ridge of the tank. It was further pleaded that he had acquired title over the suit land by way of adverse possession.

3. Defendant no.1 filed written statement denying the assertions made in the plaint. The case of defendant no.1 was that permission was accorded to

Bitu Barik for putting up a bundh on the Government land appertaining to plot no.233/1/265 and 233/1/266 under khata no.37/5 of village Tentulinanda

for the purpose of irrigation of his land and the villagers. The plaintiff has no right over the land. The settlement authorities have wrongly recorded

Ac.7.68 dec. of land in the R.O.R. The plaintiff has not acquired any title over the suit land. Defendants 2 to 10 filed written statement supporting the

stand of defendant no.1. According to them, the land belongs to the Government. The land is lying fallow. The plaintiff is not in possession of the said land.

4. Stemming on the pleadings of the parties, learned trial court framed five issues. Both parties adduced oral evidence. No document was exhibited by

the parties. Learned trial court dismissed the suit with a finding that the plaintiff has failed to prove that he has acquired title by way of adverse

possession. Feeling aggrieved, the plaintiff appealed before the learned District Judge, Keonjhar in Title Appeal No.13 of 1984. During pendency of

the appeal, an application for additional evidence was filed to mark the R.O.R. as well as the order passed in Encroachment Case No.58 of 1970-71.

Learned appellate court allowed the application and marked those documents as Exts.1 and 2. It held that the plaintiff has perfected title by way of

adverse possession. Held so, it allowed the appeal. It is apt to state here that during first appeal, the plaintiff died, whereafter his legal heirs have been

substituted.

5. The appeal was admitted on the following substantial questions of law :

1) Whether the plaintiff can claim title by adverse possession in respect of the Government land when such possession was initially permissive in

nature; and

2) Whether the plaintiff can acquire title by adverse possession over the suit lands without exhibiting hostile animus against the real owner, that is

without expressly or impliedly denying the title of the true owner?â??

6. Heard Mr.R.P.Mohapatra, learned Additional Government Advocate for the appellant and Mr.S.D.Das, learned Senior Advocate along with

Mr.H.K.Behera, learned Advocate for the respondents.

7. Mr.Mohapatra, learned Additional Government Advocate for the appellant submits that there is no material on record that the land was settled in

favour of the father of the plaintiff. The record of right neither creates title nor extinguishes title. Learned appellate court committed a manifest

illegality and impropriety in placing reliance on the order passed in Encroachment Case No.58 of 1970-71. There is no pleading or evidence on record

that the plaintiff has perfected title by way of adverse possession.

8. Mr.Das, learned Senior Advocate for the respondents submits that lease was granted to the father of the plaintiff in B.T.Case No.4 of 1947. His

father was in possession of the suit land for more than a statutory period peacefully, continuously and with the hostile animus to the true owner and, as

such, has perfected title by way of adverse possession. He further submits that in Encroachment Case No.58 of 1970-71, the plaintiff filed objection.

The Tahasildar dropped the case. The father of the plaintiff was in possession of the land whereafter the plaintiff is in possession of the land

peacefully, continuously and with the hostile animus to the true owner and, as such, perfected title by way of adverse possession.

9. There is no dispute with regard to settlement of the land in favour of the father of the plaintiff in B.T.Case No.4 of 1947. The dispute pertains to a

piece of land adjoining to tank. The plaintiff asserts that he has perfected title by way of adverse possession.

10. In Karnataka Board of Wakf vs. Govt. of India and others, (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 wellsettled

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.â??

11. The date of entry into the suit land has not been mentioned. Mere possession of the suit land for long time is not sufficient to hold that the

defendants 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.

12. Learned appellate court fell into patent error in placing reliance on the R.O.R. as well as the order passed in Encroachment Case No.58 of 1970-

71. As would be evident from the R.O.R., the R.O.R. has been issued in respect of Ac.7.48 dec. which is not the subject matter of dispute. The order

passed by the Tahasildar in Encroachment Case No.58 of 1970-71 is not binding on the Civil Court. In a suit for declaration of title, the Civil Court has

to examine as to whether the plaintiff has title over the same or not. The substantial questions of law are answered accordingly.

13. In the wake of aforesaid, the impugned judgment is set aside. Consequently, the suit is dismissed. There shall be no order as to costs.