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**(1997) 08 OHC CK 0018**  
**In the Orissa High Court**  
**Case No : Second Appeal No. 260 of 1986**

Swaraswati Mohanty and Others

APPELLANT

Vs

Tirthananda Badu

RESPONDENT

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**Date of Decision :** 27-08-1997

**Acts Referred:**

Specific Relief Act, 1963 — Section 36, 38

**Citation :** (1997) 2 OLR 325

**Hon'ble Judges :** D.M. Patnaik, J

**Bench :** Single Bench

**Advocate :** Sanjit Mohanty, for the Appellant; R.K. Mohapatra, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.M. Patnaik, J.—The plaintiffs are in appeal against the reversing judgment of the lower appellate Court dismissing the suit of the plaintiffs for permanent injunction in respect of the disputed land.

2. The plaintiffs claim to be the owner in possession of the disputed land bearing 1962 settlement plot No. 3295 under Khata No. 675/1 situated in Bhubaneswar. They claim to have purchased the land on 21.5.1962 from one Ramesh Chandra Mishra. In the same year the plaintiffs were treated as Stitiban tenants under Lingaraj Mohaprabhu and were recorded as such in 1962 under the Orissa Tenancy Act, 1913. When thereafter the land vested in the State in 1974, the plaintiffs became the tenants under the Government and paid rent. During the current settlement the plaintiffs were issued with Pucha. It is their further case that taking advantage of their absence the defendant threatened to trespass over the land on 16.4.1983 and tried to take forcible possession by constructing pucca wall in a portion of the land and hence the suit for permanent injunction.

3. The sole defendant filed written settlement denying material facts pleaded in the plaint. It was specifically denied that the vendor Ramesh Chandra Mishra who

was the Executive Officer of the temple of Lord Lingaraj Mohaprabhu had no authority to sell the land.

With regard to the title and possession of the suit property, the defendant pleaded that his grand-father Bauribandhu and his brother mutually partitioned their properties in which his grand-father got Ac. 3.530 decimals of land to his share and possessed the same. He sold away his lands to the father of the vendor of the plaintiffs by two sale-deeds of the years 1910 and 1912, but did not sell Ac. 0.530 decimals of land in plot No. 1486. This area was found to have been increased in the provincial settlement with by-plot No. 1486/3768 and his grand-father and thereafter his father and after him, the defendant has been in possession of the land in question. In 1962 settlement, this plot No. 1486/3768 and plot No. 1479 were recorded under single plot bearing No. 3295 with an area of Ac. 1.220 decimals. The defendant continued to possess his area of Ac. 0.555 decimals of land under old plot No. 1496/ 3768 which formed a portion of the single plot No. 3295. Thus according to him the plaintiffs have no title nor possession in respect of the disputed land.

4. The trial Court decreed the plaintiff's suit with a finding that the plaintiffs had title as well as possession in respect of the land in question. The lower appellate Court allowed the appeal with the finding that the plaintiffs failed to prove title in respect of the disputed-land in question.

5. Mr. Sanjit Mohanty, learned counsel for the plaintiffs, though raised several grounds in support of the appeal, the crux of his argument was that when the defendant's case is that he was in possession of Ac. 0.530 decimals of land under old plot No. 1486/3768 and thereby did not claim any title or possession over the disputed plot No. 1479 and that, taking into consideration the positive case thus pleaded by the defendant in the written statement, the lower Court rightly held that the plaintiffs had proved their title and possession, the lower appellate Court committed error in just reversing this finding without giving any reason for the same. It was further urged that the plaintiffs filed the suit on the basis of the record-of-rights of the year 1962 settlement which mentioned only the single plot No. 3295 with area of A. 1.200 decimals of land. Therefore the lower appellate Court before reversing the finding of the lower Court should have given a finding as to in respect of which portion of the disputed plot No. 3295 the defendant's Ac. 0.555 decimals lay. In other words, in the absence of a proper identification of the defendant's area the onus of which was on the defendant to prove, the lower appellate Court should have dismissed the appeal.

Mr. Mohanty during the course of argument pointed out that, even to prove plaintiff's title to that portion of the land claimed by the defendant, as a matter of abundant caution, the plaintiffs searched for the sale-deed of the year 1916 executed by Bauribandhu in favour of the father of Ramesh Chandra Mishra in respect of plot No. 1479 and obtained the certified copy of which they have filed in this Court to be admitted as additional evidence. Mr. Mohanty submitted that in the worst case the plaintiffs should be given a chance to adduce additional

evidence to prove that he had acquired title also in respect of the land covered under old plot No. 1479.

6. Mr. R.K. Mohapatra, learned counsel for the defendant, strenuously countered the argument of Mr. Mohanty and submitted that the written statement of the defendant is abundantly clear that he denied the title of the plaintiffs in respect of plot No. 1479 and averred to have possessed the disputed land in question. Further it was argued by Mr. Mohapatra that, it is for the plaintiffs to prove their title as well as possession in order to succeed in a case for permanent injunction. Failure to prove these two elements, according to Mr. Mohapatra, the plaintiff's suit must be dismissed.

Mr. Mohapatra further submitted that the defendant has been able to prove his title and possession which the lower appellate Court has rightly considered particularly in the absence of title of the plaintiffs.

With regard to the prayer of allowing to adduce additional evidence, Mr. Mohapatra vehemently challenged the grounds taken by the plaintiffs in support of his contention. It was submitted that the plaintiffs did not make any effort to search for the documents and thus were not diligent in proving the same. Mr. Mohapatra referred to several decisions in support of this contention which I do not feel it necessary to discuss for the reasons given in the following paragraphs.

The rival contentions need examination.

7. It is the admitted case of the parties that the suit land measures Ac. 1.200 decimals and is comprised of the 1962 settlement plot No. 3295. It is also admitted by both the sides that the Sabik Plot No. 1486/3768 and plot No. 1479 both have been converted to single plot No. 3295 of 1962 settlement.

8. I am unable to accept the contentions of Mr. Mohapatra that in a suit for permanent injunction the plaintiff is bound to prove title and possession.

It is well settled law that, in a suit for permanent injunction a person can defend his possession against all the world except the true owner having a better title than the plaintiff, so much so a trespasser can defend his possession against a subsequent trespasser unless the latter shows a better title to the property in question (vide decision reported in *M. Kallappa Setty Vs. M.V. Lakshminarayana Rao*, ) followed by the decision of this Court reported in *Raghunath Prusty and Others Vs. Raghunath Baliarsingh*, , also cited by Mr. Mohapatra. Therefore, in the case at hand, we are only to judge whether the plaintiffs have been able to prove that they are in possession of the land so as not to allow the defendant to disturb his possession unless the latter has been able to prove a better title to the property.

9. The plaintiffs have filed the suit on the basis of record of rights of the 1962 settlement which mentions the single plot No. 3295. The plaintiffs have committed no wrong in filing the suit basing on the record-of-rights of 1962 settlement. No doubt, a record-of-right does not either create or extinguish title,

but it is well settled that the record-of-rights have a presumptive value both in regard to title and possession. The settlement authorities prepare the record-of-rights after spot visit and measurement in respect of title as well as the possession of the person in whose favour the record-of-rights are prepared. Even though a person may not have any title to the property yet possesses the same, there supposed to be a note of possession in his favour though title may remain with another person.

In the present case because the plaintiffs had claimed title on the basis of the sale deeds and that the settlement authorities found the plaintiffs to be in possession of the land in question, they recorded the plaintiffs in the record-of-rights of 1962. This positively establishes that the defendant failed to satisfy the settlement authorities that he had either title or possession in respect of whole of the area or even a portion of the same which is claimed by him to have been covered under the Sabik Plot No. 1486/3768. The present suit being only a suit for permanent injunction the parties are not debarred from filing a regular suit for title, subject of course to the period of limitation. But so far as the plaintiffs' possession is concerned, the same has been proved by documentary evidence i.e. the record-of-rights of 1962 as well as the rent receipts. At the same time the defendant having failed to prove possession, the plaintiffs' possession has to be protected. Therefore, the plaintiffs' suit must succeed.

That apart, I agree with the submission of Mr. Mohanty that the defendant should have positively proved by way of proper identification of the land that the disputed Sand formed part of the land in respect of which he had title as well as possession.

The lower appellate Court has committed error on both fact and on point of law contrary to what has been held by me in the foregoing paragraphs. Therefore, the judgment is liable to be set aside.

11. Mr. Mohapatra, also cited the decision reported in Fakir Senapati Vs. Tahsildar and Others, , in support of his argument that in a suit for permanent injunction the plaintiff is to prove title and possession. This proposition pointed out by Mr. Mohapatra cannot be made applicable to all cases. As already indicated by the Supreme Court in the case of M. Kallappa Setty (supra) and observed by me in the foregoing paragraphs, the plaintiffs even without proving their title can maintain the suit for permanent injunction on the basis of possession alone.

12. So far as the case of Fakir Sepanapati (supra) is concerned, the facts of the case is not applicable to the present case inasmuch as in that case the plaintiff failed to prove that a lease in respect of the government land was ever granted in his favour. There was thus absence of even a semblance of title. But in the present case the plaintiffs filed the suit claiming that they were Stitiban tenants under the Lingaraj Mahaprabhu and was so recorded in the 1962 settlement under Ext. 1. Therefore the decision is not applicable to the present case.

13. In regard to the prayer for additional evidence I may say that the plaintiffs

were not bound to prove their title and that they have been able to prove possession which is to be protected. Therefore, I do not feel it necessary to allow the plaintiffs' prayer for additional evidence as prayer for by them in Misc. Case No. 462 of 1986. They may do so when occasion arises to prove such fact in future. Thus, in view of the above finding no order is necessary to be passed in the misc. case and the same is disposed of accordingly.

14. In the result, the appeal is allowed. The lower appellate Court's judgment and decree are set aside and that of the lower Court are confirmed. Parties to bear their own cost.