
(2009) 12 OHC CK 0049
In the Orissa High Court

The State of Orissa

APPELLANT

Vs

Ghanashyam Sahoo

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2010) 109 CLT 253 : (2010) 1 OLR 947 Supp

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—This First Appeal is directed against the Judgment & Order Dated 30.09.1989 passed by the Learned Subordinate Judge, Bolangir in Title Suit No. 101 of 1980.

2. The facts of the case, as borne out from the records, are that one Kunjabehari Sahoo of Bolangir was the recorded tenant & owner of lands under holding No. 45 of 1936 Settlement of Bolangir town comprising plot Nos. 2570, 2574 & 1575 along with other plots. Being a dealer of fire works, he had his godown in plot No. 2574. On 03.08.1966, he sold away the aforesaid plots under holding No. 45 to the present Respondent for a consideration of Rs. 2000 by execution of registered sale deed. The delivery of possession was duly given to the present Respondent by him. The Respondent possessed the suit land on 03.08.1966 until it was encroached upon by the Appellant. The Respondent was in possession of the aforesaid land in his own right & title openly, peaceably & to the exclusion of all others & thereby perfected his title by way of adverse possession. In Rev (Mutation) case No. 8/3 of 1967 by order of the Tahasildar, Bolangir mutation was allowed in favour of the Respondent & intimation slip was issued to him. In the R.O.R. of the current settlement, the Respondent has been recorded with respect to plot Nos. 2570, 2574 & 1575 amongst other plots of 1936 settlement. It is discovered that an area of A.0.783 out of plot No. 2570 & whole of plot Nos. 2574 & 2575 have been occupied by the Ayurvedic Pharmacy unauthorizedly &

illegally & some unauthorized constructions have been made for said Ayurvedic Pharmacy. There was a house over plot No. 2574 & a well in the vicinity which were in possession of the Respondent. The said house was demolished & the well was filled up. Respite strong protest made by the grand father of the Respondent, Janak Bihari Sahoo, the construction was made. The Respondent through his advocate issued notice u/s 80 C.P.C. which was received by the Appellant. Thereafter, the Respondent filed a suit for declaration of right & title over the suit land & recovery of possession after demolishing the construction made by the Appellant or alternatively for recovery of a sum of Rs. 1,50,000 from the Appellant being the approximate market value of the suit lands & damages for unauthorized construction & injuries caused against his will.

3. The Appellant appeared & submitted his written statement. While denying the allegations made by the Respondent, the Appellant stated that the Nazul plot in question of Bolangir Nazul area were recorded in the name of Kunjabehari Sahoo with limited rights without ownership over the same in the last settlement. He was in possession over the same till the said lands were acquired by the State Government in the prescribed manner. The plots had been kept reserved for the Government purposes. Though a registered sale deed had been executed by Kunjabehari Sahoo in favour of the Respondent, possession was not taken by him. It was further pleaded in the written statement that the sale deed was only a paper transaction. Therefore, the Respondent has not acquired right, title or possession over the land. The mutation case was allowed wrongly & without jurisdiction in favour of the Respondent & the said case was not decided in its proper perspective.

4. The Learned Subordinate Judge, Bolangir, who tried the case, vide his Judgment dated 30.09.1989 decreed the suit on contest & declared the right & title of the Respondent over the suit land & directed the Appellant to pay the price of the suit land amounting Rs. 1,50,000 to the Respondent within two months.

5. Miss Mishra, Learned Additional Standing Counsel appearing for the Appellant submits that the Trial Court ought to have held that the vendor had no saleable interest over the suit land in the year 1960. There is no evidence with regard to his possession over the suit land. She further submits that the mutation order was without jurisdiction in view of statutory bar under Rule 33 of the Orissa Survey Settlement Rules. Therefore, the decree passed by the Trial Court is void, illegal & liable to be set aside.

6. Learned Counsel for the Respondent submits that there is no illegality committed by the Trial Court. There is no infirmity in the impugned Judgment & decree & the Respondent was in possession of the suit land.

7. On perusal of the records, it appears that Kunjabehari Sahoo was the original owner of the suit land who sold the same to the present Respondent by execution of registered sale deed dated 03.08.1966 & accordingly ownership was

transferred in favour of the Respondent in the year 1966 as per sale deed Ext.9. The Respondent also produced evidence both oral & documentary to show that his right, title & interest over the suit lands continues. P.Ws.2 & 3, the adjacent tenants deposed that the suit land was in possession of the Respondent. Apart from that, the present Respondent proved Ext. 1, the certified copy of the R.O.R. of 1936 settlement with respect to the suit lands which stood in the name of Kunjabehari Sahoo. Further, the Respondent proved Ext.2, the certified copy of the Mutation case No. 8/3 of 1967. An intimation slip had also been issued in favour of the Respondent vide Ext.3 & rent was accepted for the suit lands by the State. As per Ext. 8, a certificate case bearing No. 99/81 was started against the Respondent for realization of the arrear rent & the same was paid & accepted by the State. Since 1966 till the year 1980 all along the State has acknowledged the title of the Respondent over the suit lands as per Exts.1 to 4 & 8. After considering the oral evidence coupled with the exhibits, it is proved that the Respondent has title over the suit land. Kunjabehari Sahoo was the actual owner of the suit Nazul land & the sale deed dated 02.08.1966 is valid/genuine & thereby the Respondent has acquired right, title & possession over the suit lands by virtue of the sale deed.

8. Now, the question is whether the suit land along with other land was acquired by the State Government in the prescribed manner or not. The Appellant has not produced nor proved the land acquisition record in spite of the order of the Trial Court. Rather he took many adjournments to produce the land acquisition case record. But it was never produced before the Court. After going through the entire evidence adduced by both the parties, it is found that no original record was produced before the Trial Court & thereby the Respondent has successfully proved that actually the land had not been acquired in due process of law.

9. Now, it is to be seen whether the amount of Rs. 1,50,000 as awarded by the Trial Court for damages is proper or not. There is no dispute that the suit land is homestead in nature & Ayurvedic Pharmacy building is standing thereon. D.W.6, who is a Clerk in the District Sub-Registrar Office, Bolangir, has admitted that the value of the suit land was Rs. 93,000 per acre at the relevant time. There is no material to show that the value of the land was less than Rs. 1,50,000. Admittedly, the suit land was occupied by the Government & Ayurvedic Pharmacy building has already been constructed. The suit is of the year 1980 & in the meantime, 25 years have elapsed. So there is no justification to reduce the amount.

10. In view of the discussions made above, the First Appeal is bereft of any merit & is dismissed as such.