

(1994) 11 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 2806 of 1989

Trilochan Dandsena and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-11-1994

Acts Referred:

Evidence Act, 1872 — Section 101

Limitation Act, 1963 — Article 65

Orissa Land Reforms Act, 1960 — Section 22, 23, 23B

Citation : (1995) 1 OLR 75

Hon'ble Judges : V.A. Mohta, C.J.; R.K. Patra, J.; D.P. Mohapatra, J

Bench : Full Bench

Advocate : A.K. Mahakud, U.K. Lenka and S.K. Misra, for the Appellant; Govt. Advocate, S.K. Nayak-I, A.K. Baral, R. Roy and R.K. Kar, for the Respondent

Judgement

V.A. Mohta, C.J.—In this writ petition under Articles 226 and 227 of the Constitution, the Full Bench is called upon to record an answer to the following question:--

"Whether the petitioners, who were in possession of the land in question from 25-3-1961 under an unregistered sale deed though the value of the land was Rs. 1,400/- and thereafter another registered sale deed was executed between the same vendor and vendee on 11-11-1967 without prior permission of the competent authority u/s 22 of the Act, though the vendor was a Scheduled Tribe member and vendees were Non-Scheduled Tribe Members, who continued in possession from the date of the unregistered sale deed, have perfected their title by adverse possession. In other words, whether the second registered sale deed in between the parties which was also void ab initio interrupted continuance of the adverse possession which started from 25-3-1961."

2. Basic factual background is:

Linga Bariha (O. P. No. 5) -- a Scheduled Tribe person -- filed on 10-2-1983 an application u/s 23 of the Orissa Land Reforms Act ("the Act") -- brought into

force from 1-10-1965 -- for restoration of possession of his land from Trilochan Dandsena and another (the petitioners) -- the non-Scheduled Tribe persons. The basis was that the registered sale deed dated 11-11-1967 executed by C. P. No. 5 in favour of the petitioners transferring the land for a consideration of Rs. 1,400/- was void and inoperative in law being in contravention of Section 22 of the Act, as it was obtained without permission of the Revenue Officer. The petitioners defended the possession on the ground that they are in possession of the property with effect from 25-3-1961 on the basis of an unregistered sale on paying the full consideration of Rs. 1,400/- and had acquired title by adverse possession before 2-10-1973 from which date Section 23-B (inserted by Act No. 44 of 1976) was brought into force. By Section 23-B, two changes are brought about (1) the period of 12 years contemplated by Article 65 of the Limitation Act has been enhanced to 30 years for the limited purposes of proceedings u/s 23 of the Act, and (2) burden to prove the transaction as valid is placed on the transferee. No party led any oral evidence. The Sub-Divisional Officer rejected the defence and ordered restoration of possession, The Additional District Magistrate, however, allowed the appeal filed by the petitioners. The Collector reversed the order passed by the appellate authority and restored the order of the S.D.O.

3. Aggrieved by the order of the Collector, the petitioners filed this writ petition and in course of hearing relied upon a Division Bench decision of this Court in the case of *Ranjit Sahu v. Chintamani Sethi* (1990) 1 OLR 289 in which claim of acquisition of title by adverse possession on the basis of two transactions, one of unregistered sale dated 1-4-1962 and the other of a registered sale deed 15-1-1966, but in contravention of Section 22 of the Act, was upheld. The learned Judges bearing the present matter expressed doubts about the correctness of the ratio of that decision and hence this reference to Full Bench was made.

4. Having heard learned counsel for the parties and examined the record with their assistance, it seems to us that the answer to the question has to be against the petitioners.

5. In the first place we are unable to see how the acquisition of title by adverse possession would be possible in the cases of this type specially when no evidence whatsoever is led by the party claiming title. Adverse possession is essentially a question of fact. In any case it is a mixed question of law and fact. The starting point of limitation begins from the expression of hostile animus amounting to denial of title of the real owner to his knowledge. This must continue for uninterrupted period of 12 years. Merely on the basis of possession under a void transaction -- and nothing more -- title by adverse possession cannot be matured, more so when before the prescribed period has run out, the person in possession acknowledges the superior title of the real owner. Even if the possession continues uninterruptedly but the nature of the possession is not identical, the two periods cannot be tagged for the purposes of counting the total

period required for maturity of title by adverse possession.

6. Getting the registered sale deed from the real owner on the ground that the first transaction was not in accordance with law clearly amounts to recognition of title of the real owner and results in the break in the running of time, as observed in *Corpus Juris Secundum*. (Vol. II, Page 627). Submission of the learned counsel for the petitioners that the registered document of 1967 was purely a voluntary act of opposite party No. 5 without knowledge or consent of the petitioners and, therefore, does not amount to their recognition of title has to be stated merely to be rejected. Common sense does not permit acceptance of this astounding proposition. The learned counsel relied upon a decision of the Supreme Court in the case of *Wuntakal Yalpi Chenabasavana Gowd Vs. Rao Bahadur Y. Mahabaleshwarappa and Another*, . We notice nothing in that decision which can even remotely substantiate the proposition. The said decision essentially deals with the question of starting point of limitation under old Article 144 of the Limitation Act (now Article 65) in a dispute between the co-owners where the time of ouster is crucial.

7. In the case of *Ranjit Sahu* 1990 (1) OLR 289 the previous possession of land valued more than Rs. 100/- was on the basis of an unregistered sale deed dated 1-4-1962. The registered sale deed was executed on 15-1 -1966, but without permission of the Revenue Officer u/s 22 of the Act. A submission was made that both the documents were inoperative in law and hence having regard to all relevant factors, acquisition of title by adverse possession should be held since the transferee was in actual continuous possession for more than 12 years on 2-10-1973. The learned Judges accepted that proposition. Effect of acknowledgment of title by the second document was not argued before the learned Judges and hence was not considered in that decision.

8. In order to avoid the drudgery of another round of hearing and in public interest, we considered the ritual of remitting the case for decision before a Division Bench as unnecessary. Hence, we requested the parties to address us even on the question of merits of the matter to which they fairly and readily agreed, and hence, we propose to dispose of the petition itself by this very order.

9. u/s 23-B of the Act, the burden is cast on the transferee to prove that the transaction was valid. As far as burden to prove the claim of acquisition of title by adverse possession is concerned, it is always on the person claiming that title. In reply to the show cause notice in the proceeding u/s 23 of the Act, reference to the claim is only by using the words "adverse possession" without specifying anything more. Pleadings are blissfully vague. The transferees neither entered into the witness-box nor examined any witness. They have failed to allege and prove the hostile animus as well as the unusual claim of second registered sale deed of 1967 having been executed without their consent or knowledge. The finding of the two Revenue Authorities under the Act that the claim of adverse possession was not proved is a reasonable finding of fact which is binding on writ Court. For all these reasons no interference in writ jurisdiction is called for.

10. To conclude, the reference is answered in the terms indicated earlier and the petition is dismissed. No order as to cost.

D.P. Mohapatra, J.

11. I agree.

R.K. Patra, J.

12. I agree.