

IN THE COURT OF CIVIL JUDGE(SR. DIVN.), BHUBANESWAR

Present : **Sri Sitikantha Samal**
Civil Judge(Sr. Divn.)
Bhubaneswar.

C.S No. 188/2005

Smt. Pabitra Sahu, aged about 62 years
W/o Chakradhar Sahu
Plot No. 79/7, Bapuji Nagar
Bhubaneswar, Ps-New Capital,
Dist-Khurda.

..... Plaintiff

– Versus -

1. Secretary to Govt. of Orissa,
Revenue Department, Orissa Secretariat
Bhubaneswar, Dist-Khurda.
2. State of Orissa, represented through its
Special Secretary, G.A Department
Orissa Secretariat, Bhubaneswar, Dist-Khurda.

..... Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s S.N.Das & Associates
For the defendants : Sri R.P Nanda (G.P)

DATE OF ARGUMENT : 12.05.2014

DATE OF JUDGMENT : 15.05.2014

J U D G E M E N T

The plaintiff has filed the suit for declaration of title, confirmation of possession and permanent injunction.

2. The case of the plaintiff in brief is that she is the occupier and in possession of drawing plot no. 79/5 and 79/6 of Mouza-Bapuji Nagar adjoining to which drawing plot no. 79/7 measuring an area Ac0.005 decimals having 11' x 25' (suit land) was lying vacant and taking advantage of the

same, the plaintiff amalgamated the suit land with plot no. 79/5 and 79/6 by encircling the same by boundary wall and possessed the same continuously since 01.01.1963. The plaintiff has also constructed her residential house over the suit land, taken electricity and water connection to the same. The house of the plaintiff has also been duly assessed by the Bhubaneswar Municipal Corporation. During the settlement, the plaintiff approached the settlement authority to record the suit land in her name. The settlement authority though changed the kisam of the suit land to Ghara and Bari, but recorded the same in favour of the deft.no.2, G.A Department with plaintiff's note of possession in the remark column. When the matter stood thus, the deft.no.2 with an ulterior motive, in the year 1993 initiated an OPP Case bearing no. 265/93 as against the plaintiff when the plaintiff completed her 30 years of continuous possession over the suit land. When the deft.no.2 could not take any step in the said OPP case, the ROR in respect of the suit land was published in the name of the plaintiff and as such, the plaintiff enjoyed the suit land and thereby acquired title by adverse possession over the same. But on 17.03.2005, some officers of deft.no.2 threatened the plaintiff to disposes her from the suit land. Hence, the suit.

- 3.** Both the defendants appeared and deft.no.2 filed W.S in challenging the case of the plaintiff in various grounds inter-alia on the ground of maintainability, lack of cause of action, limitation and under valuation. It is averred that the suit land appertaining to plot no. 599/1290, Khata No. 357 measuring an area Ac0.005 decimals stands recorded in the name of G.A Department having illegal note of possession in the name of Kasinath Sahu in the remarks column of the Hal ROR. The plaintiff is the allottee of plot no. 599 and she has illegally encroached an area Ac0.005 decimals from plot no. 599/1290 which is adjoined to her plot no. 599. As per recent

field verification report submitted by the R.I, the plaintiff has recently constructed one asbestos house over the suit land and rented it. In view of the said encroachment, the deft.no.2 has already started an OPP Case bearing no. 236/L for her eviction. In collusion with lower level settlement officials, the plaintiff's predecessor could be able to record a note of illegal possession in his favour in the remarks column of the ROR. Submitting the above, the deft.no.2 prays to dismiss the suit.

- 4.** On the basis of the aforesaid rival pleadings of the parties, the following issues have been framed for consideration.

ISSUES

- (i)** Is the suit maintainable ?
- (ii)** Whether there is cause of action to file the suit ?
- (iii)** Whether the plaintiff has perfected her title over the suit land by way of adverse possession ?
- (iv)** Whether the plaintiff is entitled for the relief of permanent injunction against the defendants as prayed for ?
- (v)** To what relief(s), if any the plaintiff is entitled ?

- 5.** In support of her case, the plaintiff besides adducing her own evidence who is referred to as P.W.1 has also adduced the evidence of P.W.2 who is referred to as P.W.2. Besides the plaintiff has also exhibited several documents in the shape of Ext.1 to 5. On the other hand, the defendants have adduced the evidence of D.W.1, one R.I of the G.A Department. Besides the defendants have also exhibited some documents marked Ext.A to C from their side. All the oral and documentary evidences adduced on behalf of the parties have been reflected in detail at the foot of this judgment.

FINDINGS

6. Issue No. (iii) :-

Since this issue is the crux of the suit, it is taken first for consideration. It is the specific case of the plaintiff that since the suit land adjoins her land bearing drawing plot no. 79/5 and 79/5, she amalgamated the same and possessed the suit land from 01.01.1963 having boundary wall. But during settlement in the not final ROR, even though the suit land was recorded in the name of the Government but in the remarks column, her name finds place as an illegal possessor. In spite of her approach to the settlement authorities, finally the suit land has been recorded in the name of the Government and the final ROR has been prepared accordingly. She has also taken the plea that she has constructed the house over the suit land and has been possessing by availing electricity and water supply to the said house standing over the suit land and also paying tax to the municipal corporation. Since she is possessing the suit land from 01.01.1963 openly, peacefully, continuously to the knowledge of all concerned including the defendants, she has perfected her title over the suit land by adverse possession. In order to substantiate her pleading, she examined herself as P.W.1 and has deposed supporting her aforesaid plea. In course of her examination, she proved the certified copy of the Not final ROR which is admitted in evidence as Ext.1 which reveals that even though the suit land has been recorded in the name of the G.A Department, the Kisam of the suit land is Gharabari and the plaintiff is in illegal possession over the same which is reflected in the remarks column of Ext.1. She also proved the Ext.2, municipality tax receipt and the water rent receipt and electricity bills which are admitted in evidence as Ext.3 & 4 respectively. She also proved a notice under the O.P.P Act issued against her in O.P.P Case No. 265/93(L) which is admitted in evidence as Ext.5. The learned counsel for the

plaintiff submitted that the Ext.1 coupled with the Ext.2 to 5 clearly establish that the plaintiff is in possession over the suit land having her house thereon since 01.01.1963 openly, peacefully and continuously and thereby she has acquired title over the same by way of adverse possession.

It is well recognized position of law that mere possession however long does not necessarily mean that it is adverse to the owner. Adverse possession really means the hostile possession which is expressly or impliedly denial of the title of the true owner and in order to constitute adverse possession, the possession proved must be adequate in continuity, in publicity and in extent so as to show it is adverse to the true owner. The classical requirements of the acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. A person pleading adverse possession has no equities in his favour. Since that person 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.

Keeping in mind the aforesaid proposition of law, this Court is to appreciate the evidence adduced by the plaintiff so also her pleading. Admittedly the Ext.1 shows that the plaintiff was in illegal possession over the suit land at the time of preparation of the same. The Ext.2, 3 and 4 though stand in the name of the plaintiff, but it can not be said that those documents are for the alleged house standing over the suit land. The evidence of P.W.2 who is only 39 years of age as on 15.01.2014, who only stated that from his childhood, he is seeing the plaintiff's possession over the suit land having her house thereon. This evidence of the P.W.2 even though supports the factum of possession of the plaintiff over the suit land for some period, but not enough to establish the ingredients of the principles of adverse possession.

The learned G.P in course of his argument relied upon a decision reported in AIR 2010 SC 744 (Mandal Revenue Officer Vs. Goundla Venkaiah and another), the Hon'ble Apex Court has observed in the law of adverse possession over the Government land that :

“ In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep every day vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularised. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give upper hand to the encroachers, unauthorised occupants or land grabbers”.

The learned G.P submitted that in view of the decision supra, the Court must take utmost care and be cautious while appreciating the evidence available for adverse possession. The D.W.1, the R.I of G.A Department in his evidence supported the plea of the defendant. The defendants have proved the final ROR in respect of the suit land which is admitted evidence as Ext.B and the order sheet of OPP Case No. 236/2012(L) in respect of the suit land which is admitted in evidence as Ext.C. The Ext.B shows that the suit land recorded in the name of the G.A Department. But in the remarks column, it has been mentioned that one Kasinath Sahu is in illegal possession over the suit land. In his cross-

examination, at para-17, he has specifically stated that the ROR was finally published in the year 1987-88. Similarly, the Ext. C, the true copy of OPP Case No. 236/12 shows that the said case was initiated against Sri Pabitra Sahu, S/o Kasinath Sahu in respect of the suit land. Even though it is found that the plaintiff is in possession over the suit land, except the statement of P.W.1, the plaintiff, there is nothing in the case record to show that she started possessing the suit land from 01.01.1963. Similarly, the Ext.A, the final ROR in respect of the suit land contradicts the possession of the plaintiff over the suit land at the time of preparation and publication of the same. The D.W.1 in his cross-examination at para-14 on being asked by the plaintiff has stated that in the OPP Case of the year 1993, eviction of the encroacher was done. So the evidence of D.W.1 coupled with the Ext.B and C establishes the fact that the plaintiff is not in continuous possession over the suit land which is the most important ingredient of adverse possession. On the other hand, if at all for the sake of argument it is held that the plaintiff is in possession over the suit land for more than statutory period continuously, that itself can not establish adverse possession unless she has got hostile animus against the true owner not only during her possession but also from the very inception when she entered into possession. The pleadings so also evidence adduced by the plaintiff is completely silent as to her hostile animus against the true owner in possessing the suit land. In this respect, the learned counsel for the defendant draws the attention of this Court to the evidence of P.W.1. During cross-examination at para-11, the P.W.1 has categorically admitted that the suit land is a Government land and till today, the Government is the owner of the suit land. This statement of the plaintiff goes to show that she never possesses the suit land as of right with hostile animus against the true owner.

From the aforesaid discussion, I am of the view that not only the plaintiff failed to prove her continuous possession for the statutory period of 30 years, but also more importantly the hostile animosity against the true owner which is the vital ingredient of principle of adverse possession. Accordingly to the issue no.3 is decided in negative against the plaintiff.

7. Issue No. (iv)

When the plaintiff has failed to prove her title over the suit land as decided in issue no. (iii) and when her possession is not lawful, she is not entitled to an order of injunction against the true owner. Accordingly, the aforesaid issue is answered in negative against the plaintiff.

8. Issue No. (i) (ii) & (v)

In view of discussion in issue no. (iii) & (iv), the suit is found not maintainable and there is no cause of action for this suit. Accordingly the issues are also decided against the plaintiff for which the plaintiff is not entitled for other relief. Hence ordered;

ORDER

The suit be and the same is hereby dismissed on contest against the defendants, under the circumstances without any cost.

Advocate's fees be assessed at the contested scale.

Civil Judge(Sr.Divn.)
Bhubaneswar.

The judgment is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 15th day of May, 2014 under my seal and signature below.

Civil Judge(Sr.Divn.)
Bhubaneswar.

List of witnesses examined for the plaintiff:

- P.W.1 Smt. Pabitra Sahu
P.W.2 Girija Sankar Pattnaik

List of witnesses examined from the side of defendants:

- D.W.1 Rabi Narayan Jena

List of documents exhibited on behalf of the plaintiff:

- Ext.1 Not final ROR of the suit land.
Ext.2 Municipality Holding tax
Ext.3 Water tax receipt
Ext.4 Electricity Bill
Ext.4/a Electricity Receipt
Ext.5 OPP Case Summon and map

List of documents exhibited on behalf of the defendants:

- Ext.A Letter of Authorization
Ext.A/1 Signature with seal of Niten Chandra
Ext.A/2 Signature of D.W.1 on Ext.A
Ext.B Certified copy of Hal ROR of Khata No. 357
Ext.C Certified copy of order sheets and notice in O.P.P Case No. 236/12.

Civil Judge(Sr.Divn.)
Bhubaneswar.