

HEADINGS OF DECISION IN CIVIL SUITS

**IN THE COURT OF FIRST ADDL. SENIOR CIVIL JUDGE,
BHUBANESWAR
DISTRICT-KHURDA.**

**PRESENT: - *Pranab Kumar Routray, LL.M.*
1st. Addl. Senior Civil Judge,
*Bhubaneswar.***

C.S.54/797 of 2012/2010

Sri Mohan Pradhan, aged about 40 years,
S/o- Nrusinh Pradhan,
Vill- Basantapedi, P.O.- Balakati,
P.S.- Baliana, Dist.- Khurda.

.... Plaintiff

Versus

Sri Madhusudan Tripathy, aged about 70 years,
Son of Late Krupasindhu Tripathy,
Vill.- Basantapedi, P.O.- Balakati,
P.S.- Baliana, Dist. Khurda.

... Defendant.

COUNSEL APPEARED

For the Plaintiff : Sri H.S. Pati

For the Defendant : Sri D. Das & Associates

DATE OF ARGUMENT : 14-05-2014

DATE OF JUDGMENT : 17-05-2014

J U D G M E N T

The plaintiff's suit is one for declaration of title and permanent injunction in respect of the property described in Schedule 'B' of the plaint.

2. The case of the plaintiff in brief is that the suit schedule 'B' property is part of Schedule 'A' property which is the self acquired property of the defendant. On 27-11-1998 the defendant entered into an agreement with the plaintiff for sale of Ac.0.05 decimals of land out of Schedule 'A' for consideration of Rs.1,00,000/- and received Rs.5000/- as advance under proper receipt. It was agreed that the plaintiff will pay the balance consideration Rs.95,000/- and the defendant will execute a registered sale deed in his favour within a period of one year i.e. 27-12-1999. The plaintiff was also authorised to develop the said land. On 09-03-1999 the defendant took a further sum of Rs.25,000/- from the plaintiff out of the balance consideration and granted receipt accordingly. Thereafter the defendant somehow or other avoided to execute a registered sale deed in favour of the plaintiff for which the plaintiff sent a pleader notice to the defendant on 29-10-2001 calling upon him to execute the required sale deed in his favour. But on 22-03-2002 the defendant entered into a fresh agreement with the plaintiff for sale of Ac.0.50 decimals of land out of Schedule 'A' and received another Rs.50,000/-. Thus the defendant has received a total sum of Rs.80,000/-. After much delay, on 22-03-2004 the plaintiff approached the

defendant and disclosed that he was willing to take Ac.0.45 decimals of land out of Schedule 'A' and the remaining Ac.0.05 decimals out of the agreed area would be transferred to one Parbati Sahoo D/o- Akrura Sahoo who is related to the plaintiff as a sister. Accordingly the plaintiff brought Rs.10,000/- from his said sister. On 16-04-2004 the defendant executed a registered sale deed in favour of the plaintiff for an area of Ac.0.045 decimals of land out of Schedule 'A' on receipt of the balance consideration Rs.20,000/-. But as the sister of the defendant could not come to the registration office on that day the defendant could not execute sale deed in her favour for Ac.0.05 decimals of land described in Schedule 'B'. Thereafter when the defendant took time for execution of the sale deed in favour of the sister, she ultimately expressed her unwillingness to purchase the said land from the defendant and the plaintiff had to refund Rs.10,000/- to her. The plaintiff approached the defendant to execute sale deed in his favour in respect of Schedule 'B' property as he had already paid the consideration to the defendant but the defendant did not. Hence, the suit.

3. The defendant is contesting the suit by filing written statement. He has challenged the maintainability of the suit on the ground of lack of cause of action and the suit being barred by law of limitation. According to him, the plaintiff had persuaded him time and again to grab his property. Though the defendant has admitted to have entered into an agreement with the plaintiff but the plaintiff failed to perform his part of contract but entered into fresh agreement with the defendant. There was no delivery of land under any agreement executed between them. As per the agreement the plaintiff was required to leave Ac.0.01 decimals of land to the

defendant for the purpose of a road to be used by the defendant to approach his plot. He has denied the fact and assertions of the plaintiff regarding any transaction between him and sister of the plaintiff for sale of Ac.0.05 decimals of land in her favour and her payment of Rs.10,000/- to the plaintiff as the plaintiff had already paid the entire consideration for Ac.0.50 decimals of land. There was no occasion for the plaintiff to approach the defendant with a request for executing a sale deed in respect of Ac.0.05 decimals of land in his favour as there was no such agreement. On the other hand the plaintiff has not paid the entire consideration Rs.1,00,000/- to him and has been playing hide & seek and trying to grab Schedule 'B' property.

On the basis of the aforesaid rival pleadings of the parties the following issues are settled.

ISSUES

1. Is the suit maintainable ?
2. Is there any cause of action to file the suit ?
3. Is the suit barred under law of limitation ?
4. Whether the plaintiff has title over Schedule 'B' property ?
5. Whether the plaintiff is entitled to the relief of permanent injunction ?
6. To what other relief (s) the plaintiff is entitled ?
5. In order to prove his case, the plaintiff has examined

himself as P.W.1 and besides oral evidence he has produced and proved pleader notice, agreement, money receipts and certified copy of the R.S.D dtd.22-08-2004 executed by the defendant in favour of the plaintiff which have been marked as Exts.1 to 6 respectively. On the other hand, the defendant examined himself as D.W.1 and his son Rammohan Tripathy as D.W.2. But no document has been admitted as evidence from his side.

With the aforesaid evidence on record the issues as framed are to be answered.

6. **Issue no.3**

The defendant has taken a plea in his written statement that the plaintiff's suit is barred by law of limitation without specifically stating the grounds for the same. According to the plaintiff, the cause of action for the suit arose on 22-03-2004 when the defendant entered into an agreement with him, on 16-04-2004 when the defendant received full consideration of Rs.1,00,000/-, on 26-08-2009 when he issued a pleader notice to the defendant and on 20-12-2009 when he approached the defendant for execution of a sale deed in respect of the suit land. As per the pleadings in the plaint, the defendant was required to execute a sale deed in favour of the sister of the plaintiff on the date when he executed a Registered Sale Deed in his favour i.e. Ext.6. Ext.6 was executed on 22-03-2004 and registered on 16-04-2004. But as on that day the sister could not be present, no sale deed could be executed and registered in her favour. So, the cause of action, if any, at all was there in respect of Ac.0.05 decimals of land, the limitation should start from 22-03-2004 / 16-04-2004 and a suit for declaration in the present form, if at all maintainable should have been filed within a period of three

years as per Article 58 of Limitation Act. Though the plaintiff claims to have issued pleader notice to the defendant on 16-08-2009 but the copy of the same has not been produced and proved in this case. So, in absence of any such document the said plea of the plaintiff can be said to be an imaginary one and has been resorted to for overcoming limitation.

Ext.5 is a money receipt said to have been executed by the defendant acknowledging receipt of Rs.10,000/- from the plaintiff on 16-04-2004. The purpose for which the said transaction was made has not been mentioned in the said document. But it appears that one last sentence has been inserted in the said document in a different handwriting with a pen having different ink. If at all Ext.5 is accepted for a moment for the sake of argument then the suit should have been filed within a period of three years therefrom. But the same has been filed much thereafter. Hence, it can be well concluded that the suit of the plaintiff is barred under the law of limitation.

7. **Issue no.4**

Considering the claim of the plaintiff this is the core issue. The plaintiff has claimed title over the suit land but he has not mentioned on what basis he is claiming such right. The defendant has not alienated Schedule B property in favour of the plaintiff to facilitate passing of title. The plaintiff has also not taken any plea of acquiring title over Schedule B property by way of adverse possession. If his claim that he entered into an agreement with defendant on 27-11-1998 for purchase of Ac.0.60 decimals of land out of Schedule 'A' property is accepted as a basis but calculated from that date till the date of filing of the suit i.e. 12-05-2010, it does not cover a period of 12 years to claim adverse possession. Of course the fact of

delivery of possession is to be

considered for taking such a plea. So, the plaintiff fails to prove his title from that angle.

8. The plaintiff during cross examination as P.W.1 has already admitted that his claim for declaration of title over Schedule 'B' property is on the basis of Ext.3. Now coming to Ext.3, it is an agreement between the defendant and the plaintiff for sale of Ac.0.50 decimals of land for Rs.1,00,000/- i.e. Ac.0.16 decimals out of plot no.4584 and Ac.0.34 decimals out of Plot no.3692 in Khata no.1616/150 of Mouza Pratap Sasan. Law is well settled that any possession under agreement is permissive in nature irrespective of the length of such possession. Further, in view of amendment of the Registration Act by incorporating Section 17(1)(A) in the said Act for the purpose of Section 53A of the Transfer of Property Act the party cannot claim protection of possession under an unregistered agreement to claim any right on that basis. Therefore, considered from all angles Ext.3 is not at all a document clothing the plaintiff with title over Schedule 'B' property.

9. Ext.5 is the money receipt dtd.16-04-2004 executed by the defendant in token of receipt of Rs.10,000/- from the plaintiff and the last sentence has been inserted showing that amount to have been received towards registration of balance Ac.0.05 decimals of land. It is already held that the last sentence is an interpollation. On the date of Ext.5, the sale deed Ext.6 was registered which was previously executed on 22-03-2004. Under the above circumstances it cannot be believed that prior to Ext.6 there was any agreement or understanding between the defendant and the

plaintiff's sister namely Parbati Sahoo for sale of

Ac.0.05 decimals of land in her favour. The plaintiff's claim over the said land is based on imaginary assertions.

10. Therefore, considered from all corners the plaintiff has miserably failed to prove his title over Schedule 'B' property either by acquisition or otherwise. Hence, this issue is answered in the negative and against the plaintiff.

11. **Issue no.5**

The evidence on record does not establish the fact of possession of the plaintiff over Schedule 'B' property as there was never any transaction between him and the defendant in that respect. If at all it is believed for a moment for the sake of argument that the plaintiff was given possession in respect of Schedule 'B' property, the same cannot get any legal protection as the agreement Ext.3 is not a registered one as required U/s.17 of Indian Registration Act. So, the plaintiff is not entitled to the relief of permanent injunction.

12. **Issue nos.1 & 2**

In view of the discussions in the foregoing paragraphs under issue no.3, 4 & 5, the plaintiff's suit is not maintainable either on facts or in law. The cause of action as narrated appears to be a myth. Both these issues are answered in the negative and against the plaintiff.

13. **Issue no.6**

The plaintiff is neither entitled to the reliefs as claimed nor to any other reliefs. On the other hand, the suit is liable to be dismissed.

Hence, ordered.

ORDER

The suit be and the same is dismissed on contest against the defendant but under the circumstances without cost.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

The judgment is typed to my dictation by the typist 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. on the 17th day of May, 2014 under my seal and signature.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

List of Witnesses examined for the Plaintiff:

P.W.1 : Sri Mohan Pradhan

List of Witnesses examined for the Defendant :

D.W.1: Sri Madhusudan Tripathy

D.W.2: Rammohan Tripathy

List of Documents marked as Exhibits for the Plaintiff :

Ext.1: Office copy of Pleader's notice ;

Ext.1/a: Signature of Advocate P.K. Mohanty ;

Ext.2 : Postal Receipt ;

Ext.3 : Original agreement dtd.22-03-2002 ;

Ext.3/a: Signature of Plaintiff ;

Ext.3/b: Signature of Defendant ;

Ext.3/c: Signature of Ram Mohan Tripathy ;

Ext.4: Original Money receipt dtd.22-03-2002 ;

Ext.4/a: Signature of defendant ;

Ext.5: Original Money receipt dtd.16-04-2004 ;

Ext.5/a: Signature of defendant ;

Ext.6: Certified copy of R.S.D bearing the number 551 dtd.16-04-2004 ;

List of Documents marked as Exhibits for the Defendant :

N I I

*1st. Addl. Senior Civil Judge,
Bhubaneswar*