

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

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

**C.S No. 322/2010**

Rabi Choudhury, aged 60 years,  
S/o late Gajendranath Choudhury  
Chidananda Vihar, Po-Aiginia,  
Ps-Khandagiri, Bhubaneswar, Khurda.

..... Plaintiff

– Versus –

1. Orissa State Housing Board Sachibalaya Marg,  
Unit-III, Bhubaneswar, Khurda,  
Represented by its Secretary.
2. Competent Authority, Orissa State Housing Board  
Sachivalaya Marg, Unit-III,  
Bhubaneswar, Dist-Khurda.

..... Defendants

**COUNSELS APPEARED FOR THE PARTIES:**

For the Plaintiff : M/s P.K.Pattnaik & Associates

For the defendants : M/s K.K.Panda & Associates

DATE OF ARGUMENT : 24.06.2014

DATE OF JUDGMENT : 30.06.2014

**J U D G E M E N T**

The plaintiff has filed the suit for declaration by way of adverse possession, permanent injunction and for other consequential reliefs.

2. The case of the plaintiff in brief is that the suit land measuring an area of 50' x 35' which is a part and parcel of plot no. 132 appertaining to Khata No. 775 of Mouza-Aiginia originally belonged to the State Government. The plaintiff who belonged to Jagatsinghpur being unemployed came to Bhubaneswar in the year 1974 and constructed a thatched house over the suit land on the day of Akhaya Trutiya and doing business over the same. Thereafter he developed the same and constructed an asbestos and RCC roofed house, compound wall around the suit land and planted some permanent fruit bearing trees over the same. He has also taken the electric connection from Gridco and received the voter identity card issued by the Election Commission. The house of the plaintiff was also recognized as House No.6 in ward No.30 of Dumuduma and he was issued a Ration Card from the Civil Supply Corporation. Since the day of Akhaya Tritiya, the plaintiff has been in peaceful possession over the suit land openly, continuously, peacefully &

uninterruptedly with the knowledge of all including the State Government as well as the defendants. The plaintiff further averred that the State Government for one project of the deft.no.1 transferred a big patch of land including the suit land to the Orissa State Housing Board in the year 1998, but though the plaintiff is in possession over the suit land, neither the State Government nor the deft.no.1 at the time of constructing of houses made any attempt to evict him till the year 2002. But after the year 2002, the defendants issued various show causes and notices to the plaintiff for his eviction and the plaintiff also sent various replies requesting the defendants to settle the suit land in his name. It is also stated that the suit land occupied by the plaintiff is neither earmarked for any public purposes nor for any urgent public interest and by residing over the same since 1974, the plaintiff has acquired title by way of adverse possession. Hence, by showing the aforesaid cause of action, the plaintiff is compelled to file the present suit for adverse possession.

- 3.** Both the defendants appeared and 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, non-joinder of necessary party and on the point of under valuation. The suit is also barred U/s.48 of Orissa Housing Board Act. After denying the various pleas taken by the plaintiff for setting the suit land in his name, the

defendants in their W.S stated that the G.A Department vide order no. 18 dt. 01.01.1998 allotted Ac48.290 decimals of land from different plots in Mouza-Aiginia for implementation of the Social Housing Scheme by preparing a layout plan over these plots in earmarking a portion for construction of residential houses and another portion for construction of commercial complex which has also been approved by the competent authorities. Out of the land earmarked for construction of commercial complex, the plaintiff is in unauthorised occupation of an area measuring to 3008 sq.ft. including the suit land for which the defendants initiated a proceeding U/s.45 of the Orissa Housing Board Act against the plaintiff for his eviction. Having completed the proceeding, the deft.no.2 issued eviction order in Form V to the plaintiff on dt. 20.10.06 and as the plaintiff has not challenged U/s.48 of the OSHB Act, the aforesaid order attained finality. Submitting the above, the defendants have prayed 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 suit is barred by non-joinder of necessary

party ?

**(iv)** Whether the suit is barred U/s.48 and U/s.60 of the Orissa Housing Board Act, 1968 ?

**(v)** Whether the plaintiff has perfected her title over the suit land by way of adverse possession ?

**(vi)** Whether the plaintiff is entitled for the relief of permanent injunction against the defendants as prayed for ?

**(vii)** To what relief(s), if any the plaintiff is entitled ?

- 5.** In support of his case, the plaintiff besides adducing his own evidence who is referred to as P.W.1 has also adduced the evidences of 3 witnesses who are referred to as P.W.2, 3 and 4. Besides the plaintiff has also exhibited several documents in the shape of Ext.1 to 19 and also marked one M.O in supported of his plea. On the other hand, the defendants have neither adduced the evidence nor exhibited any single document in support of their plea. 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), (v) & (vi):-**

Since these issues are the fate of the suit, there taken up first

for discussion. It is the specific case of the plaintiff that as the suit land is lying vacant being recorded in the name of the State Government on the side of the N.H-5 and the plaintiff has constructed a thatched house over the same in the year 1974 and started business and developed the same, constructed an asbestos and RCC roofed house, compound wall around the same and planted some fruit bearing trees. He has taken electric connection from GRIDCO, received the voter identity card and ration card from the concerned authorities and remained in peaceful possession of the same openly, continuously, peacefully, uninterruptedly with the knowledge of all concerned including the State Government and the defendants. But the defendants since the year 2002 disturbed in his peaceful possession and trying to evict him from the same by issuing various notices. As the plaintiff has been residing over the suit land since the year 1974, he has perfected his title by way of adverse possession.

In order to substantiate his pleading, he examined himself as P.W.1 and has deposed in support of his aforesaid plea. In course of his examination, he proved the electricity bills which is admitted in evidence as Ext.1 to 1/e which reveals that the plaintiff has taken electricity connection in his name. He also proved the voter identity card and ration card which are admitted in evidence as Ext.2 & 3

respectively. The evidence of P.W.1 reveals that the State Government for the project of the deft.no.1 in the year 1998 namely Aiginia Phase-I Scheme transferred a big patch of land including the suit land to the deft.no.1 in the year 1998 and he was in possession over the suit land much prior to that transfer. In course of his evidence, he proved the notice dt. 13.11.02 issued by the defendants marked as Ext.4, show cause notice dt. 04.10.06 issued by the defendants in Case No. 196/06 marked as Ext.6, notice dt. 20.10.2006 marked as Ext.8 and the letter dt. 13.12.2006 marked as Ext.13. The P.W.2 is a villager of Aiginia (Kolathia) who deposed supporting the evidence of P.W.1 that the plaintiff is in peaceful possession over the suit land since 1974 having his residential house thereon. The P.W.3 claims to be a mason and he deposed that he constructed the house of the plaintiff over the suit land in 1974. The P.W.4 has stated that he has seen the possession of the plaintiff over the suit land having his residential house thereon with his family members since 1974 and the plaintiff is a landless person. The learned counsel for the plaintiff submitted that the cogent evidences of the plaintiff who has examined as P.W.1 and the oral evidences of the P.W.2 to 4 coupled with the documentary evidences like Ext.1 series, Ext.2, Ext.3 and M.O-I clearly established that the plaintiff is possessing the suit land having his residential house thereon and

residing there with his family members since 1974 and he being in possession over the suit land since more than the prescribed period peacefully, openly and continuously with the knowledge of the all concerned including the defendants has acquired title over the suit land by way of adverse possession. In course of his submission, he also gave stress on Ext. 4, 6, 8 and 13 issued by the defendants which establishes the fact that the plaintiff is possessing the suit land having his house thereon for which the defendants have issued such notices and letters for his eviction. The learned counsel for the plaintiff further submitted that neither the defendants nor any other witness from the side of the defendants has not deposed in this suit in support of the case of the defendants and the absence of the defendants from the witness box gives rise a presumption that the case setup by them is not correct. In support of this, he relied upon a decision of our Hon'ble Apex Court reported in AIR 1999 Supreme Court at Page 1441 (Vidhyadhar Vrs. Manikikrao and another). In the aforesaid facts and circumstances, the learned counsel for the plaintiff summed up his submission that from the oral evidences and the documentary evidences adduced from the side of the plaintiff which includes the aforesaid notices by the defendants to the plaintiff establishes the fact that the plaintiff is in possession over the suit land since 1974 openly, peacefully and continuously as of right and



with the knowledge of the all concerned including the defendants and thereby acquired title over the suit land by way of adverse possession.

The learned counsel for the defendants whine opposing the aforesaid argument of the plaintiff's counsel submitted that the mere unauthorized possession over a piece of land cannot itself prove the ingredients of the Law of adverse possession. Firstly he urged that the burden is on the person whose case rests on the plea of adverse possession and since the burden is on the plaintiff in this suit, he is to prove his own case and the absence of the defendants from the witness box is of no help to the plaintiff. To that effect, the learned counsel for the defendant relied upon a decision of our Hon'ble Apex Court reported in 2014(I) CLR (SC) 264 Union of India and ors Vrs. Vasavi Co-Op Housing Society and ors.

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. Here in this case, it remains admitted that the plaintiff is possessing a piece of land and residing therein having his houses thereon in the land allotted to the defendants in the year 1998 by the Government for Social Housing Scheme called as Aiginia Phase-I. Though the plaintiff in his pleading so also evidence stated that he entered into possession in the year 1974 but the Ext.5 which is written by the plaintiff himself to the defendants in reply to the show cause notice Ext.4 has categorically admitted that since 1984 he is staying over the suit land. Similarly in Ext.7 which is the reply to the show cause notice vide Ext.6, the plaintiff has also stated that she is living with his family members by constructing a house over the land in question since 1984. Though the plaintiff thereafter in other replies and notices to the defendants has stated that he is possessing the suit land since 1974, but the above admission in Ext.5 & 7 goes to show that the plaintiff is possessing the land in question having his residential house thereon since 1984 and the plea of his possession from 1974 is nothing but a after thought for the purpose of the litigation. The next question

arises whether by such possession, the plaintiff has acquired title over the suit land by way of adverse possession. Without going to unnecessary details, the Ext. 5, 7, 9, 12, 14, 15, 18 and 19 clearly reveal that the plaintiff has prayed for settlement of the land in his name on payment of the consideration fixed by the defendants in all those replies and notices given by him to the defendants. This prayer of the plaintiff in the aforesaid Exhibits undoubtedly gives rise the admission of the plaintiff that the defendants are the owners of the suit property. This admission of the plaintiff goes against his plea of adverse possession by not exercising his right of possession over the suit property with an hostile animosity against the defendants which is the vital ingredient of the law of adverse possession. So the possession of the plaintiff over the suit land since 1974 or since 1984 does not matter. More over, the learned counsel for the defendants submitted that the suit is bad of non-joinder of necessary parties i.e. the G.A Department in whose name the suit land stands recorded and who is the true owner even though the suit land has been allotted to the defendants for social housing project scheme 1998. Admittedly the suit land stands recorded in the settlement record of right in the name of the G.A Department and the G.A Department allotted the suit land to the defendants in 1998 for a social housing project scheme. This admitted fact goes to show that the G.A

Department was the true owner of the suit land till 1998. When the plaintiff claims his title over the suit property by way of adverse possession, he has to establish his possession with hostile animosity against the true owner i.e.the G.A Department till 1998. Thereafter, may be the ownership comes to the hands of the defendants. So in absence of the true owner i.e. the G.A Department, the plaintiff's claim of adverse possession can not be decided because till 1998, the defendants were no way related to the suit land. That being so in either way, the G.A Department, Govt. of Orissa is a necessary party to this suit. As discussed above from the admissions of the plaintiff himself that he is residing from 1984 and is praying to the defendants for settlement of land in his favour on payment of consideration and other dues & the notices issued by the deft.no.2 for his eviction from time to time starting from the year 2002, it can be safely held that though the plaintiff is in possession, his possession is not as of right, peacefully and with hostile animosity and thereby he has not acquired any title over the suit land by way of adverse possession. At best his possession is just an unauthorised possession over the suit land. Since the plaintiff is in unauthorised possession over the suit land, his possession is not to be protected permanently and accordingly he is not entitled for the relief of permanent injunction. Accordingly, these issues are answered against the plaintiff.

**7. Issue No.(iv) :-**

The learned counsel for the defendants submitted that this Court has no jurisdiction as per Section 48, 49 and 60 of Orissa State Housing Board Act 1968. Section 48 speaks that any person aggrieved by an order of the competent authority U/s.45 and 46 may prefer an appeal to the District Judge and the Section 49 speaks that all orders passed by the competent authority under the Act shall be final subject to the orders, if any passed in an appeal under Section 48 and shall not be called in question in any Court. Here in this case, the plaintiff has not challenged any order of the competent authority under the Orissa State Housing Board Act rather the plaintiff has filed this suit for declaration of his title over the suit land basing on the plea of adverse possession. That being so, the mischief of Section-48 and 49 does not affect the present suit. So this Court is of the opinion that the Civil Court has got the jurisdiction to sit over the matter. So far as the notice U/s.60 of the Act is concerned, it is found that vide Ext.18, the plaintiff has served a notice on the Secretary Orissa State Housing Board through his lawyer claiming the suit property and to take legal action in case of his inaction and the said notice can be construed as a notice U/s.60 of the Act. Accordingly, this issue is answered.

**8. Issue No. (i) (ii) & (vii)**

In view of discussion in issue no. (iii), (v) & (vi), 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 30<sup>th</sup> day of June, 2014 under my seal and signature below.

**Civil Judge(Sr.Divn.)**

Bhubaneswar.

**List of witnesses examined for the plaintiff:**

P.W.1 Rabi Choudhury  
P.W.2 Kailash Chandra Das  
P.W.3 Purna Chandra Nayak  
P.W.4 Brundaban Rath

**List of witnesses examined from the side of defendants:**

None

**List of documents exhibited on behalf of the plaintiff:**

Ext.1 to 1/e Electricity bills  
Ext.2 Voter Identity Card  
Ext.3 Ration Card  
Ext.4 Notice dt. 13.11.2002  
Ext.5 Copy of reply in response to Ext.4  
Ext.6 Show cause notice dt. 04.10.06  
Ext.7 Reply in response to Ext.6 dt. 11.10.06.  
Ext.8 Letter dt. 20.10.06  
Ext.9 Copy of advocate's notice dt. 01.11.06  
Ext.10 to 10/b Postal receipts (3 nos)  
Ext.11 to 11/b A.Ds (3 nos)  
Ext.12 Copy of letter dt. 17.11.06  
Ext.13 letter dt. 13.12.06  
Ext.14 Copy of letter dt. 11.09.07  
Ext.15 Office copy of advocate notice dt. 13.01.09

Ext.16 to 16/b Postal receipts (3 nos)

Ext.17 to 17/b A.Ds (3 nos.)

Ext.18 Copy of Advocate notice dt. 15.12.09

Ext.19 Copy of letter dt. 18.01.10

**List of documents exhibited on behalf of the defendants:**

None

**List of M.Os :**

M.O-I           Plate given by BMC regarding the House No. and  
Ward No. mentioning therein.

**Civil Judge(Sr.Divn.)**  
Bhubaneswar.