

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 15th Oct. '14.

R.F.A. No. 30 of 2013.

[Arising out of the judgment dated 25.03.2013 & decree dated 06.04.2013 passed by the learned 1st Addl. Sr. Civil Judge, Bhubaneswar in T.S. No.130 of 2000.]

Gagan Bihari Pradhan, aged about 58 years, S/o. Late Biswanath Pradhan, At/P.O./P.S. – Laxmisagar, P.O. – Bhubaneswar - 6, Dist. – Khurda, Odisha.

... **Appellant.**
(Plaintiff in the Court below)

-V e r s u s-

State of Orissa, represented through Special Secretary, G.A. Department, Odisha Secretariat, P.S. – Capital, Bhubaneswar, Dist. – Khurda.

... **Respondent.**
(Defendant in the Court below)

Counsel :

For Appellant -- Shri A. Mohanty & Associates.
For Respondent -- Shri R.P. Nanda (G.P.).

Date of conclusion of argument : 24.09.2014.

Date of judgment : 15.10.2014.

J U D G M E N T

Plaintiff in the Court below has preferred this appeal challenging the judgment dated 25.03.2013 & decree dated 06.04.2013 passed by the learned 1st Addl. Sr. Civil Judge, Bhubaneswar in T.S. No.130 of 2000, dismissing the suit.

2. The parties hereinafter have been referred to as they have been arrayed in the trial Court for the sake of convenience and proper appreciation.

FACTS :

3. The factual matrix leading to the case of the plaintiff is that his father Biswanath Pradhan was a settled Raiyat of village - Laxmisagar. The suit schedule property, which was a bushy land, was lying vacant. Said Biswanath finding it vacant, took possession of the same and cleared the land. He constructed a thatched house in the north-west corner of the said suit plot in 1952 and raised seasonal crops thereon. During life time of Biswanath, there was a family dispute and, in amicable settlement, the suit land fell to the share of the plaintiff, who is one of the sons of Biswanath. The plaintiff possessed the same since 1967 uninterruptedly, peacefully, openly to the knowledge of the defendant. So, the possession

of his father from 1952 was tagged with his possession and, as such, the plaintiff continued to possess the same by constructing two asbestos roofed house thereon. He also dug a well on the suit plot. As such, by the time of institution of the suit, the plaintiff successfully possessed the suit land adversely to the interest of the defendant for more than thirty years with hostile animus. The plaintiff claims that he has been possessing the suit land peacefully, uninterruptedly, continuously for more than thirty years and, as such, he has acquired prescriptive title by virtue of adverse possession. On 05.02.2000, the officers of the defendant threatened the plaintiff to dispossess him, knowing very well that there is note of illegal possession of the plaintiff in the remarks column of Not Final Record of Right; but, the Record of Right was published in favour of the defendant. The cause of action arose when the staff of the defendant threatened the plaintiff to dispossess him. So, he filed the suit, seeking leave of the Court under section 80(2) of the C.P.C. to dispense with necessary statutory notice. He prayed in the suit for declaration of his right, title, interest, confirmation of possession and, if dispossessed, to recover the same, and for permanent injunction against the defendant.

4. The defendant, who is the State of Orissa, filed

written statement, stating that the suit is not maintainable, there is no cause of action to file the suit, the suit is barred by section 80 of the C.P.C. and the suit is undervalued. The defendant refuted the entire allegations made in the plaint. It was the case of the defendant that the G.A. Department of the State Government is the lawful owner and title holder of the suit land and the suit land stands recorded in its favour. It was further stated that the suit is also defective by not specifying the schedule of the suit land, for which it should be dismissed as per the provisions under Order 7, Rule 3 of the C.P.C. According to this defendant, during sabik settlement operation in the year 1953-54, the Settlement Authority, after proper field verification, recorded the suit land in favour of the State of Orissa under Anabadi Khata. Again in the year 1988-89 in major settlement operation, the suit land was recorded in favour of G.A. Department, State of Orissa, and the Record of Right has got presumptive value of possession in favour of the person in whose name it stands. When final Record of Right is published in favour of G.A. Department, under no circumstances, the suit land has been possessed by the plaintiff continuously, uninterruptedly, openly and peacefully for more than thirty years to accrue his title by virtue of adverse possession. On the whole, the defendant denied the possession

of plaintiff's father and the plaintiff over the suit land at any point of time. So, it was prayed to dismiss the suit.

5. Basing upon the pleadings of both parties, the learned 1st Addl. Sr. Civil Judge, Bhubaneswar has framed the following issues :

- (i) Whether the suit is maintainable ?
- (ii) Whether there is any cause of action to file the suit ?
- (iii) Is the suit undervalued ?
- (iv) Is the suit barred by limitation ?
- (v) Whether the plaintiff is in possession of the suit land and if so, whether he has perfected his title over the same by way of adverse possession ?
- (vi) Whether the possession of the plaintiff is to be confirmed ?
- (vii) Is the plaintiff entitled for permanent injunction ?
- (viii) To what relief, the plaintiff is entitled ?

6. The learned trial Court took up issue Nos.(v) & (vi) together and came to hold that the plaintiff has not proved that he has acquired right, title, interest over the suit land by adverse possession and, as such, his possession cannot be confirmed. The learned trial Court also decided issue No.(vii) against the plaintiff. Accordingly, the learned trial Court answered all other issues against the plaintiff, finally dismissing his suit against the defendant.

CONTENTIONS :

7. Learned counsel appearing for the appellant

submitted that the learned trial Court has erred in law by deciding the issues in the suit against the plaintiff without going into the factual matrix of plaintiff's legitimate case. According to him, the learned trial Court has also erred in law by deciding issue Nos.(v) & (vi), when there is clear indication of illegal possession of the plaintiff in the remarks column of Not Final Record of Right vide Ext.1. The learned trial Court has also erred in law by not discussing the oral evidence of the witnesses examined from the side of the plaintiff to give a finding on the issues in question. He further submitted that the learned trial Court ought to have held that the plaintiff is in possession over the suit land openly, peacefully, continuously for more than thirty years against the interest of the defendant. It was strenuously submitted by learned counsel for the appellant that the learned trial Court should have considered the possession of the plaintiff over the suit land when the plaintiff has been possessing the same by constructing two asbestos roofed house thereon. The learned trial Court has erred in law by not appreciating the documentary evidence in its proper perspective. He further submitted that the learned trial Court has erred in law by deciding other issues basing on issue Nos.(v) & (vi) because both the issues have been decided by miscarriage of justice.

On the whole, learned counsel for the appellant submitted that the judgment and decree passed by the learned Court below is illegal, improper and not sustainable in law, for which the same should be set aside, decreeing the suit.

8. On the other hand, learned Government Pleader appearing for the respondent submitted that plaintiff's father was never possessing the suit land and plaintiff's possession is also not free from any encumbrance. That apart, he denied the continuous and peaceful possession of the plaintiff over the suit land. According to him, the suit land is a Government land and in two settlements, the name of G.A. Department, Government of Orissa, has been recorded and the plaintiff has no document to show that it stands recorded either in his name or in the name of his father. He further submitted that the plaintiff has not produced any tangible evidence to reasonably believe that he has been in possession of the suit land since the time of his father till now by constructing house thereon. According to him, the learned trial Court has correctly assessed the evidence while coming to the conclusion. Learned G.P. supported the judgment and decree of the learned lower Court and submitted to dismiss the appeal.

DISCUSSIONS :

9. It is well settled law that the first Appellate Court

being the Court of finding of facts and law has to answer in every issue decided by the learned trial Court. It is also well settled law that the evidence adduced in the lower Court has to be reappreciated by the first Appellate Court while deciding the appeal. Bearing in mind the settled principles, let me find out if the findings of the learned trial Court are liable to be interfered with.

10. At the first instance, issue No.(v) has to be answered. Their Lordships of the Hon'ble Apex Court in the case of ***Khitish Chandra Bose Vs. Commissioner of Ranchi (AIR 1981 SC 707)*** have been pleased to observe that :

“Adverse possession – Law is no more *res integra* that the plea of adverse possession is not a pure question of law, but is blended with facts and law. Therefore, a person who claims adverse possession is required to prove - (1) on what date he came into possession; (2) what was the nature of his possession; (3) whether the factum of possession was known to the other party; (4) how long his possession has continued; and (5) whether his possession was open and undisturbed. Since a person pleading adverse possession 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”.

11. With due respect to the said decision, I find that in the case of adverse possession, heavy onus lies on the plaintiff to prove his prescriptive title. The plaintiff has to prove that his possession is adequate, in continuity, in publicity and

extent and the same must be accompanied by hostile animus. In order to discharge his onus, the plaintiff has examined six witnesses and adduced documentary evidence, whereas the defendant has examined one witness to disprove the case of the plaintiff.

12. The suit schedule property, as described in the plaint, is under sabik plot No.258 corresponding to hal plot No.74 measuring an area of Ac.0.290 decimals bounded by north - plot Nos.36 & 35, south - hal plot No.74, east - hal plot No.74 and west - plot No.42. The plaintiff has filed Not Final Record of Right of the suit land vide Ext.1. It shows that plot No.74 corresponds to plot No.258, which stands recorded in the name of G.A. Department with note of illegal possession of the present plaintiff in respect of Ac.0.290 decimals out of Ac.5.088 decimals since 1968. Again the plaintiff has proved Ext.3, the certified copy of Record of Right, which shows that chaka No.99 stands recorded in the name of plaintiff's father Biswanath Pradhan. He has also filed the Record of Right vide Ext.4 to show that two plots, namely, 1139 & 1140 stand recorded in favour of his father. On going through these documents, the suit land is not found to be specific. The defendant has also challenged in the written statement that the description of the suit schedule property is not specific, for

which the suit is defective under Order 7, Rule 3 of the C.P.C. To my utter surprise, the learned trial Court has left such an important issue to be framed. It is to be made clear in this context that there should have been another issue as to whether the suit is defective for non-compliance of the provisions under Order 7, Rule 3 of the C.P.C. Since there is no such issue, the evidence adduced by plaintiff and defendant available on record cannot be answered without deciding issue Nos.(v) & (vi). The learned trial Court instead of paying its attention to this aspect, has gone ahead to decide both the issues.

13. P.W.1, who is the plaintiff, has proved the tax receipt issued by Bhubaneswar Municipal Corporation; but there is no document to show that such receipt pertains to the suit house. Similarly, Ext.6, which is the electricity bill, does not disclose whether electricity dues has been paid for the suit house or not. So, it is necessary to identify the proper suit site by cogent evidence before answering the proposed issue, as aforesaid.

14. P.W.1, while being examined, has stated that the suit land is on north-west portion of the suit plot and it is a Government land. Unless that north-west portion is identified, the evidence of P.W.1 as to his adverse possession over the

suit plot cannot be assessed in proper manner. Similarly, P.Ws.2 & 3 have no knowledge about the suit land. Simply, they have stated that their firm Adi-Shakti Engineering contacted the plaintiff for being inducted as a tenant in the suit house of the plaintiff situated over the suit land. P.W.4 has admitted that he has no idea about the suit land. He came to know about the plaintiff only in the year 2001. So, his evidence also does not focus on the issue. P.W.5 has stated that the suit land is in the west of plot No.74; but he could not give the boundary of plot No.74. He has no land in the suit mouza. Similarly, P.W.6 has stated in para-8 of his cross-examination that he is not staying in the plot adjacent to the suit plot. So, his evidence does not improve the case of the plaintiff. The learned trial Court has not discussed the oral evidence while answering issue Nos.(v) & (vi). Therefore, without foundation of the case, issue Nos.(v) & (vi) cannot be said to have been correctly decided. Similarly, the learned trial Court has not discussed the evidence and simply observed that due to failure of the plaintiff to prove his title over the suit land by virtue of adverse possession, point No.(vii) cannot be decided in favour of the plaintiff. Moreover, the learned Court below has observed that since G.A. Department is the recorded tenant of the suit land, no order of injunction can be issued against it.

The learned trial Court should have discussed the evidence as to possession before going to decide issue No.(vii). In the like manner, issue Nos.(i), (ii), (iii), (iv) & (viii) have not been specifically answered by the learned trial Court sans discussing the evidence on record. So, the findings on these issues are also not tenable. As per Order 20, Rule 5 of the C.P.C., trial Court is required to answer every issue independently and can only decide group of issues where they are inter-linked and basis for deciding other issues. Considering all such aspects, I find that the conclusion arrived at by the learned trial Court warrants interference and the suit should be remanded to the lower Court for fresh disposal in accordance with law.

O R D E R

The appeal is allowed on remand without cost and judgment dated 25.03.2013 & decree dated 06.04.2013 passed by the learned 1st Addl. Sr. Civil Judge, Bhubaneswar in T.S. No.130 of 2000 are hereby set aside.

The learned trial Court is directed to frame the required issue, as observed above, give opportunity to both parties to adduce evidence thereon, answer all the issues afresh and dispose of the suit according to law by the end of December, 2014.

Both parties are directed to appear before the trial

Court on 22.10.2014 to receive necessary directions.

**District Judge, Khurda
at Bhubaneswar.**

15.10.2014.

Dictated, corrected by me and pronounced in the open Court
this day the 15th October, 2014.

**District Judge, Khurda
at Bhubaneswar.**

15.10.2014.