

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

Present:

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

Dated, Bhubaneswar the 19th Aug'14.

R.F.A. No. 41 of 2011.

[Arising out of the judgment dated 31.10.2011 & decree dated 08.11.2011 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in T.S. No.313 of 1988.]

Hari @ Haribandhu Mohanty, aged about 61 years, S/o.
Late Alekha Mohanty, Vill./P.S. – Badagada, P.O. –
Bhubaneswar-18, Dist. – Khurda.

... **Appellant.**

-V e r s u s-

1. Union of India, represented by General Manager of S.E. Rly, Garden Reach, Calcutta, at present - East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. The Estate Officer of S.E. Railway, Waltair (A.P.), now East Coast Railway, Rail Vihar, Chandrasekharpur, and functioning at Khurda Road, P.O./P.S. – Jatni, Dist. – Khurda.

... **Respondents.**

Counsel :

For Appellant -- Shri S. Mishra & Associates.
For Respondents -- Shri A.K. Mohanty.

Date of argument : 07.08.2014.

Date of judgment : 19.08.2014.

J U D G M E N T

The unsuccessful plaintiff has come up with this appeal against the judgment dated 31.10.2011 & decree dated 08.11.2011 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in T.S. No.313 of 1988, dismissing his suit for confirmation of possession and permanent injunction in respect of the suit schedule property.

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

FACTS :

3. The factual matrix leading to the case of the plaintiff is that he has purchased a piece of land adjoining the area of Bhubaneswar Railway Station vide Registered Sale Deed No.6535 dated 10.08.1976 from one Bidulata Mohanty and got delivery of possession of the same from her. Since then, he has been possessing the suit land peacefully. It is further averred, inter alia, that said Bidulata Mohanty had purchased the suit land from one Dinabandhu Sahoo, which is Ac.0.005 decimals out of Ac.0.019 decimals. One pucca road runs adjoining the

land where the plaintiff has got his shop room. Accordingly, the plaintiff applied to the Settlement Authority and got draft Record of Right in his favour. He also constructed pucca house on his purchased land and got it assessed by Bhubaneswar Municipality vide holding No.1323. It is further averred that defendant No.2 served a notice under section 7(3) of the Public Premises (Eviction of unauthorised occupants) Act, 1971 (hereinafter called "the Act") on the allegation that the plaintiff has unauthorisedly occupied the Railway land measuring 7.95 metres x 3.25 metres of Bhubaneswar Railway Station area, which is the suit land at schedule 'B'. The plaintiff also alleged that defendant No.2 has no right to serve such notice upon him, as no notice to show-cause under section 4 of the Act has been issued. Moreover, the plaintiff is in peaceful possession over Stitiban land and he has not encroached any land of the Railway Administration, for which such notice is illegal. Since defendant No.2 threatened to demolish the structure on flimsy ground alleging that encroachment has been made by the plaintiff over the suit schedule 'B' land, the plaintiff filed the present suit for confirmation of his possession and for permanent injunction against the defendants from demolishing or destroying any portion of the shop room standing on the land, as described in

schedule 'A' property appended to the plaint, so also in schedule 'B' i.e. sketch map. Hence the suit.

4. Defendant No.1 filed written statement contending, inter alia, that the suit is not maintainable in the eye of law, there is no cause of action to file the suit, the trial Court has no jurisdiction to try the suit, and the suit is bad for non-compliance of the provisions under section 80 of the C.P.C. Defendant No.1 has neither confirmed, nor denied the title of the plaintiff acquired through the Registered Sale Deed, as the plaintiff has to prove the same. But, defendant No.1 has clearly alleged that the land described in schedule 'B' measuring 7.95 metres x 3.25 metres towards western side of the plaintiff's plot is their land and due to unauthorised occupation, on 05.09.1981 defendant No.1 initiated an eviction proceeding in the Court of Estate Officer i.e. defendant No.2 vide case No.EC/133 of 1984. When the eviction order was passed by defendant No.2 on 28.02.1985, the plaintiff preferred an appeal in the Court of District Judge, Puri vide Misc. Appeal No.22 of 1985 and the said appeal was dismissed on 24.02.1986. Then, the plaintiff preferred OJC No.944 of 1986 in the Hon'ble High Court of Orissa against the order of the District Judge, Puri. That was also dismissed on 25.04.1986. Since the unauthorised occupation of the plaintiff over 'B'

schedule land of defendant No.1 was confirmed by the Courts, as narrated above, defendant No.2 issued notice under section 7(3) of the Act basing on the fact that the plaintiff remained in unlawful possession of the property, described in schedule 'B', in spite of order of eviction duly confirmed by the higher Courts. It is also averred that the plaintiff has no cause of action to file the suit. It is averred that after the order was pronounced in OJC No.944 of 1986, defendant No.1 has got every right to evict the plaintiff from the suit land besides issuing notice to collect damages from him. Defendant No.1 denied the allegations made in the plaint. They averred that the suit is undervalued. Taking all such defence, defendant No.1 prayed to dismiss the suit with cost. Defendant No.2 has been set ex parte.

5. Basing on the pleadings of both parties, the learned trial Court framed the following issues.

- i) Whether the suit is maintainable ?
- ii) Whether the plaintiff has any cause of action to file the suit ?
- iii) Whether the Civil Court lacks pecuniary jurisdiction to try the present suit ?
- iv) Whether the plaintiff is entitled to confirmation of possession over the schedule 'A' land ?
- v) Whether the plaintiff is entitled to permanent injunction against the defendants ?
- vi) Whether the plaintiff is entitled to any other relief

or reliefs ?

6. The learned trial Court at first took up issue Nos.(iv) & (v) together and answered the same against the plaintiff by observing that he has not proved the title over the suit land at schedule 'B' upon which he has asked for confirmation of possession and permanent injunction. Similarly, she took up rest of the issues; but did not answer the same, as the plaintiff is not entitled to confirmation of possession and permanent injunction, as held in the other issues. Finally, she recorded the order of dismissal of the suit.

CONTENTIONS :

7. Learned counsel appearing for the appellant challenged the findings of the learned Court below, stating that the impugned judgment is highly illegal, inoperative and untenable in the eye of law. It was further submitted that the learned Court below has erred in law by not appreciating the evidence on record and by observing that the plaintiff has not proved a single document in support of his claim, although the documents have been marked as Exts.1 to 4. The learned Court below has also erred in law by not considering the title of the plaintiff when defendant No.1 has clearly averred in written statement that they neither admit nor deny his title over schedule 'A' property. He further submitted that the

learned Court below has committed error by dismissing the suit on perverse grounds and she ought to have decreed the suit. So, he prayed to set aside the impugned judgment and decree and allow the appeal.

8. Learned counsel appearing for the respondents submitted that the plaintiff has suppressed the material facts by not elaborating the eviction notice issued by defendant No.2 against him for unauthorisedly occupying schedule 'B' property. It was also contended that the plaintiff has also suppressed about his participation in hearing the notice for eviction issued under the Act; challenging the same in appeal before the District Judge, Puri; against the order of District Judge, Puri, filing of writ before the Hon'ble High Court; and his becoming unsuccessful in every forum. Learned counsel for the respondents further submitted that the suit is not maintainable because of the appeal not being filed under section 9 of the Act before this Court. According to him, whenever there is any unauthorised occupation of public premises and action taken thereunder, the only forum available therein is to challenge the same against the Estate Officer before the Appellate Court, as described under the Act, and no suit will lie being barred under section 9 of the C.P.C. Thus, he supported the result of the suit and prayed for

dismissal of the appeal.

DISCUSSION :

9. On going through the pleadings of both parties, it appears that the plaintiff has claimed the suit at schedule 'A', including schedule 'B' land, to have been purchased by him from one Bidulata Mohanty and got draft Record of Right. It has also been admitted that he has got his house constructed thereon with holding No.1323, whereas as per written statement filed by defendant No.1, schedule 'B' land was actually encroached by the plaintiff for which he has been given notice under section 4 of the Act and that matter has been finalized before the Hon'ble High Court vide OJC No.944 of 1986, after which they have claimed damages for unlawful occupation of the suit schedule 'B' land by the plaintiff. When the plaintiff has claimed schedule 'B' land to be part of schedule 'A' land under the Registered Sale Deed, it is for the plaintiff to prove that he is the owner in possession of schedule 'B' land. In this regard, the learned trial Court has taken up issue Nos.(iv) and (v) together and discussed the evidence of P.W.1, including the pleadings, and came to the conclusion that the ownership over schedule 'B' property has not been proved by the plaintiff because he has not filed a single document in support of his claim. On the other hand,

learned counsel for the appellant submitted that they have already filed documents and the same do form part of the record; but the learned trial Court has not taken those documents into consideration. On going through the order-sheets and the impugned judgment, nothing is found to indicate that any document from the side of the plaintiff has been exhibited. But, on a thorough examination of the record, it appears that on 25.04.1995 the Sale Deed in question has been marked as Ext.1, holding tax receipt has been marked as Ext.2 with the signature of the P.O., and necessary Municipality notice in respect of holding No.1323 has been marked as Ext.3 without obtaining the signature of the P.O. and those documents seem to have been filed from the beginning of the suit. Of course, the list of documents shows that the plaintiff has filed the same in Misc. Case No.261 of 1988, arising out of the present suit. The evidence of P.W.1 does not disclose that those documents have been marked as exhibits, although they have been discussed in his examination-in-chief. It is a matter of surprise that neither the trial Court nor the party concerned thought it proper to mark those documents as exhibits during examination of P.W.1, although he has been examined on 25.04.1995. Due to such lacuna, those documents have not been brought on record, although marked as exhibits in the

suit. It is a sheer over-sightedness on the part of the learned trial Court and, as such, the observation of the learned trial Court that the plaintiff has not filed a single document is not sustainable in law. Although discussion has been made by the P.O. with regard to oral evidence and pleadings of P.W.1 and defendant, but due to non-consideration of the documents already on record makes the findings on issue Nos.(iv) & (v) unintelligible. On the contrary, a petition has been filed by learned counsel for the appellant to pass appropriate order for taking documents filed by them in the lower Court into consideration at this stage.

10. Thus, it is clear that the plaintiff's claim that he was not given proper and reasonable opportunity to consider his documents to prove his ownership is genuine when the learned trial Court has lost sight of the evidence of the plaintiff while giving findings on issue Nos.(iv) & (v). As such, the findings of the learned lower Court on issue Nos.(iv) & (v) are not agreed with and the same require reconsideration.

11. Issue Nos.(i) to (iii) and (vi) have not been answered at all by the learned trial Court on the plea that the plaintiff has not been able to prove confirmation of possession and permanent injunction. When defendant No.1 has taken plea that the suit is not maintainable, there is no cause of action to

file the suit and the lower Court lacks pecuniary jurisdiction to try the case, it cannot be said that the issues are not required to be answered. The issues must be answered giving sufficient reasons and it cannot be the non-speaking order as to the fact that since the plaintiff has not been able to prove his right, title and interest, the case of the plaintiff may not improve. On going through the record, it appears that the defendants claim that since the case is based on the notice issued by them under the Act, the real forum to quash such notice and observe the bonafideness of the plaintiff is under section 9 of the Act. So, this aspect is also required to be thrashed out while deciding issue Nos.(i) & (ii) as to the maintainability of the case and cause of action to file the suit. Moreover, the finding on undervaluation of the suit could also be answered by the learned trial Court. When the vital issues have not been answered by the learned Court below on flimsy grounds, interference by the Appellate Court is unavoidable. On the other hand, Order 20, Rule 5 of the C.P.C. says that in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit. This provision also gets support from the decision reported in **AIR 1985 SC**

736 (M/s. Fomento Resorts and Hotels Ltd. Vs. Gustavo Ranato da Cruz Pinto), where Their Lordships have held that where there are several issues, the judgment should be on all points and not on single point. Hence, the learned trial Court has committed error by not following the provisions of law and it has to decide on all the issues. Thus, the findings of the learned trial Court on those issues are not agreed with and the same are liable to be answered afresh. Hence ordered :

O R D E R

The appeal is allowed on remand with cost and the judgment dated 31.10.2011 & decree dated 08.11.2011 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in T.S. No.313 of 1988 are hereby set aside.

With the observations, as indicated above, the appeal is remanded to the lower Court for fresh disposal according to law within a month from today.

Since the suit relates to the year 1988, both parties are directed to appear on 25th August, 2014 before the trial Court. The learned trial Court is instructed to allow P.W.1 to prove the documents already exhibited on his behalf on the same day and cross-examination to P.W.1, if any, by the defendants on those documents. At the same time, the defendants should also be given opportunity to adduce

evidence, if any, on the same day. No adjournment should be granted by the learned trial Court since it is a matter of the year 1988. However, in the event any compelling reasons appear, the learned trial Court may adjourn one or two days from 25th August, 2014, but must bear in mind that the suit shall be disposed of on merit within a month hence. Immediately after hearing arguments on the above date or on subsequent dates, the learned trial Court shall fix up date for judgment.

If neither of the parties appears, the learned trial Court shall close the hearing of the suit and fix up date for judgment. The learned trial Court is directed to dispose of the suit by giving individual findings on all issues afresh in the second week of September, 2014 positively.

**District Judge, Khurda
at Bhubaneswar.**

19.08.2014.

Dictated, corrected by me and pronounced in the open Court this day the 19th August, 2014.

**District Judge, Khurda
at Bhubaneswar.**

19.08.2014.