

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

Present:

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

Dated, Bhubaneswar the 14th July'14.

R.F.A. No. 47 of 2008.

[Arising out of the judgment dated 05.08.2008 & decree dated 21.08.2008 passed by the learned 2nd Addl. Civil Judge (Sr. Division), Bhubaneswar in Civil Suit No.35/288 of 2005/2003.]

Akhila Patra, aged about 56 years, S/o. Ananda Patra, permanent resident of At/P.O. - Itamati, Nayagarh. At present : Plot No.238, Sahid Nagar, P.O./P.S. - Sahid Nagar, Bhubaneswar, Dist. - Khurda.

... **Appellant.**

-Versus-

Govt. of Orissa, General Administration Department, Represented through its Special Secretary, At – Orissa Secretariat, Bhubaneswar.

... **Respondent.**

Counsel :

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

Date of argument : 26.06.2014.

Date of judgment : 14.07.2014.

J U D G M E N T

The unsuccessful plaintiff has come up with this appeal against the judgment dated 05.08.2008 & decree dated

21.08.2008 passed by the learned 2nd Addl. Civil Judge (Sr. Division), Bhubaneswar in Civil Suit No.35/288 of 2005/2003, dismissing his suit for declaration of his right, title and interest as well as for 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.

3. Factual matrix leading to the case of the plaintiff-appellant is that he being an uneducated and unemployed person was residing in village – Itamati in the district of Nayagarh. He came to Bhubaneswar in 1972 in search of employment. Having found the suit schedule property lying vacant, for the purpose of shelter, he immediately constructed a thatched house thereover and occupied the same on Dushera day in the same year. Since then, he has been possessing the suit property by constructing a tea-stall thereon and raising vegetables and other plants on the rest portion of the said property. Accordingly, he obtained the voter's identity card, ration card, took electricity connection and, finally, he also opened a savings account in Puri Gramya Bank, Rasulgarh Branch, Bhubaneswar. As such, he has been possessing the suit property openly, peacefully and uninterruptedly with hostile animus to the knowledge of all, including the defendant-respondent. But, on 22.04.2003, the defendant and its agents tried to forcibly evict the plaintiff to occupy the suit land. So, the plaintiff was compelled to file the

suit for declaration of his right, title and interest over the suit property and for permanent injunction against the defendant from interfering with his peaceful possession thereover.

4. Defendant-respondent filed written statement, contending therein that the suit of the plaintiff is not maintainable in law, there is no cause of action to file the suit, the suit is barred by limitation and the suit is grossly undervalued. The defendant denied the plea of adverse possession over the suit land by the plaintiff. According to the defendant, finding unauthorised possession of the plaintiff over the suit land, notice under section 4(1) of the Orissa Public Premises (Eviction) Act, 1972 (“the Act”, for short) was issued and on 29.12.2003 order was passed to evict the plaintiff from the suit land. Since the plaintiff did not challenge the order, the same reached its finality and, as such, the suit is not maintainable under section 14 of the Act. The documents relied upon by the plaintiff have no relevancy to the suit land. Hence, it was submitted to dismiss the suit with cost.

5. Basing on the plaint and written statement, the following issues were framed by the learned trial Court.

- i) Whether the suit is maintainable ?
- ii) Whether there is any cause of action to file the suit ?
- iii) Whether the suit is barred by law of limitation ?
- iv) Whether the plaintiff has got right, title and interest in respect of the suit land by way of adverse possession ?
- v) Whether the plaintiff is entitled to get a decree of permanent injunction in respect of the suit land ?
- vi) To what other relief, the plaintiff is entitled ?

6. The learned trial Court took up issue Nos.iii & iv together and decided the same against the plaintiff by observing that he has not acquired title over the suit property by way of adverse possession. Similarly, all other issues were also answered against the plaintiff.

7. Learned counsel appearing for the appellant challenging the findings of the trial Court submitted that the learned Court below has erred in law by misinterpreting the documents relied upon by the plaintiff. The learned Civil Judge ought to have relied upon the documents and observed that the plaintiff has been in peaceful, uninterrupted and continuous possession since 1972. But, he has failed to appreciate the oral evidence of P.W.1, which is in consonance with the documents relied upon by him. According to him, if the defendant has no knowledge as to the possession of the plaintiff till 2003, when they started a case under the Act, by then the adverse possession of the plaintiff had been matured. So, he forcefully submitted to set aside the impugned judgment and decree passed by the learned trial Court and the plaintiff's suit be decreed.

8. On the other hand, learned Government Pleader appearing for the Government of Orissa, G.A. Department, submitted that the oral evidence of the plaintiff is shaky, inconsistent and against the documents relied on. The documents vide Exts.1 to 4 submitted by the plaintiff have no relevancy to the subject matter of the suit. According to him, the defendant is the recorded owner of the suit land and the Record of Right has

been published finally in favour of the G.A. Department. The defendant being a trespasser cannot claim adverse possession against the State Government, as by the time of eviction, he has not perfected title by adverse possession. He thoroughly supported the findings of the learned trial Court and submitted to dismiss the appeal with cost.

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 finding of the learned trial Court is liable to be interfered with.

10. The most crucial issue in this suit is issue No. (iv) as to whether the plaintiff has got right, title and interest over the suit land by way of adverse possession. It is well settled law he, who seeks right, title and interest by virtue of adverse possession, has to prove the same by the principles of *nec-vi, nec-calm & nec-precario*. On the other hand, he has to prove that he has been possessing the suit land peacefully, uninterruptedly and continuously for more than the statutory period. It is needless to say that against the State Government, the plaintiff is required to prove the period of his actual possession for more than thirty years to mature his claim of right, title and interest by way of adverse possession. It is well settled law that in the case

of adverse possession, the plaintiff must prove that he has been possessing the property with hostile animus, openly and to the knowledge of the original owner of the suit land. On the other hand, heavy onus lies on the plaintiff to prove that he has acquired right, title and interest over the suit land by adverse possession.

11. In the instant case, in para-2 & 3 of the plaint, the plaintiff has averred that he came to Bhubaneswar in 1972 in search of employment and occupied the suit land on Dusshera day in the year 1972 and raised vegetables. In para-5 of the plaint, he stated that he started a tea-stall over the suit land in March, 1973. But, in para-10, he stated that the cause of action of the suit was in Dusshera day of the year 1973 when the plaintiff occupied the suit land. So, the plaint itself is self-contradictory as to when the plaintiff commenced his possession over the suit land. For that, we can go through the evidence adduced by the plaintiff. The plaintiff in order to discharge onus has examined himself only as P.W.1 and adduced documentary evidence. On going through the examination-in-chief of P.W.1 filed in shape of affidavit evidence under Order 18, Rule 4 of the C.P.C., which is just replica of the plaint, it is found that during 1971, he came to Bhubaneswar and possessed the suit land on the auspicious Dusshera day in the year 1972. But, in 1973, he brought his family. In para-18 of the affidavit evidence, he has admitted that he is in peaceful possession over the suit property since 1973. Now, the examination-in-chief of P.W.1 itself is not clear as to when he

commenced his possession over the suit property – whether in 1972 or in 1973 or in 1971. Even if it is assumed that the pleadings have some typographical mistakes, but the evidence through affidavit submitted by the plaintiff cannot be said to be by mistake. In cross-examination, he stated that in the year 1971, he entered upon the suit land. So, the evidence of P.W.1 coupled with the pleading are not consistent to prove as to when the plaintiff started to possess the suit land, which admittedly belongs to the defendant.

12. Now, advertent to the documentary evidence of the plaintiff to find out whether he can discharge his onus by virtue of documentary evidence, it is seen that he has filed four documents. Ext.1 is the voter's identity card, Ext.2 is the ration card, Ext.3 is the electricity energy connection letter and Ext.4 is the telephone connection letter. On going through Ext.1, it appears that the same was issued in favour of the plaintiff on 01.01.1994. Ext.2 is the ration card, which shows that he being in possession of the suit land was issued with consumer's identity card only on 30.04.1994; but he started receiving ration articles since 25.02.1996. Ext.3 is the electricity bill dated 10.05.1998 for the period February, 1998. Ext.4 is the telephone connection letter dated 18.05.2002 of Bharat Sanchar Nigam Ltd. issued in favour of the plaintiff over the suit plot. There are no other documents filed by the plaintiff in his favour. Since no other document is forthcoming in favour of the plaintiff showing his occupation of the suit land prior to 1994 and his oral evidence

being shaky, inconsistent and impeachable as to when he started his possession thereon, it is only proved that he is in possession over the suit land since 1994.

13. It is revealed from cross-examination of P.W.1 that the G.A. Department is the recorded owner of the suit land in the last settlement operation and the Government initiated an O.P.P. Case vide No.731 of 2003 against him before the Estate Court for his eviction. So, the interference by the defendant with his possession is well admitted by P.W.1 to evict him from the suit land. When his possession of the suit land is from 1994 and there is interference by the defendant with his possession in 2003, it cannot be said that he has been in possession peacefully, uninterruptedly and continuously for more than thirty years from the year of commencement of his possession.

14. On the other hand, D.W.1, who is the Revenue Inspector of the G.A. Department, stated that the suit plot is recorded in favour of the G.A. Department in the year 2003 and the plaintiff occupied the same, O.P.P. Case No.731 of 2003 was started. He proved the eviction order vide Ext.B, which shows that on 30.04.2004 final order was issued for evicting the plaintiff from the suit plot and it has been admitted by the plaintiff in his examination-in-chief, as stated above. Be that as it may, fact remains that the defendant has interfered with the unauthorised possession of the plaintiff over the suit land under the Act.

15. From the foregoing discussion, it appears that the

plaintiff has failed to prove his possession over the suit land for more than thirty years continuously, peacefully and uninterruptedly. Apart from this, P.W.1 has stated in para-4 of his cross-examination that five years back, settlement operation was completed for the suit mouza and final publication took place in hal settlement. In para-6, he stated that the G.A. Department is the recorded owner of the suit land in the last settlement operation. He deposed in the Court on 25.03.2008. When the settlement operation started five years back, it goes back to 2003. If he has matured his right, title and interest over the suit land by the year 2003 as per his averment, then why he did not approach the settlement authority to record his name in respect of the suit land. This shows that he has no hostile animus to occupy the suit land by virtue of adverse possession. Hence, the ingredient of adverse possession remains far from proof by the plaintiff.

16. In view of the foregoing discussion, I am of the opinion that the plaintiff has failed to prove that he has acquired right, title and interest by adverse possession by dispelling the right, title and interest of the defendant over the same. I do not find any reason to differ from the view of the learned trial Court. Hence, on this issue, I concur with the finding of the learned trial Court.

17. So far as issue No.(v) is concerned, the plaintiff claims for permanent injunction basing on his acquiring right, title and interest over the suit land by adverse possession against the defendant. But, in the instant case, the defendant's title has

not been ousted by the plaintiff. In view of the discussion made above, when the defendant is the rightful owner of the suit land, the unauthorised possession of the plaintiff for less than the statutory period cannot bring any illegality against him. It is well settled law that a person in possession can resist his possession against everybody except true owner. It is, therefore, respectfully held that the plaintiff has failed to prove that he is entitled to the relief of permanent injunction against the defendant in the suit. On the other hand, I concur with the finding of the learned trial Court that issue No. (v) is answered against the plaintiff.

18. As regards issue No.(ii), it is answered in the negative because the plaintiff has failed to prove his right, title and interest by way of adverse possession. I concur with the finding of the learned trial Court on this issue. The question that the suit is barred by law of limitation does not arise since this has not been pressed by either of the parties. At the same time, in view of finding on issue No.(iii), the question of the suit being barred by limitation is *non-est*.

19. When the plaintiff has no right, title and interest over the suit land by virtue of adverse possession and he is also not entitled to the relief of permanent injunction against the defendant over the suit land, there is no cause of action to file the suit. So, I agree with the finding of the learned trial Court that issue No.(ii) is also answered in the negative against the plaintiff.

20. When the plaintiff has no right, title and interest over the suit land by virtue of adverse possession and the

defendant is the rightful owner of the suit land, the plaintiff is not entitled for permanent injunction in respect of the suit land and there is no cause of action to file the suit and, in the facts and circumstances, the suit is not maintainable. I also agree with the finding of the learned trial Court on this issue that the suit is not maintainable.

21. In view of the foregoing discussion, I find that the plaintiff is not entitled to any relief, as sought for in the plaint. Hence, the plaintiff's suit has been rightly dismissed against the defendant by the learned trial Court and I agree with the findings arrived at. So, issue No.(vi) is also answered in the negative against the plaintiff. Hence ordered :

O R D E R

The appeal being devoid of merit stands dismissed with cost. The judgment dated 05.08.2008 & decree dated 21.08.2008 passed by the learned 2nd Addl. Civil Judge (Sr. Division), Bhubaneswar in Civil Suit No.35/288 of 2005/2003 is hereby confirmed.

**District Judge, Khurda
at Bhubaneswar.**

14.07.2014.

Dictated, corrected by me and pronounced in the open Court this day the 14th July, 2014.

**District Judge, Khurda
at Bhubaneswar.**

14.07.2014.

