

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE –CUM-
SPECIAL JUDGE, CBI-II, BHUBANESWAR.**

PRESENT:

Dr.A.K.Mishra,
Addl. District Judge –cum-
Special Judge, CBI-II, Bhubaneswar.

R.F.A. No.11/76 of 2016/2013.

(Arising out of Judgment and decree dated
21.9.2013 passed by the 2nd Addl. Senior Civil
Judge, Bhubaneswar in C.S. No. 173/537 of
2010/1999)

N.W.Redden, aged about 79 years,
Son of late V.M.Redden, At- Bachharapatna,
P.O./P.S.Jatni, Dist. Khurda.

... Appellant.

Versus.

1. State of Odisha,
Represented through Collector Khurda,
At/P.O./P.S./Dist.Khurda.

2. Tahasildar, Jatni,
P.O./P.S.Jatni, Dist.Khurda.

... Respondents.

For the Appellant : Sri J.Raheman & Associates, Advocate.

For the Respondent : Sri J.M.Mishra, Addl.G.P.

Date of argument : 22.06.2016.

Date of Judgment : 05.07.2016.

JUDGMENT

The appeal preferred by unsuccessful plaintiff is directed against the judgment and decree dated 21.9.2013 by learned 2nd Addl. Sr. Civil Judge, Bhubaneswar in C.S.No.173/537 of 2010/1999 in dismissing the suit for declaration of title on the basis of adverse possession and permanent injunction. The defendants are the respondents.

2. The plaintiff's case, in a nutshell is that one C.W.Wahab, an Anglo Indian was the recorded owner of suit plot No.473 under Khata No.62 ad-measuring Ac.0.635 decimals in Mouza-Bachharapatna under Jatni Tahasil. He was serving as Head TXR in the South Eastern Railway and was residing in the Bungalow standing over the suit plot. There was one outhouse in the said plot at a distance of 50 feet from the main building. The father of the plaintiff had a house contiguous to the north of the suit plot and was also working in the Railway. He sold his own land due to pressure of debt and occupied the outhouse to the knowledge of all. He enclosed the area raising green fence and the said area measuring about Ac.0.090 decimals out of the suit plot, is the suit land.

In the year 1968, the original owner Mr. Wahab died. Subsequently, the parents of the plaintiff expired. In the process of forcible possession, the plaintiff claimed title by adverse possession. He was paying the holding tax to the Jatni N.A.C since 1972. In such back drop, the plaintiff received a notice from R.I. Jatni on 21.7.1999 to vacate the suit premises. As per notice, the plaintiff is to appear before the Collector Khurda on 23.8.1999, due to short notice the plaintiff engaged an advocate who could be able to appear before the Collector, Khurda on the said date at 11 A.M, but by then the order of eviction was already passed. In a proceeding under the Orissa

Escheats Act, the claim of the plaintiff was not entertained which was instituted camouflagely. The plaintiff felt aggrieved filed this suit on 25.8.1999.

2-A. Both the defendants filed a common written statement challenging the maintainability, cause of action and valuation of the suit. It is averred that the plea of adverse possession is false and is based upon imaginary facts. The original recorded owner having died in the year 1968, the Collector Khurda had initiated a proceeding under the Orissa Escheats Act, 1979 and after due service of notice plaintiff having raised no claim, the possession was taken over by the govt. on 29.5.2000 as per order in the Escheat Property Case No.2 of 1999 before the Collector, Khurda. Inter alia, plea of non-issuance of notice u/s. 80 CPC was taken and for the protection of the Govt. property, the prayer was made to dismiss the suit.

3. Learned lower court framed six issues. Plaintiff himself and one independent witness were examined on behalf of the plaintiff, while Tahasildar Jatni was examined as D.W.1. Certified copy of the ROR of the suit Khata, copy of notice and order in Escheat Case No.2 of 1999 and holding tax receipts were exhibited from the side of the plaintiff vide Ext.1 to Ext.7. The copy of order and letter of the Collector to the Tahasildar are marked Ext.A to Ext.C.

4. Learned lower court in answering issue no.III as to the binding effect of the order of escheats proceeding, has recorded a finding that there was no procedural illegality or irregularity found to have been committed by the Collector in passing order in Escheats Property Case No. 2 of 1999 and the Collector, Khurda has rightly assumed charge of the suit property as custodian under 6(1) of the Orissa Escheats Act, 1979.

On the plea of adverse possession, learned trial court extracting the relevant portion from the decision reported in **2010 (5) SCC 203 R.Hanumaiah and another -vrs- Secretary to Govt. Of Karnataka Revenue Department and others** has recorded findings that documents regarding collection of tax by the authorized officer of N.A.C were created in collusion with N.A.C officials for grabbing of the Govt. land and plaintiff has not adduced the clinching evidence with regard to entry and continuance of possession over the suit land and thereby negated the plea of adverse possession. By necessary implication, he denied the relief of permanent injunction to plaintiff. With regard to other reliefs, instead of elaborating the same learned trial court held that the suit is not maintainable.

5. Learned counsel for appellant raised objection to the impugned judgment relying upon the provisions of the Orissa Escheats Act, 1979. It is submitted that the custodian was under obligation not only to serve the notice, but also to give reasonable opportunity by publishing the notice in any news paper or official gazette for the proclamation in the locality. The same thing is not done here as notice was given on 21.8.99 to appear on the next day. For violation of Section 6 of the Orissa Escheats Act, 1979, the custodian cannot be said to have taken possession of the suit land. He has further submitted that general notice u/s.7 of the Orissa Escheats Act, 1979 after taking charge of property is not yet published calling upon the claimants to put forth their claim within six months. According to the learned counsel for the appellant, the mandatory requirements for taking escheats property as provided under Section 5, 6 , 7 and 8 of the Orissa Escheats Act having not been followed, it cannot be said that the suit land was under the charge of custodian the Collector, Khurda. Reliance is placed upon the decision reported in **AIR 1995 ORISSA 129, Bhatruhari Mahatab and another -vrs-**

Collector, Cuttack and another. It is further submitted that plaintiff having acquired possession since 1968 and by the time of filing suit in the year 1999 having completed 30 years, can be said to have acquired title by adverse possession and minor varied version should not have been considered to negative the plea of adverse possession which is otherwise proved by holding tax receipts.

6. Per contra, learned G.P. argued that on the prayer of the plaintiff to get declaration of title by adverse possession, the validity of the proceeding under Escheat Property Case No.2/99 cannot be scrutinized and when plaintiff has admitted to have received the notice in that case one day prior to the date fixed and failed to appear before the Collector, Khurda, it cannot be said that he was deprived of putting forth his claim in the escheat property proceeding. Reiterating the decision relied upon by the learned lower court, it is further argued by the learned G.P that proof of adverse possession requires clear and clinching evidence and suit for title by adverse possession is not maintainable by plaintiff.

7. On the conspectus of rival submissions, the points for consideration are :

- i. Whether the learned lower court has committed an error in recording finding with regard to adverse possession and validity of the Escheat Property Case No.2 of 1999?
- ii. Whether the suit by plaintiff for declaration of title by adverse possession is maintainable?

8. ANSWER TO POINT NO.I.

The requirement of establishing title by adverse possession over the Govt. land has been reiterated and relied upon by the learned lower court quoting the decision of **R.Hanumaiah** case (noted above) and the decision reported in **(2004) 10 SCC 779**

Karnataka Board of Wakf -vrs- Government of India and others.

8-A. In the back drop of such dictum, on careful reading of the evidence, I find that plaintiff as P.W.1 could not say the year of filing of the suit and the exact period for which he was in possession of the suit land or house in exclusion of his parents. The period possessed by his parents cannot be tacked with his possession to count limitation for establishing adverse possession. Because of this the learned lower court has rightly found that there is no clinching evidence from the side of the plaintiff to claim adverse possession.

9. Once the plaintiff has failed to prove the title by way of adverse possession, the test of validity of the proceeding under the Escheat Property case is nothing but academical. In the cited **Bhatruhari Mahatab** case, Their Lordships have categorically stated in para-6 that

“Once notice is served under sub-section 3 of Section-6, the custodian is entitled to enter into possession and assume management of the property, as provided in sub-section (6)(i) of Section 6 and under sub-section (6)(ii) of Section 6, the statute mandates the person in possession to deliver the property to the custodian”.

The said decision is no way helpful to the case of the plaintiff at hand. On independent analysis of evidence on record, it is found that the lower court’s finding and answer to the questions raised here are proper and contextually not illegal.

10. ANSWER TO POINT NO.II.

The Plaintiff has claimed title by way of adverse possession with consequential relief of permanent injunction. The law of adverse possession has been scrutinized by Hon'ble Apex Court from time to time. In the decision reported in **2014 (1) S.C.C Page-669**

Gurudwara Sahib -v- Grama Panchayat village Sirithala and another (Judgment dated 16.9.2013 para-7), it is held that :-

"7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence".

In another decision reported in **Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and Ors.** reported in AIR 2009 SC 103, it is held that :

"34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner"

11. Sequel to the above analysis, prayer portraited in the form of declaration of title by adverse possession in the suit is not maintainable.

12. Since no infirmity is found in the impugned judgment, appeal warrants no interference. Hence, it is ordered.

ORDER.

The appeal be and the same is dismissed on contest without cost .

Addl. District Judge-cum-Special
Judge, C.B.I. Court No. II, Bhubaneswar.

Typed to my dictation and corrected by me. Judgment is pronounced in the open Court today, this the 5th July, 2016.

Addl. District Judge-cum-Special Judge,
C.B.I.Court No.II, Bhubaneswar.