

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

Present:

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

*Dated, Bhubaneswar the 19<sup>th</sup> Dec. '14.*

**R.F.A. No. 623 of 2014.**

[Arising out of the judgment dated 15.09.2014 & decree dated 24.09.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.313 of 1988.]

Hari @ Haribandhu Mohanty, aged about 64 years, S/o.  
Late Alekha Mohanty, Vill./P.O. – 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 : 11.12.2014.

Date of judgment : 19.12.2014.

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

This appeal is directed against the judgment dated 15.09.2014 & decree dated 24.09.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.313 of 1988, dismissing the suit of the plaintiff-appellant. Respondents are the defendants before the Court below.

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. Then, the learned Court below took up issue No.(i) for discussion and held that the suit is not maintainable. Similarly, she took up rest of the issues and observed that the plaintiff has no cause of action to file the suit, issue relating to pecuniary jurisdiction needs no determination in view of discussion on the point of maintainability and, as such, the plaintiff is not entitled to any relief. 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 applying her judicial mind to the evidence on record and misdirected herself by not appreciating the documents vide Exts.1 to 4 properly. The learned trial Court has also erred in law by not considering the title of plaintiff when defendant No.1 in the written statement has neither admitted nor denied his title

over schedule 'A' property. Moreover, burden lies on the defendant to prove that the suit property under schedule 'B' belongs to Railways. But, the learned trial Court has failed to appreciate such fact in the impugned judgment. He further submitted that the learned Court below, without framing any issue as to whether the suit schedule 'B' land is properly identified, has gone ahead to dispose of the suit. The learned Court below has also erred in law by not disposing of the petition of the appellant filed before her for deputing Commissioner for measurement and identification of the suit land. Learned counsel for the appellant further submitted that the learned Court below has erred in law by dismissing the suit on perverse ground 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. It was further submitted by learned counsel for the respondents that there is clear admission of the plaintiff while examining himself that schedule 'B' land belongs to Railways and the same does not form part of his purchased property. No where the defendant has admitted that schedule 'B' property is part of schedule 'A' property, although it was the contention of the plaintiff. According to him, schedule 'B' property being encroached, as stated above, has been ordered to be freed from such encroachment by evicting the plaintiff. He further submitted that after being unsuccessful before the Hon'ble High Court, the present plaintiff has come forward in this forum to protract the matter by filing vexatious litigations. He submitted that the judgment and order has been rightly passed

by the learned trial Court. Thus, he prayed for dismissal of the appeal.

**DISCUSSION :**

9. Being the Appellate Court, this Court has to go through the entire materials on record, including the evidence, as the first appeal is in continuation of the suit in the appeal and there the procedural aspect has to be gone through. The First Appellate Court has got its duty to see whether justice has been meted out with proper perspective by the learned Court below. Accordingly, this Court has got enormous duty to award even justice.

10. It is the cardinal principles of *onus probandi* that if neither of the parties will adduce evidence, the suit of the plaintiff will fail. On the other hand, it is always the duty of the plaintiff to discharge onus by leading evidence.

11. On going through the lower Court record, it appears that the learned trial Court had already disposed of the matter at the first instance by dismissing the suit on 31.10.2011 and being aggrieved by such dismissal, the plaintiff had preferred R.F.A. No.41 of 2011 before this Court. In the said R.F.A., this Court remanded the matter to the Court below vide judgment dated 19.08.2014 by assigning reasons

to dispose of the suit by giving individual findings on all issues afresh. Consequent thereupon, the learned trial Court disposed of the matter vide judgment dated 15.09.2014 and decree dated 24.09.2014 dismissing the suit of the plaintiff. Challenging such judgment and decree, the present appeal has been filed as aforesaid.

12. Let me first of all take up issue Nos.(iv) & (v), which are interlinked with each other and vital issues, to arrive at a proper conclusion. 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. Thus, the issue with regard to the ownership of the plaintiff over schedule 'B' land being part of schedule 'A' land rests on the plaintiff because under section 101 of the Indian Evidence Act, the burden of proof rests on the party, who substantially asserts the affirmative issues. The plaintiff in order to discharge the burden has examined himself as P.W.1 and adduced documentary evidence.

13. It is revealed from the evidence of P.W.1 that he has purchased the suit land by Registered Sale Deed No.6535 dated 10.08.1976 from Bidulata Mohanty and, subsequently, constructed his house and is paying holding tax. In his examination-in-chief, he revealed that he had applied to the Settlement Authority and got Parcha for Ac.0.005 decimals of land. He set up a tea-stall-cum-betel shop on the suit land. In further examination-in-chief, he admitted that he had purchased Ac.0.004 decimals & 6 Kadi of land, but Parcha was issued for Ac.0.005 decimals of land. With regard to boundary of the land, he stated that public road runs to the south and the east of the suit land and Bhubaneswar Railway Station is on the other side of the road. Again he has stated in para-9 that the suit land is adjacent to the Railway Station and the suit land is bounded by the house of Satrughna Sahoo in the east; land belonging to the Railways in the west, again said road;

land of Bidulata in the north; and land of Gopal Behera in the south. From the examination-in-chief of P.W.1, it is found that there is discrepancy in his statement as to the boundary, but it is consistent to the effect that in the west of his purchased land, there exists the land of Bhubaneswar Railway Station. He has proved the Registered Sale Deed vide Ext.1, Rent Receipt vide Ext.2, Municipal Assessment Letter vide Ext.3 and Settlement Record of Right vide Ext.4. From Ext.1, it appears that he has purchased 4.6 Kadi whereas the draft Parcha vide Ext.4 shows that in the settlement Ac.0.005 decimals has been recorded in his favour. It is well settled law that the Registered Sale Deed conveys title, but draft Record of Right or Record of Right, as the case may be, does neither create nor extinguish the title. So, the purchased land of the plaintiff confines to 4.6 Kadi. In para-12 of his cross-examination, after the suit was remanded, P.W.1 has admitted that the land of Railways exists to the west of his purchased land as per Ext.1 and to the west of Railway's land there exists public road. In para-13, he has again clarified that his hotel is on the western portion of his purchased land and to the east his residential house exists. Further, he has stated in para-11 that the length of his purchased land is 24 ft. x 11 ft., but in para-13 he has clarified that the dimension of his residence from east to west

is 11 ft. in width. Thus, it is crystal clear from his statement that he has got residence over the purchased plot and to its further west he has got hotel. Since his house is covered by the purchased plot, the hotel definitely exists on the western side of the purchased plot covering the area of the Railways.

14. P.W.1 has filed a petition before this Court stating that schedule 'B' land is required to be demarcated and measured; but the learned trial Court did not take into consideration his petition for deputing a Survey Knowing Commissioner for the purpose. When his evidence is clear and documents are there, as discussed above, identification of schedule 'B' land has been well established without deputing any Survey Knowing Commissioner. Apart from this, in para-19, he has admitted that he had appealed against the Notice earlier sent for eviction before the District Judge, Puri and being unsuccessful he approached the Hon'ble High Court in O.J.C. No.944 of 1986, but there also he was not successful. The defendants also confronted the impugned Notice issued in the earlier proceeding vide Ext.A, which shows that for schedule 'B' land damages has been claimed against him under section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter called "the Act") and he was asked to pay damages for his unauthorised occupation of

Railway's land.

15. Thus, the evidence of P.W.1 is not cogent, clear, consistent and positive to prove that schedule 'B' land, which belongs to Railways, is a part and parcel of his purchased land as described under schedule 'A'. As such, the plaintiff has failed to discharge his onus through oral and documentary evidence that schedule 'B' land is part and parcel of his purchased land under schedule 'A'. The submission of learned counsel appearing for the appellant that onus lies on the defendants to prove their title over schedule 'B' land is not correct because it is reiterated that if neither of the parties will lead evidence, the case of the plaintiff will fail, as he asserts that schedule 'B' land is part of schedule 'A' land. In this case, the defendants have not adduced any evidence. Ext.A has been marked through P.W.1. The defendants have become successful to show through the cross-examination of the plaintiff that he has been issued with the Notice for payment of damages being in unauthorised occupation of Railway's property i.e. schedule 'B' land.

16. On a perusal of the impugned judgment, it appears that the learned trial Court has analysed the evidence in detail and rightly arrived at the conclusion that schedule 'B' land is not part and parcel of the purchased land of the plaintiff. I am

in complete agreement with the said finding of the learned lower Court. When the plaintiff has no right, title and interest over schedule 'B' land, but occupies the same unauthorisedly, his possession thereover cannot be confirmed. A party can claim injunction against any person except true owner. When the plaintiff is not the owner of schedule 'B' property, no injunction can be granted in his favour. It is found that the learned lower Court has rightly held that the plaintiff is not entitled to the relief of injunction or confirmation of his possession and, as such, the finding of the learned Court below is concurred herewith. So, issue Nos.(iv) & (v) have been rightly answered in the negative against the plaintiff by the learned trial Court.

17. As regards issue Nos.(i) & (ii), it is found from the evidence of P.W.1 that Ext.A is the Notice, which is coupled with his statement that the defendants have threatened to evict him from schedule 'B' land. When he has no right, title, interest and lawful possession over schedule 'B' property and schedule 'B' property is not part and parcel of schedule 'A' property, the defendants are at liberty to evict him from the suit land. That apart, under the provision of section 4 of the Act, Notice has been issued to the plaintiff and such fact has been averred in the plaint for which the suit was filed. It is

found from the impugned judgment that the learned trial Court while vividly discussing the provisions of the Act has rightly come to the conclusion that the suit does not lie in such format, as made by the plaintiff. Moreover, to set aside such notice issued under the Act, the real forum has been prescribed under section 9 of the Act. So, the suit is not otherwise maintainable and the plaintiff has no cause of action to file the suit as he has no right, title and interest over schedule 'B' land, as rightly held by the learned trial Court. Issue Nos.(i) & (ii) are answered accordingly.

18. So far as issue No.(iii) is concerned, no evidence has been put-forth by the parties. When the plaintiff has no cause of action to file the suit and the Civil Court lacks jurisdiction in such matter, the question of lack of pecuniary jurisdiction by the Civil Court does not arise. So, issue No.(iii) is answered accordingly; but, the learned lower Court should have discussed over this issue. However, the conclusion arrived at by the learned trial Court is not incorrect.

19. With regard to issue No.(vi), no relief can be granted to the plaintiff when he is found to have no manner of right, title, interest and lawful possession over schedule 'B' property. Thus, I have no disagreement with the finding of the learned trial Court on this issue. Learned counsel for the

appellant has not buttressed any other point to succeed in the appeal. Hence ordered :

**O R D E R**

The appeal fails and the same is dismissed on contest against the respondents without cost. The judgment dated 15.09.2014 & decree dated 24.09.2014 passed by the learned Civil Judge (Jr. Division), Bhubaneswar in C.S. No.313 of 1988, are hereby confirmed.

**District Judge, Khurda  
at Bhubaneswar.**

19.12.2014.

Dictated, corrected by me and pronounced in the open Court this day the 19<sup>th</sup> December, 2014.

**District Judge, Khurda  
at Bhubaneswar.**

19.12.2014.