

IN THE COURT OF THE ADDL. DISTRICT JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das LLB,
Addl. District Judge, Bhubaneswar.

RFA No. 8/74 of 2013-06

(Arising out of judgment dtd. 22.7.06 and decree in TS No. 522/47 of 2004-98 passed by learned Civil Judge (Sr. Divn.), Bhubaneswar)

1. Madan Mohan Mahakud, aged about 66 years (dead)
S/o: Late Khetrabasi Mahakud, Plot No. 346, Jagamara Barabari, PO/PS: Khandagiri, Bhubaneswar, Dist: Khurda
- 1-A. Kanakalata Mahakud, aged about 63 years
W/o: Late Madan Mohan Mahakud
- 1-B Sanjay Mahakud, aged about 42 years
S/o: Late Madan Mohan Mahakud
- 1-C Sujit Mahakud, aged about 35 years
S/o: Late Madan Mohan Mahakud
- 1-D Surajit Mahakud, aged about 33 years
S/o: Late Madan Mohan Mahakud
- 1-E Krushna Mahakud, aged about 32 years
S/o: Late Madan Mohan Mahakud
- 1-F Sushanta Mahakud, aged about 30 years
S/o: Late Madan Mohan Mahakud
- 1-G Saroj Mahakud, aged about 27 years
S/o: Late Madan Mohan Mahakud
- 1-H Sanjukta Mahakud @ Gouda, aged about 38 years
D/o: Late Madan Mohan Mahakud
- 1-I Sujata Mahakud, aged about 36 years
D/o: Late Madan Mohan Mahakud
- 1-J Sumitra Mahakud, aged about 31 years
D/o: Late Madan Mohan Mahakud
all are of Plot No. 346, Jagamara, Barabari
PO/PS: Khandagiri, Bhubaneswar, Dist: Khurda

... Appellants

Vrs.

1. Smt. Saraswati Panda, aged about 56 years (Dead)
W/o: Late Bhagirathi Panda
- 1-A: Pramod Kumar Panda, aged about 34 years
S/o: Late Saraswati Panda and Late Bhagirathi Panda
- 1-B Jhunu Panda, aged about 40 years
D/o: Late Saraswati Panda and Bhagirathi Panda

2. Prasanta Kumar Panda, aged about 29 years
S/o: Late Bhagirathi Panda
 3. Pradeep Kumar Panda, aged about 26 years
S/o: Late Bhagirathi Panda
- All are of plot No. 348, Jagamara, Barabari
PO/PS: Khandagiri, Bhubaneswar, Dist: Khurda

... Respondents.

Advocate for the appellants:-
Advocate for the Respondents-

Sri R.P. Nanda & Associates
Sri S.N. Das & Associates

Date of argument- Dt.28.10.14

Date of judgment- Dt.11.11.14

JUDGMENT

This appeal filed by the appellants (legal heirs of defendant in the lower Court) directed against the judgment and decree passed in favour of the plaintiffs (respondents in the appeal) and by dismissing the counter claim filed by the defendants in TS No. 522/47 of 2004-98 by Civil Judge (Sr. Divn.), Bhubaneswar on dtd. 22.7.06.

2. It was the case of the plaintiffs (respondents) before the learned court that Late Bhagirathi Panda, (husband of plaintiff No.1 and father of plaintiff Nos. 2,3 and 4) purchased a piece of land measuring Ac. 0.026 dec. under Mouza Jagamara appertaining to Sabik Khata No. 157, sabik plot No. 184/957 from the defendant executing a Registered Sale Deed bearing No. 861 dtd. 29.1.1979 adjoining northern boundary of the plot and also he purchased another Ac. 0.023 dec. of land from the said plot adjoining to his purchased land by executing registered sale deed No. 4008 on dtd. 19.4.1982. He also took over possession of both the pieces of purchased land and acquired title on the strength of the registered sale deeds. Both the pieces of acquired land have been amalgamated during Hal Settlement operation and has been carved out as Hal Plot No. 346/2551 under Hal Khata No. 694 having area Ac. 0.050 dec. which is the suit land. Said Bhagirathi was having Hal Plot No. 348, 2308 and 2179 adjacent to the northern boundary of Hal Plot no. 346/2551. He was in cultivable possession of all the four adjacent plots with barled fence around the entire patch of land. After the death of

Bhagirathi in the year 1993, the defendants forcibly dispossessed the plaintiff from the suit land vide Hal plot No. 346/2551 under Khata No. 694 having area Ac. 0.050 dec. and claimed title over the same in the year 1997. Hence, the plaintiffs filed a demarcation case in the Court of Tahasildar, Bhubaneswar and during field enquiry conducted by the government RI, it was confirmed that the defendants were in forcible possession over the suit plot of the plaintiff and a report was submitted to Tahasildar by the RI. Thereafter, the suit is filed praying to declare right, title and interest of the plaintiffs over the suit land and to direct the defendants to give delivery of possession over the suit land and to pass decree of permanent injunction restraining the defendants from changing the nature and character of the suit land.

3. The defendant filed his written statement alongwith counter claim admitting about execution of two sale deeds and transfer of title of Ac. 0.049 dec. of land from sabik plot No. 184/957. But, it is averred in the counter claim that the purchased area of the plaintiffs has been carved out during Hal Settlement as Hal Plot No.2308. It is claimed by the defendant that the land appertaining to Hal Plot No. 346/2551 under Khata No. 694 has not been transferred in favour of the plaintiffs at any point of time and only the plaintiff by influencing Settlement Authorities during Hal Settlement operation has been successful to record the Hal suit plot in his favour under Khata No. 694 during the year 1989. The claim of the plaintiffs that plot No. 2308 was in possession of the plaintiffs alongwith its title much prior to Hal Settlement operation has not been admitted by the defendant in their counter claim. Rather, it is the case of the defendants that Hal plot No. 2308 is the purchased land of the plaintiff through the registered sale deeds of the year 1979 and 1982 from sabik plot No. 184/957. The defendant was in possession of rest of the area under plot No. 184/957 i.e. (Ac.0.112 dec.- Ac.0.049 dec.) i.e. Ac.0.063 dec. which has been converted to Hal plot No. 2551 and has been wrongly recorded in the name of the plaintiff. But, although he is in possession of suit plot and has not been dispossessed at any point of time having his right, title and interest thereupon. It is claimed that even though record of right has been published in the name of the plaintiffs such record will not create

any title in their favour. In addition to such ground of title over the Hal suit plot, the defendant also alternatively claimed in the counter claim that as he is in continuous possession over the suit Hal plot for more than 12 years he has already perfected his title by way of adverse possession. On the basis of such averment in the counter claim, the defendant prayed to declare his right, title, interest alongwith possession over the suit Hal Plot No. 346/2551 with area Ac.0.050 dec. and to pass a decree of permanent injunction against the plaintiff restraining them from interfering with his peaceful possession.

4. Learned lower Court on perusal of the pleading from both the sides framed as many as 8 issues to decide the claim of both the parties and particularly issue No. 3 and 6 are most important issues to set the dispute at rest for both the parties. During the course of argument, learned counsel for the appellants argued that although the defendant took the plea of adverse possession in the counter claim, no such issue has been framed in the Court below while deciding the suit. At the stage of hearing the suit, one witness from each of the party has been examined and in addition to such oral evidence, plaintiff filed the original sale deeds dtd. 6.5.67 wherein the defendant purchased the suit land from one Sarangadhar Pradhan. Two other sale deeds are also filed wherein the defendant transferred Ac.0.049 dec. of land out of his purchased land of Ac. 0.112 dec. in favour of the plaintiff. Hal ROR alongwith rent receipts in respect of the suit land are also filed. Report of the RI addressed to Tahasildar in Demarcation Case No. 236/97 and plot index of Hal plot No. 346/2551 are also filed by the plaintiffs in support of their case. On the other hand, sketch map of the suit land and original map of the suit land alongwith another plot index are also filed by the defendant in support of their respective cases.

5. After hearing from both the sides, I feel the only dispute between the parties is whether Hal plot No. 346/2551 under Hal Khata No. 694 having area Ac.0.050 dec. correspond to sabik khata No. 157 plot No. 184/957 area Ac.0.049 dec. It is further to be tested if Hal plot No. 2308 is the corresponding land purchased by the plaintiffs from the defendants under the two sale deeds or the same plot was in possession of the plaintiffs having their title much prior to the

Hal Settlement operation. Learned Court below has discussed the above point under issue Nos. 3 and 6 which has been taken up at first in the judgment as the most important issues to decide the suit. It is stated in the judgment that the defendant although disposed of northern portion of the sabik suit plot in favour of the plaintiff, during hearing he claimed that southern portion of the suit plot bearing sabik plot No. 184/957 has been disposed of by executing two registered sale deeds. Such claim by the defendant is without any basis as in the written statement and in the sale deeds it is specifically admitted that northern portion of the sabik plot was disposed of in favour of the defendant. The defendant keeping silent over the publication of ROR since 1989 is also taken as exception to believe the claim of the defendant. Hence, it was held that the defendant encroached into the suit plot belonging to the plaintiff without any manner of right, title and interest. I have examined the evidence and the documents filed by the parties in this respect very thoroughly on the face of the claim and counter claim of the parties. Learned counsel for the appellants on the basis of the plot index marked as Ext.C claimed that Hal plot No. 346/2308 having area of Ac.0.038 dec. is the part of corresponding sabik plot No. 187 and 957. Therefore, the claim of the respondent over Hal plot No. 346/2551 on the basis of transfer of title is not believable. On the other hand, learned counsel for respondent relied on the plot index filed by him marked as Ext.7. He argued that plot No. 346/2551 corresponds to sabik plot No. 148/957 which is the purchased land of the respondent. In addition to the force on the plot index he also relied on the Amin report marked as Ext.6. In the year 1997 when the appellants encroached into the suit land, a demarcation case was filed in the Court of learned Tahasildar, Bhubaneswar vide case No. 236/97 and the RI physically verified the spot on identification of both the parties. Some villagers were also present alongwith both the parties at the time of demarcation. The report goes to show that the disputed area having been identified by the parties was demarcated by the RI. Hal plot No. 346/2551 under Khata No. 694 having area Ac.0.050 dec. is a part of original plot No. 2551. Taking such advantage, the defendant encroached into the suit land having no right, title and interest. Taking into consideration the plot

index, Ext.7 that Hal plot No. 346/2551 correspond to sabik plot No. 148/957, it can be said that the suit Hal plot is the purchased land of the plaintiffs. Further, I find the suit Hal plot has been recorded in the name of the respondent under Hal Settlement ROR No. 694. The respondents are also paying land revenue in token of the ownership of the land having their legal possession. Although, the appellants filed counter claim in the suit of the plaintiffs, at no point of time they challenged such recording of ROR or claimed any title over the suit plot by filing a separate suit against the respondents. The ROR, rent receipts, Amin report and the plot index filed by the plaintiffs before the learned lower Court sufficiently established that the suit Hal plot correspond to the suit sabik plot which was purchased by the plaintiffs from the defendant. The contention of the appellants that plot No. 2308 is the purchased land of the plaintiffs is not acceptable on the ground that the area of plot No. 2308 is only Ac.0.038 dec., but in fact they purchased Ac.0.049 dec. from the defendant by executing two registered sale deeds. On the other hand, the area of suit Hal plot being Ac.0.050 dec. and the purchased area of the plaintiffs being Ac.0.049 dec., it is more convincing that the suit Hal plot corresponds to suit sabik plot which was purchased by the plaintiffs.

6. Respondents further argued that the appellants adopted both hot and cold method to fulfill their evil intention to grab the property by taking the plea of adverse possession in respect of the suit schedule land. Such approach of the appellants show that they are not sure over their title over the suit land and therefore, claimed their title by way of forcible possession. But, the fact remains that the plaintiffs in the suit have specifically pleaded that after the death of their father the defendants forcibly dispossessed them from the suit plot in the year 1997. Therefore, the claim of title by way of adverse possession over the suit Hal plot by the respondents is a vague attempt having no legal force. Further, I find at no point of time the defendant raised the issue before the learned lower Court for framing of additional issues to declare his title by way of adverse possession and also no evidence is led to that effect during hearing of the suit. Hence, I find the claim of the appellants in this respect of being prejudice due to non framing of the issue is no way acceptable under law.

7. During hearing of the appeal, a petition was filed by the appellants under Order 26 R-9 CPC readwith sec. 107 and 151 CPC praying to depute a Survey knowing commission for local investigation and measurement of the suit land. Such a petition was also filed before the learned Court below and having heard from both the sides, the petition was rejected. Similar petition is moved again in the appellate Court and no doubt, the appeal being a continuous proceeding of the suit, the appellate Court can act upon such petition. I have already discussed above that the suit Hal plot has been well demarcated during the Hal Settlement operation basing on which ROR has been issued in favour of the respondents declaring their right, title and interest. That apart, in the demarcation case, the RI has also measured the suit land and confirmed that the disputed area is the suit Hal plot over which the respondents have got their title which is in forcible possession of appellants. Therefore, I do not find any reason again to depute any Survey Knowing Commissioner for demarcation of the suit land which has been well answered through the plot index and RI report filed by the plaintiffs before the learned lower Court.

8. In view of my above observations and finding, I do not find any merit in the appeal. Hence, ordered.

ORDER

The appeal is dismissed on contest without any cost and the finding of the learned lower Court is hereby confirmed.

Pronounced in the open Court today this the 11th day of November, 2014.

Dictated and Corrected by me.

Addl. District Judge, Bhubaneswar

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