

HEADINGS OF DECISION IN CIVIL SUITS

**IN THE COURT OF 1ST. ADDL. SENIOR CIVIL JUDGE, BHUBANESWAR
DISTRICT-KHURDA.**

***PRESENT:- Pranab Kumar Routray, LL.M.,
1st. Addl. Senior Civil Judge,
Bhubaneswar.***

T.S.204/1991

Madhab Kumar Singh, (deceased)

Substituted by (L.Rs.)

1.(A). Sri Jogeswar Kumar Singh, (deceased)

Substituted by (L.Rs.)

1.(A)(i). Sri Narayan Kumar Singh, aged about 57 years,

S/o Late Jogeswar Singh,

1.(A)(ii). Smt Khoni Devi, aged about 74 years,

W/o Late Jogeswar Singh,

Both are of village: Kharpar,

P.O.: Lakhi Sarai /(Bihar),

A/P: 542 Kharavel Nagar, Unit-III,

Bhubaneswar, Dist.Khurda.

1.(B). Damodar Kumar Singh, (deceased)

Substituted by (L.Rs.)

1.(B)(i). Smt Urmila Devi, aged about 50 years,

W/o Late Damodar Singh,

1.(B)(ii). Arabindha Kumar Singh, aged about 29 years,

1.(B)(iii). Binay Kumar Singh, aged about 22 years,

Both are S/o Late Damodar Singh,

1.(C). Surendra Kumar Singh, (deceased)

Substituted by (L.Rs.)

- 1.(C)(i).** Smt Geeta Devi, aged about 53 years,
W/o Late Surendra Singh,
- 1.(C)(ii).** Bijendra Kumar Singh, aged about 25 years,
S/o Late Surendra Singh,
Both are of village: Kharpar,
P.O.: Swaigarha, Dist.: Munger
A/P: Lakhi Sarai /(Bihar),
- 1.(D).** Rai Kumar Singh, aged about 50 years,
- 1.(E).** Bikramaditya Kumar Singh, aged about 45 years,
- 1.(F).** Kanheya Kesar, aged about 40 years,
All are of village: Kharpar,
P.O.: Swaigarha, Dist.: Munger
A/P: Lakhi Sarai /(Bihar), Plaintiffs.

-Versus-

- 1.** State of Orissa, Represented through
The Secretry, General Administration Department,
Sachibalaya,Bhubaneswar,
Dist.Khurda.
- 2.** Director Estate, General Administration Department,
Sachibalaya,Bhubaneswar,
Dist.Khurda. Defendants.

COUNSEL APPEARED

- For the Plaintiff : Sri B.K. Mohanty & Associates.
- For Defendants : Govt. Pleader Sri. R. Nanda.

DATE OF ARGUMENT : 20.02.2014
DATE OF JUDGMENT : 24.02.2014

J U D G M E N T

This is a suit for declaration of title, confirmation of possession and permanent injunction and with cost.

2. The case of the plaintiff, in short is that original plaintiff Madhab Kumar Singh who was a permanent resident of State of Bihar came to Orissa in 1946 and settled in New Capital Bhubaneswar and started contractory business. The suit property described in schedule of plaint belonged to one Chintamani Mishra which deceased Madhab purchased through two separate registered sale deeds in 1962 for a consideration Rs. 3,780.00 (Three thousand seven hundred eighty) paid from joint family funds and he got delivery of possession of the same. After acquisition, the family funds were utilised for development and construction of building over the suit land. Now it is in joint possession of the family of Madhab and his brother Jogeswar. All of a sudden in the year 1989 the officers of the defendants asked Madhab to vacate the suit property and threatened that other wise he would be forcefully evicted. He challenged such illegal act of defendants before Hon'ble High Court and by order dtd.12.06.1989 Hon'ble High court directed the defendants not to evict

the deceased plaintiff from the suit property. That the action of the defendants purported to be under Orissa Public premises (Eviction of unauthorized occupants) Act, 1971 is without jurisdiction and is not applicable to the suit property. It is also pleaded that plaintiff has perfected his title by way of adverse possession and such continuous possession including his vendor's possession will be for more than 40 years. In the last Settlement Record of Right published in the year 1987, illegal possession and subsequently corrected as possession on the basis of the purchase by virtue of the order passed on 12.03.1991 by the Tahasildar, Bhubaneswar in Mutation Case no. 247 of 1991 has been recorded. Therefore, recording of name of General Administration Department in the R.O.R is wrong and no way affects the interest and possession of the plaintiff over the suit property. When on 8.8.1991, some employees of the General Administration Department serving under defendants No. 2 gave threat for eviction of Madhab, hence the suit.

3. The defendants have filed their Written statement challenging the maintainability, cause of action and valuation of the suit. It is averred that the schedule of property described in plaint are not properly identified by boundary and possession in the field is totally different. It is further pleaded that plot no. 89 appertaining to Sabik Plot no. 106 has been fully acquired by govt. for public

purpose as per Puri District Land Acquisition Misc Case No. LA-8 of 1950-51 which was duly notified in notification no.8369-LA dtd. 8.8.1950 out of the total area of Ac. 3.665 decimals. The plaintiff 's vendor Chintamani Mishra had title over Ac.2.749 decimals which was fully acquired as stated above who received the compensation on 20.09.1953. After acquisition the land, it was mutated in favour of Government in Bhubaneswar Tahasil Misc. Case no. 01 of 1954-55. Govt. has prepared a drawing bearing no. 529 long since covering the suit land and other land and leased out the same to different lessees for different purposes. Hence the alleged purchase of the suit plot is the out come of fraud and the plaintiff has no right, title and interest over the same in any manner. In the current settlement record Hal plot no. 542, Area Ac. 0.315 decimals which is a part of Sabik plot no. 89 acquired by Govt. but there is “ illegal possession” note in the name of the plaintiff though the Khata has been prepared in the name of General Administration Department. The plaintiff was proceeded under the Orissa public premises (eviction of unauthorised occupants) Act, 1972. in O.P.P. case no. 4/77 L and order of eviction has been passed. Hence the plaintiff is liable for eviction. Hence the suit is liable to be dismissed with cost.

4. With the aforesaid pleadings the following issues have been framed.

ISSUES

1. Whether the suit is maintainable ?
2. Whether there is any cause of action to file this suit ?
3. Whether the suit is under valued ?
4. Whether Chintamani Mishra had any saleable title to transfer in favour of Original Plaintiff Madhab Singh ?
5. Whether Original Plaintiff Madhab Singh and thereafter the present Plaintiffs have acquired title over the suit land either by purchase or by adverse possession ?
6. To what other relief or reliefs the plaintiff's are entitled ?

5. In order to succeed in the suit, plaintiffs have examined 5 witnesses of whom P.W.1 Narayan Kumar Singh, one of the plaintiffs while P.W.2, 3 & 4 are independent witnesses and P.W. 5 is the pleader commissioner. Besides oral evidence the plaintiffs have produced and proved some documents of which Ext.1 & 2 are registered sale deeds dtd. 19.12.1962; Ext.3 is the Certified Copy of R.O.R. relating to Khata No. 329 of 1962 settlement; Ext. 4 is the certified copy of Hal settlement R.O.R. of Khata no.441 of Mouza-Kharavelnagar; Ext.5 is the certified copy of order passed by the Tahasildar, Bhubaneswar in Mutation Case no. 247/1991; Ext.6 and 6/a are rent receipts; Ext. 7 is certified copy of order passed by Hon'ble High Court of Orissa in O.J.C. no. 2014 of 1989; Ext.8 is one

unregistered power of attorney executed by deceased plaintiff Madhab in favour of brother Jogeswar Kumar Singh and Ext. 9 is the report of the pleader commissioner.

On the other hand defendants are examined with one witness who is the Revenue Inspector working in G.A. Department. The documents brought into evidence from the side of defendants are : Ext.A is the authorization letter to D.W.1 to depose evidence; Ext.B is the Sabik settlement R.O.R. of 1962 of the suit property appertaining to Khata no. 329, plot no.89; Ext. C is the Pre Sabik settlement R.O.R. of Khata no. 455, plot no. 106 mouza-Laxmisagar; Ext. D is the information slip issued by the Tahasildar, Bhubaneswar showing Hal plot no. 542 corresponds to Sabik plot no.89 of mouza-Laxmisagar; Ext.E is information slip showing Sabik plot no. 89 corresponds to Pre Sabik plot no.106 of same mouza; Ext. F is gazette notification no. 8369-LA-156/50-R; Ext. G and G/1 are the sheet no. 3 & 4 respectively of map of Sabik settlement of 1962 of mouza-Laxmisagar; Ext.H and H/1 are the sheet no.2 & 6 of Map of pre sabik settlement of mouza-Laxmisagar (with objection).

FINDINGS

6. Issue No. 4 &5

So far as the claims of the parties are concerned, both these issues being core issues are taken up together

at first. It is an admitted fact that Chintamani Mishra was the original owner of the suit land. Ext.C, the certified copy of the R.O.R. submitted on behalf of the defendants reveals that the suit land originally belonged to Hata Bhoi & others and recorded as such and Chintamani Mishra had purchased the same from Hata bhoi, Bhaba Bhoi and Natha Bhoi and got the same mutated in his favour and the R.O.R was corrected accordingly in the year 1952. It is the case of the defendants that the suit land and other properties was acquired by the Govt. for public purpose i.e. for new capital of Orissa at Bhubaneswar and notification was issued on 8th August, 1950 vide notification no.8369-LA-156/50-R which was published in the Orissa Gazette dtd. 11th Aug.1950. Copy of the said notification has been marked as Ext. F which reveals that a total area of, more or less, Ac 14.010 dc. in Village Laxmisagar was acquired by the Govt. The said acquired land was also bounded as clearly mentioned in the said notification. Ext. H is the settlement map which discloses that the suit land and other properties measuring Ac. 14.010 dc. have been bounded by the plot nos. as mentioned in Ext. F. There is also no dispute regarding identity of the suit property. As per Ext. C, plot no. 106 measuring Ac. 3,665 dc. under khate no. 455 of mouza Laxmisagar originally belonged to Hota Bhoi and others and Chintamani Mishra had acquired a portion out of the name and got the same mutated in his name. So, the fact remains that original suit plot no.106 was acquired by the

State Govt. for public purpose by notification of the year 1950.

7. The next question comes as to what is the legal effect of such acquisition of the suit land by Govt. The defendants in their written statement have specifically pleaded that the suit land was acquired by Govt. for public purpose as per Puri District Land Acquisition Misc. Case No. LA - 8 of 1950-51 which was duly notified in notification no 8369-LA dtd.08/08/1950. Chintamant Mishra had received compensation money on 20.09.1953. These assertions of the defendants have not been controverted by the plaintiffs during examination of P.W.1 who is one of the plaintiffs. On the other hand, he has admitted that Govt. is the true owner of the suit land. He also could not say if Chintamani Mishra had received the compensation on 20/09/1953.

8. Sec. 16 of the Land Acquisition Act is very much clear in this regard. Once possession has been taken of the acquired land and award is made, the land stood vested in the state free from all encumbrances. It can not be divested even if some irregularities is found in the award. The aforesaid position of law is made clear by judicial authorities. The hon'ble Apex Court in (2012) II C.L.R at page 1028, (2010) II C.L.R. at page 91 and (2005) I C.L.R. at page 285 have confirmed the said legal position. Therefore, when the state has acquired the suit

land for public purpose under proper notification, made payment of the award and took delivery of possession and consequently the suit land is recorded in the name of the State, Chintamani Mishra was already divested of title over the said land. As such he having no transferable title, Madhav Singh had not acquired any title over the suit land by virtue of his purchase from Chintamani Mishra under Exts. 1 & 2. Even if in the year 1962 the suit land was recorded in the name of Chintamani Mishra as per Ext.3, the same had not created any title either in favour of Chintamani Mishra or in favour of Madhav Singh. Ext.3 can not create title in favour of Chintamani Mishra once he is divested of the same over the suit land.

9. The next question comes if the original plaintiff and after him the present plaintiffs have acquired title over the suit land on the basis of long and continuous possession. Law is well settled as reported in A.I.R. 1964 S.C. 1254 (S.M. Karim V. Mst. Bibi Sakina) that adverse possession must be adequate, in continuity, in publicity, and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. A mere suggestion in the relief clause that there was uninterrupted possession ' for several 12 years ' or that the plaintiff had acquired an 'absolute title' was not enough to raise such a plea. Long possession is not necessarily adverse possession and a prayer clause is

not a substitute for a plea. In the present case neither the pleadings nor evidence from the side of plaintiffs make out a case of adverse possession in respect of the suit land. Mere note of possession in the remark column of the Record of Right is not enough for clothing the plaintiffs with title in respect of the suit land by way of adverse possession. Their such possession as noted in the R.O.R. has been challenged by the State right from the beginning.

10. Therefore, considered from all the angles neither Chintamani Mishra had any saleable title to transfer the suit land in favour of original plaintiff Madhav Singh nor Madhav Singh had acquired any title by virtue of his purchase in the year 1962. Hence, both these issues are answered in negative and against the plaintiffs.

11. ISSUE No.6

The plaintiffs have claimed permanent injunction against the defendants by restraining them from evicting them from the suit land. They have also claimed recovery of possession of the suit land in Case they are dispossessed from the same during pendency of the suit. But no such occasion has arisen nor the plaintiffs have been dispossessed from the suit land by the state through its agencies. Since it is already held that the plaintiffs have no title over the suit land and their possession is not legal in the eye of law, the same can

not be protected by issuing an order of injunction. Of course, the state can evict them from the suit land in due process of law. The state had already issued order of eviction of the plaintiffs from the suit land but due to filing of the present suit the same has been stayed. This issue is answered accordingly.

12. ISSUE NO.3

So far as this issue is concerned, the same touches the valuation of the suit property. Though the defendants have raised such a plea in their written statement but they have not substantiated the same by evidence during trial. There is nothing to disbelieve the valuation put by the plaintiff. Hence, the suit can not be said to be undervalued. Hence, this issue is answered in negative and in favour of the plaintiffs.

13. ISSUE NO.1& 2

Since Madhav Singh and thereafter the present plaintiffs have not acquired title over the suit land, their cause of action as stated in the plaint is imaginary. Hence, the suit can not be maintained in view of such imaginary cause of action. Both these issues are answered against the plaintiffs.

14. ISSUE NO. 7

In view of the discussions in the foregoing paragraphs under the aforesaid issues the plaintiffs are

not entitled to the same. On the other hand, the suit of plaintiffs is liable to be dismissed.

Hence ordered.

ORDER

The suit be and the same is dismissed on contest against the defendants but under the circumstances without any cost.

*1st Addl. Senior Civil Judge
Bhubaneswar.*

List of Witnesses examined for the Plaintiffs:

P.W.1: Narayan Kumar Singh,

P.W.2: M. Srinivas Murty,

P.W.3: Prabhu Mahato,

P.W.4: Surendra Natha Bisoi,

P.W.5: Somanath Mishra.

List of Witnesses examined for the Defendants :

D.W.1: Sunyamani Mahapatra.

List of documents marked as exhibits for the Plaintiffs:

Ext.1. Regd. Sale deed no. 8348 dtd. 19.12.1962

- filed on 23.08.1991,
- Ext.2. Regd. Sale deed no. 8350 dtd. 19.12.1962
filed on 23.08.1991,
- Ext.3. Certified copy of R.O.R. bearing Khata no.
329 of 1962 Settlement,
- Ext.4. Certified copy of Hal Settlement R.O.R. of
Khata no. 441 of mauza Kharavelanagar,
- Ext.5. Certified copy of order passed by Tahasildar,
Bhubaneswar in Mutation case no. 247/1991
dtd. 12.03.1991,
- Ext.6. Rent Receipt dtd. 14.10.1995,
- Ext.6/a. Rent Receipt dtd. 05.02.1988,
- Ext.7. Certified copy of order passed by the Hon'ble
High Court of Orissa in OJC no. 2014 of 1989
and Misc. case no. 2883/1983 dtd.12.06.1989,
- Ext.8. Unregistered Power of Attorney executed by
Madhav Kumar Singh,
- Ext.9. Report of Pleader Commissioner.

List of documents marked as exhibits for the Defendant :

- Ext.A. Authorization letter of Director of Estate,
- Ext.A/1. Signature of Director of Estate in Ext. A,
- Ext.B. Sabik Settlement R.O.R. of 1962 of Khata no.
329, Plot no. 89,
- Ext.C. Certified copy of Pre-Sabik Settlement R.O.R. of
Khata no.445,Plot no.106, Mauza Laxmisagar,
- Ext.D. Information slip issued by Tahasildar, BBSR
showing Hal Plot no. 542 corresponds to Sabik
Plot no. 89 of Mauza Laxmisagar,
- Ext.E. Information slip issued by Tahasildar, BBSR
showing Sabik Plot no.106 of Mauza Laxmisagar,
- Ext.F. Gazette Notification No. 8369-LA-156/50-R-

showing that Govt. has acquired the suit property,

Ext.G&G/1. Sheet No. 3 & 4 of Map of Sabik Settlement of 1962 of Mauza Laxmisagar,

Ext.H&H/1. Sheet No. 2 & 6 of Map of Pre-Sabik Settlement of Mauza Laxmisagar,

Ext.J. Relay Map showing co-relation among Sabik, Pre-Sabik and Hal on the basis of Settlement Map,

Ext.J/1. Signature of D.W. 1 in Ext. J.

***1st Addl. Senior Civil Judge,
Bhubaneswar.***