

HEADING OF DECISION IN CIVIL SUITS

IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE, BHUBANESWAR

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

T.S.56/361 of 06/99

1. Kedar Nath Pradhan
2. Manoj Pradhan
3. Santosh Kumar Pradhan

All are the sons of Late Kanduri Pradhan,
of Vill-Jambeswarpatna Sahi,
PO-Bhubaneswar, PS-Lingaraj,
Dist. Khurda.

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Plaintiffs

-Versus-

1. Prativa Sundari Mohapatra
2. Kanduri Charan Pradhan (since deceased)
S/o. Late Ganesh Pradhan
3. Durgabati Pradhan
D/o Late Ganesh Pradhan,
of vill-Jambeswarpatna Sahi,
PO-Bhubaneswar, PS-Lingaraj,
Dist. Khurda.

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Defendant.

Proforma Defendants

COUNSEL APPEARED

For the Plaintiffs : Sri R.C. Sarangi & Associates

For Defendant no.1 : Sri Ajaya Kumar Mohanty & Associates

DATE OF CONCLUSION OF ARGUMENT : 14-05-2014
DATE OF JUDGMENT : 17-06-2014

J U D G M E N T

This is a suit of the plaintiffs for cancellation of Registered Sale Deeds executed by their father in favour of defendant no.1 and for other reliefs.

2. The case of the plaintiffs in brief is that they are three brothers being the sons of defendant no.2, since deceased and defendant no.3 is the sister of their father. They constituted a joint Hindu Mitakshyara family and the suit property is their ancestral joint family property recorded in the name of defendant no.2 and 3 and one Anam Pradhan, widow mother of defendant no.2 and 3 in 1989 settlement R.O.R in Gharabari Kisam. It is alleged by the plaintiffs that defendant no.1 is a complete stranger to their family but developed godly relationship with their father and managed to obtain two Registered Sale Deeds from their father executed on 31-12-1981 and registered on 27-01-1982 in respect of the schedule property without payment of any consideration. The said sale deeds were executed and registered without the knowledge & consent of their father and so also without their knowledge and there was also no delivery of possession as the same remained under their exclusive ownership and possession till now. Only on 10-04-1999 the husband of defendant no.1 demanded for delivery of the suit land as a result the plaintiffs could know about the illegal transaction. When they enquired about the same from defendant no.2, their father, he disclosed that he had executed a nominal and benami sale deed in favour of defendant no.1 as there was dispute between him and his sister, defendant no.3 for the said property. Defendant no.1 had never paid any consideration to him. Hence, this suit.

3. Defendant no.1 has filed her written statement and has been contesting the suit. Though defendant no.2 and 3 are shown as proforma defendants but defendant no.2 has filed written statement but doesn't contest the suit. Defendant no.3 in her written statement has supported the claim of the plaintiffs. She has further added that defendant no.1 had filed R.C. no.273/99 in the Court of the Commissioner, Settlement for correction of the R.O.R which was dismissed on merits on 11-07-2001 but again she filed R.C. no.134/2001 in the said Court which was also dismissed. Defendant no.1 in her written statement has denied all the allegations of the plaintiffs and has claimed that she had lawfully purchased the suit land from defendant no.2 under two R.S.Ds on payment of adequate consideration and has taken delivery of possession of the same and has been in peaceful possession over her purchased land to the knowledge of all including the plaintiffs. The plaintiffs at no point of time had raised any objection but due to desertion in their family and misunderstanding with their father they have filed this suit frivolously. Their father being the Karta of the family had lawfully alienated the suit land in her favour to meet the joint family needs. As she had already taken delivery of possession soon after her purchase there was no need for her husband for approaching the plaintiffs on 10-04-1999 for delivery of possession. Therefore, the alleged date of cause of action is false and imaginary. The suit is also barred by the law of limitation according to her. Alternatively she has also pleaded for acquiring title over the suit land by adverse possession on the basis of long, continuous and uninterrupted possession over the suit land. She has also paid rent for the same and obtained rent receipts. Hence, the suit being devoid of merit is liable for dismissal.

4. On the basis the aforesaid rival pleadings the following issues have been settled.

ISSUES

1. Is the suit maintainable ?
 2. Is there any cause of action to bring this suit ?
 3. Is the suit barred by law of limitation ?

 4. Are the sale deeds bearing No.967 and 970 dated 27-01-1982 executed in favour of defendant no.1 valid ?
 5. To what other relief(s) the plaintiffs are entitled ?
5. In order to prove the case, the plaintiffs have examined themselves as P.Ws.1, 2 and 3, while P.W.4, Purna Chandra Panigrahi is an independent witness examined from their side being a monthly tenant under them. On the other hand, defendant no.1 has examined herself as D.W.2. Further defendant no.3 has examined herself as D.W.1.

Besides oral evidence, the plaintiffs have produced and proved documents which are marked as Exts. 1 to 12 which include the affidavit evidence of P.Ws. 1 to 4. Similarly, defendant no.1 has produced and proved documents which are marked as Exts. A-1, B-1, B-2 & C-1 which include her own affidavit evidence, Ext.B-1 is R.S.D no.967 dtd.27-01-1982, Ext.B-2 is R.S.D no.970 dtd.27-01-1982 and Ext.C-1 is draft R.O.R. (Certified Copy). On the other hand, defendant no.3 has produced and proved documents marked as Exts.A, B & C of which Ext.A is her affidavit evidence, Exts.B & C are the certified copies of the orders passed by the settlement authorities.

With the aforesaid evidence both oral and documentary the issues as framed are to be answered.

FINDINGS

6. Issue No.4

This being the only vital issue of the case, hence, the same is taken up at first. The plaintiffs have challenged the two R.S.Ds executed by their father in favour of defendant no.1 on the ground that the same are nominal and sham documents fraudulently obtained without payment of consideration and taking delivery of possession. It is further alleged by the plaintiffs that the said transaction was beyond their knowledge. They ascertained from their father that he executed the nominal sale deeds in favour of defendant no.1 without receipt of any consideration and under the circumstance that there was dispute between defendant no.2 and 3 for the said property.

Before going to scrutinise the evidence on record, it is worthwhile to place on record the argument advanced by the learned counsel for the plaintiffs regarding the authority of defendant no.2 to execute the two R.S.Ds. in favour of defendant no.1. The learned counsel invited attention of the Court to the R.O.R. (Ext.12) and submitted that the suit land is of 'Pattadar' status (Leasehold property) and the intermediary was Lord Lingaraj Marfat Trust Board. So, defendant no.2 could not have alienated the suit property in favour of defendant no.1 without obtaining permission from competent authority. That is the reason for which the settlement authorities have reflected in the remarks column of the settlement R.O.R. Ext.2 that the sale deed are illegal and possession of defendant no.2 over the suit land is on the basis of the said illegal sale deeds. But on perusal of the pleadings of the plaintiffs it is found that no such ground has been taken while attacking the sale deeds in favour of defendant no.1. The only ground of attack is that those sale deeds are fraudulently obtained from defendant no.2. So, the argument as advanced by learned counsel for the plaintiffs is without factual basis. However, Ext.12 is of the year 1962 in which the father of defendant no.2 &

3 has been shown as a tenant under Lord Lingaraj whereas Ext.2 was finally published in 1989. The Orissa Estate Abolition Act, 1951 was in force by the time Ext.12 was finally published. There is nothing on record to show as to when the relevant provisions of O.E.A. Act were made applicable to the intermediary estate of Lord Lingaraj. Ext.2 discloses that the suit property has been recorded in the name of Govt. of Orissa and defendant nos.2, 3 and another are tenants under the State. From the aforesaid facts, it presupposes that after coming into force the OEA Act, 1951 the suit property vested with the State and Ganesh Pradhan and thereafter his legal heirs & successors who were tenants under the ex-intermediary continue to be tenants under the State after settlement of rent. The alleged sale transactions are of the year 1982 and by then the status of the suit property has changed. Therefore, there was absolutely no necessity for defendant no.2 to obtain any permission from the competent authority as the suit property was no more the trust property of Lord Lingaraj. Therefore, the argument of the learned counsel for the plaintiffs as stated above is groundless.

7. The learned counsel for the plaintiffs approached from another angle by taking recourse to the provisions of Section 44 of T.P. Act and submitted that the suit property being the undivided joint family homestead property, defendant no.1 has no right of joint possession alongwith the plaintiffs without getting the same partitioned. The aforesaid argument of the learned counsel is perhaps based on the recording of the suit property in the last settlement operation as per Ext.2 i.e. of the year 1989. The suit land has been described as 'Gharabari' (bari). But as per Ext.12 which is of the year 1962 the suit land and other land has been recorded as 'Puratan Patita'. The alleged sale transactions are of the year 1982 and as per the schedule of property mentioned in the sale deeds in Exts.E & F the property sold is 'Puratan Patita'. Therefore, at the time of alleged sale the suit property was not at all part & parcel of any joint family homestead. Accordingly

the provision of Section 44 of the T.P. Act has no application to the suit property. The Kism of the suit property has been changed only during the last settlement operation which has been reflected in Ext.2 which is of the year 1989.

Therefore, the issue is to be decided basing on the evidence on record which requires a thorough scrutiny.

8. Admittedly the plaintiffs are not parties to the documents Exts.B-1 & B-2. Though plaintiff no.1 was major by then but his consent was not taken. Plaintiff no.2 & 3 were minors at that time. It is further admitted that the plaintiffs and defendant no.2 were members of a joint family and the suit property formed part of their ancestral joint family property. The father and the sons being co-parceners, each of them had a legal share therein.

On perusal of the evidence of the plaintiffs themselves P.Ws.1, 2 & 3 it is found that their father was the "Karta" of their family who was managing the affairs of the joint family. Besides the suit property the family has got vast other landed properties. Law is well settled that though the "Karta" has got share over the property equal to other co-parceners depending on his position in the genealogy but he has got some special rights so far as the management of the ancestral joint family property is concerned which no other individual co-parcener has got. The plaintiffs have neither challenged in their plaint nor have deposed during their examination in Court regarding that special right of their father being the Karta of their family. Even after death of their father (defendant no.2) their family still remains joint. Here the question arises as to what was the reason for executing R.S.Ds claimed to be nominal & sham in favour of defendant no.1 who is in no way related to the said family either by blood or otherwise. Law requires that any circumstance beyond normal under which a document is executed must be specifically pleaded and be proved. The burden of proof cannot shift to defendant no.1 as defendant no.2 was a literate person. It is not the case of the plaintiff

that their father was illiterate, innocent and ignorant in worldly affairs and taking advantage of the same defendant no.1 fraudulently obtained the R.S.Ds from him. Further, the transaction being beyond the knowledge of the plaintiffs they cannot specifically plead & prove the circumstances under which Ext.B-1 and B-2 were executed by their father. It is only defendant no.2 being the executant of the documents can lay such a claim and prove the circumstances by deposing in Court. He should have been added as a co-plaintiff and when being arrayed as a defendant should have filed a written statement explaining the abnormal circumstance under which he executed the sale deeds in favour of defendant no.1, a total stranger to him and to his family. P.W.1 during cross examination has clearly admitted that they had not discussed with their father regarding execution of the sale deeds in favour of defendant no.1 prior to filing of the present suit. Similarly P.W.2 has also admitted during cross examination that prior to filing of the suit he has not contacted his father though subsequently he stated that he consulted his father who told that the deeds are false and advised to file the suit. P.W.3 has admitted during cross examination that he had no knowledge as to why his father had executed the two sale deeds and under what circumstances and for what reason. He knew about the sale deeds first from defendant no.1 which was confirmed by his father subsequently. His father being the Karta of the family was looking after their personal properties and family matters till 1994 but he has not challenged the sale deeds executed by him in favour of defendant no.1. Though he has stated that defendant no.3 has also filed a separate Civil Suit challenging the sale deeds executed in favour of defendant no.1 but the same is without any corroboration either by way of pleadings or by way of oral or documentary evidence from their side or from the side of defendant no.3. He has also admitted that while filing the present suit they have not received any instruction from their father. The aforesaid oral evidence of none other than the plaintiffs would sufficiently indicate that they

had neither any personal knowledge about the transaction nor they had gathered any such information from their father.

9. Whether execution of any document is an outcome of fraud, coercion or undue influence, the same can be established by the persons involved in the transaction. In this case besides defendants 1 & 2 both the scribes of the documents and the witnesses to execution are also material witnesses who could have thrown some light regarding the influence exercised by defendant no.1 over defendant no.2 in getting both the sale deeds in her favour. But unfortunately the plaintiffs have not made any attempt to procure their attendance in order to depose on their behalf and to bring out facts from their mouth to support their cause.

10. On perusal of the R.S.D no.967 dtd.27-01-1982 marked as Ext.B-1, it is found that much prior to its execution defendant no.2 has purchased the stamp papers on 31-12-1981. Thus, this sufficiently indicates that he was mentally prepared to alienate the property for which he was ready with stamp papers and was in search of a purchaser. Had the transaction been an outcome of any circumstance so alleged by the plaintiffs, then the required stamp papers would not have been purchased about one month prior to execution and registration of the sale deed. It should have been purchased then & there to be utilised for execution and registration of the desired document.

So far as Ext.B-2 is concerned, the required stamps papers were purchased on 27-01-1982 by defendant no.2 i.e. on the date of execution and the registration of the sale deed. Defendant no.1 as D.W.2 has specifically stated during cross examination that after execution of Ext.B-1, as per the request of her vendor who needed money and offered to sale the remaining portion of the land, she agreed and paid Rs.1000/- for purchase of documents (meaning stamp papers) for the second deed and the consideration money for the same was paid to her vendor in the night where-after the registration ticket was handed over to her. For

the second sale she ascertained from her vendor that he required money for his house expenses and also towards the marriage of his daughter. Thus, being the purchaser she has discharged the burden of proving the legal necessity of the vendor for sale of the land. Further, she denied the suggestion that her vendor was addicted to intoxication which fact is neither pleaded by the plaintiff nor deposed in Court. Though she was cross examined at length but nothing could be elicited from her mouth creating a circumstance for execution of nominal and sham sale deeds in her favour by defendant no.2. She also denied the suggestion that she had fraudulently obtained the sale deeds. According to her defendant no.3 was very much present at the time of negotiation but was not present during execution and registration of the sale deeds. Though she asked her to be a witness to the sale deeds, she replied that her brother was not selling all the properties belonging to them.

11. The next question arises whether in a state of jointness any of the co-parceners / co-sharers including the Karta can alienate any specified property as in such a situation there is unity of title and unity of possession. In the present case, besides the suit property, the adjoining property was the residential house. The suit property was separated from the remaining property by boundary walls with a gate which was delivered to defendant no.1 soon after the sale deeds and the same remains as such till date as deposed by defendant no.1. She has been possessing the same by visiting the suit land at regular intervals and by appropriating the fruits from the mango tree standing on the same.

In the present case, defendant no.2 has not alienated his undivided interest out of the joint family property in favour of defendant no.1 in the capacity of a co-sharer but as the Karta of the joint family. The said fact is well gathered from the recitals of the sale deeds that for legal necessity i.e. in order to meet the house hold expenses and for repayment of loan dues defendant no.2 had

alienated the suit property as Karta of the joint family. Therefore, his capacity to alienate any specific property such as the suit property cannot be called in question he having a special status as the Karta of the joint family and not as a co-sharer alienating his undivided interest.

12. The R.O.R of the hal settlement was published sometime in the year 1989, the original of which has been marked as Ext.2. Plaintiff no.1 was a major by then. He could have ascertained the fact regarding the sales in favour of defendant no.1 by his father as her purchase has been noted in the remarks column. On the other hand, he allowed the said recording to continue. Long ten years thereafter the present suit has been filed on the cause of action that the defendant no.1 laid a claim over the suit land. Unless she was found to be in physical possession over the suit land and the settlement authorities marked the same, her possession would not have mentioned in the remarks column. Neither the plaintiffs nor their father had approached the settlement authorities for deletion of the facts noted in the remarks column of Ext.2.

13. The cumulative effect of the aforesaid discussions is that the plaintiffs have not successfully established that the sale deeds executed by their father are sham & nominal. Of course they have produced & proved some rent receipts marked as Ext.5 series showing payment of rent for the suit land as well as the other undisputed land. Since the suit land has been recorded under one khata and there has been no mutation in favour of defendant no.1, rent is to be paid for the entire property recorded in the said khata.

From the aforesaid discussions this Court comes to a definite conclusion that the plaintiffs have no genuine ground to challenge the validity of the sale deeds Ext.B-1 & B-2 on any score such as sham, nominal or benami. On the other hand, those documents are legal and valid ones passing title in favour of defendant no.1. Thus, this issue is answered in the negative and against the plaintiffs.

14. **Issue No.3**

The defendant no.1 has challenged the maintainability of the suit on the ground of limitation. According to her, defendant no.1 was a major at the time of execution of the sale deeds and at the time of publication of Ext.2. He could have challenged the sale deeds by coming forward with a declaratory suit which he has not done. In the present case plaintiff no.1 has not filed the suit alone but with plaintiffs no.2 & 3 who are his joint living brothers. Plaintiff no.2 was 30 years old and plaintiff no.3 was 24 years old when the suit was filed. All the plaintiffs should have filed the suit at least within three years after plaintiff no.3 attained majority which has not been done. When Ext.2 was in the custody of the family including the plaintiffs it is presumed that they have definite knowledge regarding purchase of the suit property by defendant no.1 under two R.S.Ds as mentioned in the remarks column of Ext.2. On the other hand, they have cited a cause of action in the year 1999 to file the suit in the same year. Under the above circumstances they had allowed time to flow without filing the suit in time. Thus, the suit is barred by law of limitation. This issue is answered accordingly.

15. **Issue nos.1 & 2**

In view of the discussions in the foregoing paragraphs and the findings under issue nos.3 & 4 the cause of action as mentioned in the plaint appears to be imaginary and the suit on that basis cannot be said to be maintainable. Both these issues are answered in the negative and against the plaintiffs.

16. **Issue no.5**

The plaintiffs are neither entitled to the relief as claimed nor to any other relief. On the other hand, their suit is liable to be dismissed.Hence, ordered.

ORDER

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

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

The judgment is typed to my dictation by the Typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today on the 17th day of June, 2014 under my seal and signature.

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

List of Witnesses examined for the Plaintiffs:

P.W.1 : Sri Manoj Kumar Pradhan

P.W.2: Sri Kedarnath Pradhan

P.W.3: Sri Santosh Kumar Pradhan

P.W.4: Sri Purna Ch. Panigrahi

List of Witnesses examined for the Defendants :

D.W.1: Smt. Durgavati Pradhan

D.W.2: Smt. Prativa Sundari Mohapatra

List of Documents marked as Exhibits for the Plaintiffs:

Ext.1: Evidence affidavit of P.W.1 ;

Ext.1/a: Signature of P.W.1 on Ext.1 ;

Ext.2: Hal R.O.R of Khata no.1038 ;

Ext.3: Evidence affidavit of P.W.2 ;

Ext.3/a: Signature of P.W.2 on Ext.3 ;

Ext.4: Certified copy of Sale deed no.970 dtd.27-01-82 ;

Exts.5

to 5k: Rent receipts (from 1977 to 2007) ;
Ext.6: Evidence affidavit of P.W.3 ;
Ext.7: Energy Bill ;
Ext.7/a: Electricity bill card ;
Ext.8: Discharge Certificate ;
Ext.9: E.C.G ;
Ext.10: Cardiac Treatment Note Book ;
Ext.11: Evidence of affidavit of P.W.4 ;
Ext.11/a: Signature of P.W.4 in Ext.11 ;
Ext.12: Certified copy of R.O.R of Plot no.1041 ;

List of Documents marked as Exhibits for the Defendants :

Ext.A: Evidence affidavit of D.W.1 ;
Ext.A/1: Signature of D.W.1 in Ext.A ;
Ext.B: Certified copy of order dtd.11-07-2001 in Rev.
Petition no.273/99 of Commissioner, Survey &
Settlement, Odisha ;
Ext.B-1: R.S.D no.967 dtd.27-01-1982 ;
Ext.B-2: R.S.D no.970 dtd.27-01-1982 ;
Ext.C : Certified copy of order dtd.05-10-2002 in Misc.
Case no.124/01 out of R.P.273/99 of Commissioner,
Survey & Settlement ;
Ext.C-1: Draft R.O.R (Certified copy) of Khata no.718 ;

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