A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.199 of 2001

(In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908)

Kunjalata Jena	....	***Appellant***
-versus-		
Prahallad Pradhan (dead) & Others	....	***Respondents***

For Appellant - Mr.D.P.Mohanty, Advocate

For Respondents - None

CORAM:
MR. JUSTICE A.C.BEHERA

Date of Hearing :12.09.2024:: Date of Judgment :25.09.2024

A.C. Behera, J. This Second Appeal has been preferred against the confirming judgment.

2. The appellant in this Second Appeal was the defendant before the Trial Court in the suit vide T.S. No.677 of 1994 and appellant before the 1st Appellate Court in the first appeal vide T.A. No.34 of 1998.

The original respondent in this 2nd Appeal i.e. Prahallad Prahan was the plaintiff before the Trial Court in the suit vide T.S. No.677 of 1994 and respondent before the 1st Appellate Court in the 1st appeal vide T.A. No. 34 of 1998.

When, during the pendency of the 2nd Appeal, the respondent expired, then, his LRs. have been substituted in his place as respondent Nos.1(a) to 1(e).

3. The suit of the plaintiff (original respondent in this 2nd appeal) vide T.S. No.677 of 1994 against the defendant (appellant in the 2nd appeal) was a suit for permanent injunction simpliciter.

The properties described in Schedule "A" and "B" of the plaint are suit properties. The Schedule "A" suit properties are Ac.0.00$^{1/4}$ decimals out of Ac.0.02$^{1/4}$ decimals of Sabik Plot No.270 under Sabik Khata No.15 in Mouza Madhipur under Nimapara Tahasil in the District of Puri.

The Schedule "B" properties are Ac.0.01$^{1/2}$ decimals of Sabik Plot No.29 under Sabik Khata No.38 in Mouza Madhipur under Nimapara Tahasil in the District of Puri.

4. According to the plaintiff, the suit Sabik Plot No.270 Ac.0.87 decimals under Khata No.15 was originally recorded in the name of Krupa Gochhayat son of Sadei, Kela Gochhayat and Giria Gochhayat both are sons of Dina Gochhayat in the finally published settlement R.o.R. of the year 1927. As per amicable partition between the above recorded owners, Krupa Gochhayat got 50% share from the western side and Kela Gochhayat and Giria Gochhayat got the eastern half of suit

Sabik Plot No.270. Accordingly, Krupa possessed Ac.0.43$^{1/2}$ decimals from western side of suit Sabik Plot No.270. Kela and Giria possessed Ac. Ac.0.43$^{1/2}$ decimals from the eastern side of the suit Sabik Plot No.270. Thereafter, Kela and Giria sold Ac.0.07$^{1/6}$ decimals land out of their allotted share Ac.0.43$^{1/2}$ decimals from suit Sabik Plot No.270 to the plaintiff for a consideration amount of Rs.270/- by executing and registering a sale deed on dated 01.02.1967 and delivered possession thereof. The said sold land i.e. Ac.0.07$^{1/6}$ decimals from suit Sabik Plot No.270 in favour of the plaintiff by Kela and Giria are situated in two patches. One patch is Ac.0.02$^{1/4}$ decimals and the other patch is 0.04$^{11/12}$ decimals and accordingly, he (plaintiff) is in continuous possession over his aforesaid purchased land i.e. Ac.0.07$^{1/6}$ decimals in suit Sabik Plot No.270 since 01.02.1967 till yet. The Schedule "A" suit land is the part of the above purchased land of the plaintiff from suit Sabik Plot No.270. The plaintiff is also in possession of Schedule "B" land, which is adjacent to the Schedule "A" land. The Schedule "B" land is under Khata No.38, Plot No.29, which is a Government land. While the plaintiff was continuing his possession as such over the Schedule "A" land, it was detected that, the sale deed, which was executed on 01.02.1967 by Kela and Giria were defective for want of permission under the O.L.R. Act, because, Kela and Giria were the Schedule Caste persons. For which,

Kela and Giria applied before the Revenue Officer, Puri by filing O.L.R. case No.163 of 1971 under Section 22 of the O.L.R. Act, 1960 for granting them permission to sell the Schedule "A" land along with other lands (those were sold by them on dated 01.02.1967 to the plaintiff) and their prayer for permission through O.L.R. Case No.163 of 1971 was granted in their favour and thereafter, the said Kela and Giria executed an another sale deed dated 11.05.1974 in favour of the plaintiff for the same properties of Plot No.270 in respect of which first sale deed dated 01.02.1967 was executed, on which the plaintiff had been continuing his possession since 01.02.1967. The defendant raised a Pucca construction over her own land, which is to the south of the Schedule "A" land and threatened to encroach the land of the plaintiff i.e. Schedule "A" land, to which, the plaintiff protested, for which, the defendant could not succeed in her attempt. When, the defendant could not encroach the Schedule "A" land of the plaintiff, then, in order to harass the plaintiff, the defendant threatened the plaintiff to construct a compost for manure purpose to the adjacent land of Schedule "A" land of the plaintiff i.e. on the Schedule "B" land, which is a Government land in order to obstruct the plaintiff from using his Schedule "A" land properly, because, he (plaintiff) has been using the Schedule "B" land as his passage to his house on Schedule "A". As such, the defendant has no manner of right, title, interest and

possession over any of the Schedule properties. So, without getting any way, the plaintiff approached the Civil Court by filing the suit vide T.S. No.677 of 1994 against the defendant praying for injuncting the defendant permanently from coming over the suit Schedule properties and from making any construction over any portion of the suit Schedule properties.

5. Having been noticed from the Trial Court in the suit vide T.S. No.677 of 1994 filed by the plaintiff, the defendant contested the same by filing her written statement denying the allegations alleged by the plaintiff in his plaint taking her stands therein that, the suit Sabik Plot No.270 comprises an area of Ac.0.87 decimals under Sabik Khata No.15 in Mouza Madhipur and the same was recorded in the name of Krupa, Kela and Giria. In an amicable partition, the western half Ac.0.43$^{1/2}$ decimals of land was allotted to Krupa and the eastern half thereof was allotted to Kela and Giridhari alias Giria. The plaintiff and five others fraudulently obtained sale deeds from Kela and Giria in respect of Ac.0.07$^{1/6}$ decimals out of Ac.0.43$^{1/2}$ decimals without obtaining necessary permission from the Revenue Officer and without payment of any consideration amount. But, she (defendant) has purchased Ac.0.07$^{1/6}$ decimals of land from suit Sabik Plot No.270 including the Schedule "A"

land from Kela and Giria on dated 27.07.1971 for a consideration of Rs.270/- after obtaining necessary permission from the competent Revenue Authority through Misc. Case No.89/71. After purchasing the suit "A" Schedule land along with other lands of suit Sabik Plot No.270, she (defendant) has constructed her building over his purchased properties from suit Sabik Plot No.270 including Schedule "A" land in the year 1971 and she has also constructed a safetic latrine and cowshed over its adjoining Anabadi Government land i.e. on Schedule "B" land, which is at the eastern side of her building. She (defendant) has also dug a cow dung pit over the Schedule "B" land for the purpose of manure. She (defendant) has encroached an area of Ac.0.45 Decimals of land, out of Sabik Plot No.29 under Sabik Khata No.40 in Mouza Madhipur including Schedule "B" properties and she has also been raising vegetables in a portion of Schedule "B" land. Schedule "B" land is a Gochar land. One encroachment case bearing No.607/89 was initiated against her/defendant for her such encroachment of Schedule "B" land by the Revenue Authority and she (defendant) had been paying compensation for the same since 1989 to 1994. The plaintiff has no right, title, interest and possession over the Schedule "B" land, as the plaintiff along with four others have obtained the sale deed in respect of the Schedule "A" land and other lands of suit Sabik Plot No.270 fraudulently

without prior obtaining permission from the competent Revenue Authority and without payment of any consideration, for which, the sale deed in respect of Schedule "A" properties is void. Because, the recorded tenants thereof have not delivered possession of the same to him (plaintiff). So, the suit of the plaintiff for injunction is not maintainable under law.

Therefore, the plaintiff has no right, title, interest and possession over the Schedule "A" properties and likewise, the plaintiff has no interest and possession over the Schedule "B" properties. For which, the suit of the plaintiff is liable to be dismissed with costs.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether five numbers of issues were framed by the Trial Court in the suit vide T.S. No. 677 of 1994 and the said issues are:-

Issues

1. Is there any cause of action to file the suit?
2. Is the suit bad for nonjoinder of necessary party?
3. Is the suit land properly described?
4. Is the plaintiff entitled to an order of injunction?
5. Any other relief?

7. In order to substantiate the aforesaid relief, i.e. permanent injunction sought for by the plaintiff against the defendant, he (plaintiff)

examined two witnesses from his side as P.W.s 1 and 2 and relied upon the documents vide Exts.1 to 11.

On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendant examined three witnesses from her side including her as D.W.3 and exhibited the documents on her behalf vide Ext.A to B/3.

8. After conclusion of hearing and on perusal of the materials, evidence and documents available in the record, the Trial Court answered issues Nos.2, 3 and 4 in favour of the plaintiff and against the defendant, but, the issue Nos.1 and 5 were not pressed by the parties. For which, basing upon the findings and observations made by the Trial Court in issue Nos.2, 3 and 4 in favour of the plaintiff and against the defendant, the Trial Court decreed the suit of the plaintiff vide T.S. No.677 of 1994 on contest against the defendant as per its judgment and decree dated 28.03.1998 and 10.04.1998 respectively and restrained the defendant permanently from coming over the Schedule "A" and "B" properties assigning the reasons that, the plaintiff has title and possession over the Schedule "A" properties and he (plaintiff) has been using the Schedule "B" properties as his passage.

9. On being dissatisfied with the aforesaid judgment and decree passed on dated 28.03.1998 and 10.04.1998 respectively by the Trial

Court in T.S. No.677 of 1994 in favour of the plaintiff and against the defendant, she (defendant) challenged the same by preferring the 1st Appeal vide T.A. No.34 of 1998 being the appellant against the plaintiff arraying him (plaintiff) as respondent.

10. After hearing from both the sides, the 1st Appellate Court dismissed that first Appeal vide T.A. No.34 of 1998 of the defendant as per its judgment and decree dated 17.02.2001 and 02.03.2001 respectively concurring/accepting the findings and observations made by the Trial Court in T.S. No.677 of 1994 in favour of the plaintiff and against the defendant

11. On being aggrieved with the aforesaid judgment and decree of the dismissal of the 1st Appeal vide T.A. No.34 of 1998 filed by the defendant, she (defendant) challenged the same by preferring this 2nd appeal being the appellant against the plaintiff arraying him (plaintiff) as respondent

12. When, during the pendency of this 2nd Appeal, the respondent (plaintiff) expired, then, in his place, his LRs have been substituted as respondent Nos.1(a) to 1(e).

13. This 2nd Appeal was admitted on formulation of the following substantial questions of law i.e.:-

1. Whether the Courts below should have held that, the suit is hit by Section 34 of the Specific Relief Act.?

2. Whether the Courts below have landed in a confusion with regard to the identity of Schedule "A" land, which is not claimed by the defendant and Schedule "B" land, which is the real bone of dispute?

3. Whether the Courts below are correct in their findings about plaintiff's right of easement over Schedule "B" Government land?

14. I have already heard from the learned counsel for the appellant (defendant) only, as none appeared from the side of the respondents for participating in the hearing of this 2nd appeal.

15. So far as the first formulated substantial question of law i.e. whether the Courts below should have held that, the suit is hit by Section 34 of the Specific Relief Act is concerned;

In this suit, both the parties i.e. plaintiff and defendant have specifically pleaded in their respective pleadings claiming their title against each other over the Schedule "A" suit properties and they have adduced evidence for establishing their title over the Schedule "A" suit properties on the basis of their pleadings knowing the case of each other relating to their controversies in respect of their claim of title over the Schedule "A" suit properties and after appreciating the evidence of both

the sides, the Trial Court has answered the same in issue No.4 as follows:-

> "*this being a suit for permanent injunction only, title of the parties should not be scrutinized thoroughly, but, however it is clear from the materials in the record that, the documents have been prepared in favour of the plaintiff concerning his title over the Schedule "A" properties and also his possession over the same and unless the said documents are set aside or canceled by the Court, the said document in favour of the plaintiff regarding his title and possession over Schedule "A" properties shall be presumed as correct. So, it is clear that, the plaintiff has title and possession over Schedule "A" suit properties. It is also admitted by the defendant that, she has no right, title, interest and possession over the said Schedule "A" properties. For which, the plea of the plaintiff is more reliable than the plea of the defendant. Therefore, the plaintiff has successfully proved his title and possession over the Schedule "A" suit properties".*

Under which circumstance, the Court can decide the title of the parties over the suit properties in a suit for injunction simpliciter has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> (i) ***2024 (I) CCC 216 (Allhabad):Meera Awasthi & Another Vrs. Ajeet Awasthi & Another***—Question of title can be looked into in a suit for injunction unless same is very complicated—A person who is in settled possession cannot be dispossessed except in accordance with law.

(ii) ***1998 (I) A.P.L.J. 104 (H.C.) & 1998 (2) Civ.C.C. 222 (A.P):P.Rama Rathnamma & Others Vrs. G.Lavanyavathi***—Title should not be investigated in a suit for permanent injunction only, but title can be incidentally investigated for the purpose of determining whether the plaintiff was in possession of the suit land as on the date of institution of the suit or not. (Para 12)

(iii) ***2021 (4) Civ.C.C. (S.C.) 1: T.V. Ramakrishna Reddy Vrs. M.Mallappa & Another***—Injunction suit—Issue regarding title—Court may decide issue regarding title even in a suit for injunction, if there are necessary pleadings regarding title and appropriate issues relating to title on which parties lead evidence, if matter involved is simple and straightforward—However, such cases are exception to the normal rule that question of title will not be decided in a suit for injunction (Para 11)

16. Though the plaintiff (respondent) had filed the suit vide T.S. No.677 of 1994 against the defendant praying for injunction simpliciter, but, in his pleadings he has indicated about his title and possession over the Schedule "A" suit properties and likewise, the defendant in her pleadings has specifically pleaded about her title and possession over the same Schedule "A" suit properties and accordingly, both the parties led their evidence during the trial of the suit in order to establish their respective title and possession over the Schedule "A" suit properties and one issue was framed in the suit vide T.S. No.677 of 1994 i.e. issue No.4 touching the pleadings of the parties i.e. whether the plaintiff is entitled to an order of injunction and the Trial Court has answered the said issue No.4 basing upon the pleadings and evidence of the parties concerning their claim of title and possession over the suit properties and held that, the plaintiff has title and possession over the Schedule "A" suit

properties. For which, by applying the principles of law enunciated in the ratio of the aforesaid decisions of the Hon'ble Courts and Apex Court, it cannot be held that, the suit of the plaintiff vide T.S. No. 677 of 1994 is hit by Section 34 of the Specific Relief Act, 1963.

17. So far as, the 2nd formulated substantial question of law i.e. whether the Courts below have landed in a confusion with regard to the identity of Schedule "A" land, which is not claimed by the defendant and Schedule "B" land, which is the real bone of dispute is concerned;

When, the defendant has claimed her possession over the self-same suit properties in respect of which, the plaintiff has claimed his possession, then at this juncture, the argument, which has been raised on behalf of the defendant that, the suit properties is not identifiable cannot be acceptable under law. Because, admitting the identity of the suit properties, the defendant has claimed her possession over the same.

18. So far as, the third formulated substantial question of law i.e. whether the Courts below are correct in their findings about plaintiff's right of easement over Schedule "B" Government land is concerned;

It is the admitted case of the parties that, the Schedule "B" land is the public property, because, the same stands in the name of the Government and the Kisam thereof is "Gochar". The plaintiff has prayed

for injunction against the defendant on the basis of her right of easement of way on the same.

The Trial Court as well as 1st Appellate Court both have injuncted the defendant in respect of the Schedule "B" properties by stating that, the plaintiff has right of easement of way over the Schedule "B" properties.

On the basis of the aforesaid findings, the Trial Court as well as 1st Appellate Court have indirectly declared the right of easement of way of the plaintiff over the Schedule "B" suit properties injuncting the defendant permanently from coming over the same.

19. It is the settled propositions of law that, a plaintiff cannot claim his right of easement of way over the suit properties against the defendant without admitting the defendant as the owner of the suit properties.

As, the Schedule "B" properties are Government land, then, the claim of easement of way over the suit properties by the plaintiff against the defendant without claiming the same against the Government and without impleading the Government as defendant is not entertainable under law.

That apart, the law has also further been settled that, a suit for mere injunction on the basis of easementary right of way without seeking the

declaration of his/her right of easement of way on the same is not maintainable under law.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:-

(i) ***2024 (II) OLR 150: Dibakar Das & Others Vrs. Sriram Das & Others***—The claim of easement of way over the suit properties by the plaintiff against the defendants without admitting them (defendants) as the owners of the suit properties is not entertainable under law. (Para 12)

(ii) ***2020 (I) Civ.C.C 366 (H.P.): Jaram Singh Vrs. Santosh & Others***—A suit for mere injunction on the strength of easementary rights cannot be maintained. (Para 9)

20. Here, in this suit/appeal at hand, when, the plaintiff has sought for injunction in respect of the Schedule "B" properties (which is a Government land) against the defendant without praying for declaration of his easement of way over the Schedule "B" properties and without admitting the defendant as the owner of the same and without impleading the owner of the suit properties i.e. Government as a party, then at this juncture, the prayer of the plaintiff for injunction against the defendant in respect of the Schedule "B" suit properties is not entertainable under law.

Therefore, the plaintiff is not entitled for the decree of permanent injunction in respect of Schedule "B" properties, though the plaintiff is

entitled for the decree of permanent injunction in respect of the Schedule "A" properties against the defendant. For which, the Trial Court as well as 1st Appellate Court both have committed error in passing the decree of injunction in respect of Schedule "B" properties in favour of the plaintiff and against the defendant. Therefore, there is justification under law for making some interference with the judgment and decree passed by the Trial Court as well as 1st Appellate Court through this 2nd appeal filed by the defendant. Because, as per the discussions and observations made above, though the plaintiff is entitled for the decree of permanent injunction in respect of Schedule "A" properties against the defendant, but, he (plaintiff) is not entitled for the decree of injunction in respect of the Schedule "B" properties against the defendant.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decision:-

> (i) ***1987 (II) OLR 126: Rusi Kumar Sahu & Others Vrs. Sri Sri Rasa @ Rahas Behari Thakura & Others***—When the Civil Court has jurisdiction to decide one relief, the suit is maintainable in civil Court irrespective of the fact whether other reliefs can be granted by it or not. (Para 8)

21. Here, in this suit/appeal at hand, when, the plaintiff is entitled for the decree i.e. for injunction only in respect of Schedule "A" properties, but, he (plaintiff) is not entitled for the decree for injunction in respect of the Schedule "B" properties, then, at this juncture, in view of the

principles of law enunciated in the ratio of the aforesaid decision, it cannot be held that, the suit of the plaintiff is not totally maintainable under law. For which, in other words, it is held that, the suit of the plaintiff is maintainable under law only in respect of the Schedule "A" properties.

As per the discussions and observations made above, when, it is held that, there is justification under law for making some interference with the judgment and decree passed by the Trial Court and 1st Appellate court only in respect of Schedule "B" properties, then at this juncture, this 2nd appeal filed by the appellant-defendant is to be decreed in part.

22. In result, the 2nd appeal filed by the appellant (defendant) is allowed in part on merit.

The impugned judgment and decree passed by the Trial Court in T.S. No.677 of 1994 injuncting the defendant restraining her (defendant) from coming over the Schedule "B" properties and the confirmation of the same by the 1st Appellate Court in T.A. No.34 of 1998 is set aside.

23. The judgments and decrees passed by the Trial Court in the suit vide T.S. No.677 of 1994 as well as by the 1st Appellate Court in T.A. No.34 of 1998 restraining the defendant from coming over the Schedule

"A" properties and the confirmation of the same by the 1st Appellate Court vide T.A. No.34 of 1998 is confirmed.

The suit be and the same vide T.S. No.677 of 1994 filed by the plaintiff is decreed in part on contest against the defendant, but without cost.

The defendant is restrained from interfering into the possession of the plaintiff only in respect of the Schedule "A" properties.

The prayer of the plaintiff for injunction in respect of Schedule "B" suit property against the defendant is refused.

(A.C. Behera),
Judge

Orissa High Court, Cuttack
25th of September, 2024/ Binayak Sahoo//
Junior Stenographer