



AFR

ORISSA HIGH COURT : CUTTACK

S.A. No.197 of 1998

In the matter of an appeal under Section 100 C.P.C, 1908.

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Smt. Sushilarani Behera & Others ... **Appellants.**

-VERSUS-

Sri Haguru Mahalik & Others ... **Respondents.**

Counsel appeared for the parties:

For the Appellants : Mr. D.P. Mohanty, Advocate.

For the Respondents : Mr. J.R. Dash, Advocate.

P R E S E N T:

**HONOURABLE
MR. JUSTICE ANANDA CHANDRA BEHERA**

Date of Hearing : 18.06.2025 :: Date of Judgment : 04.07.2025

JUDGMENT

ANANDA CHANDRA BEHERA, J.—

1. This 2nd Appeal has been preferred against the confirming Judgment.



2. The predecessor of the appellants in this 2nd Appeal i.e. Kali Charan Behera was the sole plaintiff before the Trial Court in the suit vide O.S.No.189/87-I and appellant before the 1st Appellate Court in the 1st Appeal vide T.A. No.78 of 1991-I.

When during the pendency of the 1st Appeal, the plaintiff/appellant i.e. Kali Charan Behera expired, then, his legal heirs (appellants in this 2nd Appeal) were substituted in his place as appellants.

The predecessors of the respondents in this 2nd Appeal i.e. Gana Mahalik & Fakira Mahalik were the defendants before the Trial Court in the suit vide O.S.No.189/87-I and respondents before the 1st Appellate Court in the 1st Appeal vide T.A. No.78 of 1991-I.

When during the pendency of the 1st Appeal, both the defendants/respondents expired, then, their legal heirs (respondents in this 2nd Appeal) were substituted as respondents.

3. The suit of the plaintiff (Kali Charan Behera) vide O.S.No.189/87-I before the Trial Court against the defendants was a suit for injunction simpliciter.



4. The case of the plaintiff before the Trial Court against the defendants as per the averments made in his plaint was that, the suit properties along with other properties were the joint and ancestral properties of the predecessors of the defendants along with their other co-sharers. All the co-sharers of the suit properties including the predecessors of the defendants distributed their all joint properties including the suit properties between them through amicable partition and as per such amicable partition, the suit properties fell into the shares of the vendors vendors of the plaintiff. The vendors vendors of the plaintiff being the owners of the suit properties sold the same to the vendors of the plaintiff executing and registering sale deeds and delivered possession thereof. Accordingly, the suit properties came to the hands of the vendors of the plaintiff. While the vendors of the plaintiff were the owners of the suit properties described in Schedule “Ka” of the plaint, they sold the same to the plaintiff by executing and registering 3 sale deeds vide R.S.D. No.604 dated 22.03.1974 (Ext.1), R.S.D. No.9461 dated 30.06.1971 (Ext.2) & R.S.D. No.5005 dated 21.04.1970 (Ext.3) respectively and delivered possession thereof. Accordingly, after purchasing the



suit properties, the plaintiff had/has been possessing the suit properties being the exclusive owner thereof. When during consolidation operation, the defendants created disturbances in the plaintiff's possession over the suit properties, then, the plaintiff approached the Trial Court by filing the suit vide O.S.No.189/87-I against the defendants praying for injuncting them (defendants) permanently from creating any sort of disturbance in his peaceful possession over the suit properties without praying for declaration of title, as, the consolidation operation was going on, stating that, the suit for injunction simpliciter is maintainable as per law even during consolidation operation.

5. Having been noticed in the suit vide O.S.No.189/87-I from the Trial Court, the defendants contested the same by filing their written statement jointly taking their stands *inter alia* therein that, *the suit of the plaintiff is not maintainable.*

The specific/definite/case/plea of the defendants was that, the suit properties are their joint ancestral family properties and the suit properties along with their other joint properties have never been partitioned between them at any point of time. The plaintiff has never possessed the suit



properties at any point of time. For which, the suit for injunction filed by the plaintiff against them (defendants) is not maintainable under law, as the plaintiff is not in possession over the suit properties. That apart, the suit of the plaintiff for injunction simpliciter without declaration of title and without recovery of possession is also not maintainable under law. The suit properties being their house and homestead properties, the same is within one enclosure along with their house and the Kisam of the suit properties is Khalabari. The so-called sale deeds dated 22.03.1974, 30.06.1971 & 21.04.1970 said to have been executed in respect of the suit properties in favour of the plaintiff are the fraudulent deeds. As such, the sale deeds relied upon by the plaintiff claiming his title and possession over the suit properties are non-est in the eye of law. For which, the suit of the plaintiff is liable to be dismissed against them (defendants) with costs.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 11 numbers of issues were framed by the Trial Court in the suit vide O.S.No.189/87-I and the said issues are:

ISSUES



1. *Has the plaintiff any cause of action to file the suit?*
2. *Is the suit maintainable in law?*
3. *Is the suit barred under law of limitation?*
4. *Is the suit bad for non-joinder of parties?*
5. *Are the sale deeds purported to have been executed by the defendant No.1 and ancestor of defendant No.2 in respect of the suit land legal, valid, genuine and acted upon?*
6. *Has the suit land any separate and definite existence on the spot?*
7. *Has the plaintiff got any actual physical possession over the suit land at the time of institution of this suit?*
8. *Is the plaintiff entitled to the simple permanent injunction in the suit?*
9. *Are the deeds of transfer of the suit land hit under Section 23 of the OLR Act?*
10. *Have the defendants alternatively acquired title of the suit land by way of adverse possession?*
11. *What relief, if any the plaintiff is entitled to?*

7. In order to substantiate the aforesaid relief i.e. permanent injunction against the defendants, the plaintiff examined 4 numbers of witnesses from his side including him (plaintiff) as P.W.1 and exhibited series of documents on his behalf vide Exts.1 to 8.

On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendants examined 2 numbers of witnesses from their side including the defendant No.1 (Gana Mahalik) as D.W.1 and relied upon the documents vide Ext.A to D on their behalf.



8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the Trial Court answered issue Nos.1,4,5,7 & 8 against the plaintiff and in favour of the defendants and other issues were not pressed by the parties.

Basing upon the findings and observations made by the Trial Court in the issue Nos.1,4,5,7 & 8 against the plaintiff and in favour of the defendants, the Trial Court dismissed the suit of the plaintiff on contest against the defendants as per its Judgment and Decree dated 26.08.1991 and 09.09.1991 respectively assigning the reasons that, the plaintiff has failed to establish his possession over the suit properties and the so-called sale deeds relied upon by the plaintiff said to have been executed in his favour as well as in favour of his vendors in respect of the suit properties are not valid, legal and genuine and as such, the plaintiff has also failed to establish his title over the suit properties.

9. On being dissatisfied with the aforesaid Judgment and Decree of the dismissal of the suit of the plaintiff passed by the trial court, he (plaintiff) challenged the same by preferring the 1st Appeal vide T.A. No.78/1991-I being the appellant



against the defendants arraying them (defendants) as respondents.

When during the pendency of the 1st Appeal, the appellant (plaintiff) expired, then, his LRs were substituted in his place as appellants.

Likewise, when during the pendency of the 1st Appeal, both the respondents/defendants expired, then, their LRs were substituted in their place as respondents.

After hearing from both the sides, the First Appellate Court dismissed that 1st Appeal vide T.A. No.78-1991-I of the plaintiff on contest against the defendants/respondents as per its Judgment and Decree dated 15.04.1998 and 25.04.1998 respectively concurring/accepting the findings of the Trial Court regarding the possession of the defendants over the suit properties. But, whereas, in the said Judgment and Decree of the learned 1st Appellate Court in T.A. No.78 of 1991-I, the learned 1st Appellate Court reversed to the findings and observations of the learned Trial Court concerning the title of the suit properties assigning the reasons in Para Nos.12,13 & 14 of its Judgment that, the consolidation operation has not yet been completed and title of the suit properties has not



been determined finally as yet by the consolidation authorities. Therefore, the dispute concerning the title of the suit properties between the parties has not been decided by the competent authorities i.e. Consolidation Authorities as yet and as such, the matter concerning title of the parties in respect of the suit properties is subjudice before the higher forum of the consolidation authorities. For which, without deciding the title of the suit properties in question, only the matter concerning injunction is taken up into consideration and after considering the disputes between the parties relating to injunction, it is held after accepting the findings regarding possession made by the Trial Court that, the defendants are in possession over the suit properties, for which, confirmed the Judgment and Decree of the dismissal of the suit for injunction of the plaintiff/appellant against the defendants/respondents passed by the Trial Court and dismissed to that 1st Appeal of the plaintiff.

10. On being aggrieved with the aforesaid Judgment and Decree of the dismissal of the First Appeal of the plaintiff passed by the learned 1st Appellate Court in T.A. No.78-1991-I, the substituted successors of the plaintiff challenged the



same preferring this 2nd Appeal being the appellants against the successors of the defendants arraying them as respondents.

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

I. Whether in view of the order of the Assistant Consolidation Officer (Ext.6) and Consolidation R.o.R (Ext.10) recording the name of the plaintiff in respect of the suit land which amounts to acceptance of title of the plaintiff, are the forums below justified in holding that, the title of the plaintiff is in controversies?

II. When there is stay by the High Court in OJC No.1786 of 1995 as per Ext.9 to the order of the Consolidation Commissioner, the Courts below were justified in dismissing the suit for permanent injunction of the plaintiff?

12. I have already heard from the learned counsel for the appellants and the learned counsel for the respondents.

13. When the above two formulated substantial questions of law are interlinked having ample nexus with each other as per the findings and observations made by the Trial Court and First Appellate Court on the basis of the pleadings and evidence of the parties, then, both the above formulated



substantial questions of law are taken up together analogously for their discussions hereunder:

14. *“It is the settled propositions of law that, during consolidation operation, it is not the work of the Civil Court to decide the right, title and interest of any land, which comes under consolidation operation. Because, the consolidation authorities being lawfully vested with the powers of Civil Court, shall decide right, title and interest of the properties coming under their jurisdiction.*

The law is very much clear that, during consolidation operation, a suit for permanent injunction simpliciter is maintainable, because, that relief is beyond the scope of the consolidation authorities.

Likewise, it is also the law that, the Civil Court has no jurisdiction to sit on the Judgments and decisions of the consolidation authorities. The decisions of the consolidation authorities are available to be varied/set aside only by the higher forums provided under the Consolidation Act.

The decision of the consolidation authorities on the question of right, title and interest, which are the matters within their jurisdiction would operate as res judicata in the suit for the same properties and that being so, the Civil Court would have no jurisdiction to hear and decide the right, title and interest of the parties for the same land again after the decision of the Civil Court.”



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

- I. In a case between ***Raghunath Sahu & Another Vs. Sarat Nayak & Others*** reported in ***1987 (I) OLR 144*** that, suit for injunction simpliciter shall not abate following provision of Section 4(4) of the OCH & PFL Act, 1972.
- II. In a case between ***Prafulla Kumar Swain Vs. Kalandi Kandi & Others*** reported in ***2016 (I) CLR 565*** that, suit for permanent injunction simplicitor without involvement of adjudication of right, title and interest of the parties cannot abate during the consolidation operation.
- III. In a case between ***Laxmidhar Sahu & Others Vs. State of Orissa & Others*** reported in ***2019 (I) CLR 950***, a decision of the consolidation authorities on the question of right, title and interest which are matters within their jurisdiction would operate as res-judicata and that being so, the Civil Court will have no jurisdiction to hear and decide the suit. **(Para Nos.13 & 14)**
- IV. In a case between ***Bholanath Bal & Others Vs. Nandi Bal & Others*** reported in ***125 (2018) CLT 970***, when the consolidation operation is still going on, it is not the work of the Civil Court to order upon the right, title and interest of the suit land.
- V. In a case between ***Brajakishore Panda & Others Vs. Damodar Rout & Another*** reported in ***63 (1987) C.L.T. 347***, Civil Court has no jurisdiction to sit in Judgment over the decisions of the consolidation authorities. Such decision of the consolidation authorities are available to be varied by the higher forums provided under Consolidation Act.

(Para No.4)



15. Here in this matter at hand, when it is the findings and observations of the learned 1st Appellate Court in Para Nos.12 to 14 of its Judgment passed in T.A. No.78-1991-I reversing the findings concerning the declaration of title and validity of the sale deeds of the learned Trial Court that, *“the decisions of the consolidation authorities concerning the title of the parties in respect of the suit properties and the validity of the sale deeds in respect of the same in favour of the plaintiff and his vendors have not been reached in its finalities due to the pendency of the writ petition vide OJC No.1786 of 1995 before the High Court against the decision of the consolidation Commissioner and there is stay of the operation of the order passed by the Consolidation Commissioner, for which, there is no necessity under law to enter into the discussions concerning the title of the suit land in question as the same as beyond the jurisdiction of the Civil Court, for which, the learned 1st Appellate Court only confirmed to the part findings of the Trial Court concerning possession in favour of the defendants, and when the defendants have neither filed any separate appeal nor any cross objection challenging the reversing of the findings of the trial court concerning title of the suit properties and validity of*



the sale deeds, then, the said findings of the 1st Appellate Court concerning title of the suit properties and validity of the sale deeds have already been reached in its finality leaving the said matter to be decided in OJC No.1786 of 1995 by the High Court. Therefore, in this 2nd Appeal, only the controversies between the parties regarding injunction is to be decided answering the above formulated substantial questions of law.”

A relief i.e. injunction is purely an equitable relief. Relief of injunction cannot be granted, in a case, where plaintiff fails to establish his/her possession over the suit properties. Therefore, possession of the suit land is main consideration while considering the relief i.e. permanent injunction.

It is the concurrent findings on facts of the trial court and 1st Appellate Court after appreciation of the pleadings and evidence of the parties that, the plaintiff has failed to establish his possession over the suit properties. For which, the plaintiff is not entitled for the relief i.e. injunction against the defendants.

16. The scope, power and jurisdiction concerning interference of the High Court in an 2nd Appeal with the concurrent findings on facts of the Trial Court and 1st



Appellate Court has already been clarified by the Apex Court in the ratio of the following decisions:

- I. In a case between *Kashibai & Another Vs. Parwatibai & Others* reported in *1995 SCC (6) 213*, High Court has no jurisdiction to entertain a 2nd Appeal on the ground of erroneous finding of fact, based on appreciation of the relevant evidence however gross the error may seem to be.
- II. In a case between *Ramathal And Ors. vs K.Rajamani (Dead) Through Lrs And Anr.* Reported in *2024(1)Civ.L.Judgment (SC) 243 (at Para No.31)* High Court has no jurisdiction to disturb pure and concurrent findings of facts, that too, on wrong appreciation of evidence.
- III. In a case between *Mst. Kharbuja Kuer Vs. Jangbahadur Rai And Others* reported in *AIR 1963 SC 1203 (at Para No.5) & Khitish Chandra Bose Vs. Commissioner of Ranchi* reported in *(1981) 2 SCC 103 at Para No.11* that, High Court had no jurisdiction to entertain a 2nd Appeal on the ground of erroneous finding of fact.
- IV. In a case between *V. Ramachandra Ayyar And Another Vs. Ramalingam Chettiar And Another* reported in *AIR 1963 SC 302 (Para No.12)* that, High Court cannot interfere with the conclusions of fact recorded by the lower Appellate Court however gross or inexcusable the error may seem to be.

17. Here in this suit/appeal at hand, when it is the concurrent findings on fact of the Trial Court and the First Appellate Court after appreciation of the pleadings and evidence of the parties that, the plaintiff has failed to establish his possession over the suit properties, then, at this juncture, by applying the propositions of law enunciated by the Apex



Court in the ratio of the aforesaid decisions, the question of disturbing such findings on possession against the plaintiff does not arise.

18. Law concerning the relief i.e. injunction basing on the findings of possession like this appeal at hand has already been clarified in the ratio of the following decisions:

- I. In a case between *Shabbu & Another Vs. Moinuddin* reported in **2021 (4) Civil Court Cases Page 38**, in a suit for permanent injunction, when there is no positive material available on record that, the plaintiff has been in possession, the relief of permanent injunction cannot be granted to the plaintiff. **(Para No.25)**
- II. In a case between *Balasubramanian & Another Vs. M. Arockiasamy (dead) through LRs.* reported in **2021 (3) CCC 504 (SC)**, relief of perpetual injunction cannot be granted in cases where plaintiff has failed to establish possession of suit property.
- III. In a case between *Bruce Vs. Silva Raj & Others* reported in **1987 (Supp.) SCC 161**, person concerned having no possession, no injunction can be granted, as, the relief i.e. injunction can be granted on the basis of possession only.

19. When, it is the concurrent findings on facts by the Trial Court and First Appellate Court that, the plaintiff has failed to establish his possession over the suit properties, then, at this juncture, by applying the propositions of law enunciated by the Apex Court and Hon'ble Courts in the ratio of the above decisions to this 2nd appeal at hand, it is held that, the



plaintiff is not entitled to get the decree i.e. permanent injunction in respect of the suit properties against the defendants. For which, the question of interfering with the Judgment of dismissal of the suit for injunction of the plaintiff through this 2nd Appeal filed on behalf of the plaintiff does not arise. Therefore, the refusal to the prayer for injunction sought for by the plaintiff made by the Trial Court and 1st Appellate Court is to be confirmed without disturbing/interfering with the findings made by the learned 1st Appellate Court relating to the title of the suit properties and the validity of the sale deeds in respect of the same leaving that part to be decided in the pending writ petition vide OJC No.1786 of 1995 against the decision of the Consolidation Commissioner.

20. As such, there is no merit in this 2nd Appeal filed the appellants/plaintiffs. The same must fail.

21. In result, this 2nd Appeal filed by the appellants (successors of the plaintiff) is dismissed on contest against the respondents (successors of the defendants), but without cost.



22. The Judgment and Decree along with its findings thereof passed by the learned First Appellate Court in T.A. No.78/1991-I are confirmed.

(ANANDA CHANDRA BEHERA)
JUDGE

High Court of Orissa, Cuttack
The 04 .07. 2025// Rati Ranjan Nayak
Sr. Stenographer