



the judgment and decree dated 25.11.2017 and 14.12.2017 respectively passed by the learned Additional District Judge, Sonapur in R.F.A. No.29/9 of 2005-2017. By the said judgment and decree, the lower Appellate Court has confirmed the judgment and decree dated 26.02.2005 and 17.03.2005 respectively passed by the learned Civil Judge (Jr. Division), Sonapur in C.S. No.23 of 2003.

**2.** For the sake of convenience, in order to avoid confusion and bring in clarity; the parties hereinafter have been referred to as they have been arraigned in the trial court.

**3.** Plaintiffs case is that the land which is the subject matter of the Suit belonged to the State of Orissa (Defendant) and it stands recorded as such in the Record of Right. The lands are cultivable lands and the father of the Plaintiff No.1 made those lands fit for cultivation by dint of his own effort and since then he has been in possession of the suit land since the year 1940 till his death. On the death of the father of the Plaintiff No.1, his son, the Plaintiff No.1 and son-in-law, the Plaintiff No.2 have been in possession of the said property.

The present Plaintiff No.1, who being the son and the other Plaintiff being the son-in-law of Nimai Mahana are in possession of the same. It is stated that an Encroachment Case had been initiated against the father of the Plaintiff No.1 for his

unauthorized cultivation of the suit property wherein, he had prayed for settlement of the same. To that effect, he had filed an application before the Sub-Divisional Officer, Sonapur, which had been rejected. An appeal being preferred, the Collector, Bolangir in Encroachment Appeal No.40/60-61 was pleased to order that the land be settled in favour of the father of Plaintiff No.1. Saying so, as mandated in law the matter being forwarded for due approval by the Revenue Divisional Commissioner, the matter, however, has rested there without further development. In the subsequent Settlement operation; the record of right in respect of the suit land has been prepared in the name of the State. There being a move before the Revenue Authorities for correction of the said record of right that has yielded no fruitful result.

**4.** It is the case of the Plaintiffs that they have been in open, peaceful and continuous possession of the suit land to the knowledge of the Defendant-State and its officials all along since the time of Nimai Mahana. It is stated that for such long continuous and uninterrupted possession of the land in question as its owner to the knowledge of the true owner, i.,e., the State, the Plaintiffs have acquired title in respect of the suit land by adverse possession. They assert to have been all along in possession of the suit land denying the title of the State and for such long possession, the title of the State is said to have been extinguished.

The Defendants-State appearing in the suit contested the same without filing the written statement.

**5.** The Trial Court on the above rival pleadings framed as many as nine issues. In answering the crucial issues touching upon the claim of the Plaintiffs as to the acquisition of the title over the suit land by adverse possession and extinguishment of the right, title and interest of the true owner, i.e., the State in respect of the suit land, upon analysis of evidence on record in the backdrop of the case as projected by the Plaintiffs in their pleading has held that the Plaintiffs have failed to establish their claim as laid. Having said so, the Plaintiffs have been non-suited.

Being aggrieved by the same, an Appeal under section 96 of the Code being filed, the lower Appellate Court has concluded that the Plaintiffs have failed to satisfy the required ingredients for establishment of their claim of acquisition of title over the suit land by adverse possession by leading clear, cogent and acceptable evidence. Furthermore, relying upon the decision of the Apex Court in *Bhim Singh & Others Vs. Zile Sing & Others*, A.I.R. 2006 P&H 195, it has been said that the suit at the instance of the Plaintiffs based on the claim of acquisition of the title by way of adverse possession is not maintainable which is only available in defence as shield but not to the suitor as sword. Hence the Appeal.

6. Mr. Gautam Mishra, learned Senior Counsel for the Appellants (Plaintiffs) submits that the position of law has in the meantime undergone change as to the maintainability of the suit at the instance of the person claiming title over the suit land by adverse possession. In this connection, he has referred to the recent decision of the Hon'ble Apex Court in case of *Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others*, (2019) 8 SCC 729 laying down the legal position that the suit at the instance of the person claiming acquisition of title over the land in question by adverse possession is squarely maintainable and accordingly, it can also be used as sword by the suitor besides being used as shield by the defender. He further submits that the findings of the Courts below that the Plaintiffs have not acquired title over the suit land by adverse possession is based on perverse appreciation of evidence and the exercise as to appreciation of evidence, according to him, is based on erroneous view point of law and without taking into account the material evidence on record as to the open, peaceful, long, continuous and interrupted possession of the Plaintiffs since the time of Nimai Mahana the finding on that score has been recorded against the Plaintiffs. He thus submits that the following substantial questions of law surface in the case standing to be answered in this Appeal:-

- (1) That the lower Appellate Court has committed error of law by relying upon the decision in case of **Bhim Singh Vs. Zile Singh** [AIR 2006 Punjab & Haryana, 195] to non-suit the Plaintiffs since they base their case in claiming the reliefs upon their claim of acquisition of title over the suit land by way of adverse possession;
- (2) That Courts below committed patent error of record by ignoring the pleadings in the plaint as also the evidence, which specifically make out a case of acquisition of title over the suit land by the Plaintiffs by adverse possession; and
- (3) That the judgments rendered by the Courts below run contrary to the ratio decided in case of **Kshitish Chandra Bose Vs. Commissioner** [AIR 1981 SC 707].

**7.** In order to address the above submission, in having the exercise of searching out the substantial questions of law for the purpose of admission of this Appeal, let us have a brief survey over the facts placed by the Plaintiffs. The suit land as described in schedule of the plaint as per the record of right prepared in the third settlement as also the corresponding record of right prepared in the fourth settlement in total measures Ac.4.300 dec. This land has all along been recorded in the name of the State as its owner. The father of the Plaintiff No.1 is said to have made those lands fit

for cultivation and began to possess the same. It is stated that the father of the Plaintiff No.1 has been in possession since the year 1940 having made those fit for cultivation and thus was in cultivable possession of the said lands all through during his lifetime. The Plaintiffs being his son and son-in-law are continuing to be in possession thereafter. It is also their case that an Encroachment case had been initiated against the father of Plaintiff No.1 for his unauthorized cultivation of the suit land and there he had prayed for settlement of the land in his favour. The lower Revenue Authority having rejected the prayer for settlement, the next higher Revenue Authority had found favour with the same subject to its approval by the Revenue Divisional Commissioner as required in law. However, the matter has taken a halt there and finally this land has not been settled in favour of the Plaintiff No.1 for want of due approval. The RORs, continued to be prepared in the name of the State and there being a move for correction of the same, it has not been successful.

It is now stated that for such long possession from the time of the father of the Plaintiff No.1 insofar as the suit land is concerned, which was open, peaceful and continuous without any interruption from any quarter as also in denial of the title of the true owner and to its knowledge in exercising all the rights of ownership, the Plaintiffs have perfected title by way of adverse

possession and accordingly they are the rightful owners of the land at present. It is also stated that the title of the State over the suit land for the above, has long since been extinguished. Here, one important aspect features which is that from the time when prayer for settlement of the land was advanced, the possession is with a hope and expectation of the settlement of the land. No such overt act from that time or at any time thereafter has been pleaded and proved.

**8.** The classical requirements for establishment of a claim of acquisition of title by adverse possession are: *nec vi, nec calm, nec precario*. The possession must be adequate in continuity, in publicity and in extent to show that it was adverse to the true owner as that of a competitor to the title of the true owner.

**9.** As per the case of the Plaintiffs-Nimai, the father of the Plaintiff No.1 started to possess the land sometime in the year 1940 and that continued all through during his lifetime. However, when it is said that he had made an application before the Sub-Divisional Officer, Sonapur for settlement of the land which has been rejected, it stands that his possession prior to that submission of the application for settlement loses all the significance as on that date of application the title of the State over that land is being admitted, settlement of the land is prayed for. The application is said to have been made sometime in the year

1960. The father of the Plaintiff No.1 having not halted there appears to have further proceeded to pursue the matter in carrying an appeal before the Collector, which had been allowed in his favour. Thereafter, the approval of the higher authority as mandated under the law holding the field remained wanting and thus stop was put in the matter. So even if it is accepted that the father of the Plaintiff No.1 since then continued to possess the suit land by cultivating over there, it goes without saying that it was not in denial of the title of the true owner-State but upon acceptance or acknowledgment of the title of the true owner with the hope and expectation of final settlement of the same. This continued to be the nature of possession in the hands of the Plaintiffs even if their case is accepted that they stepping into the shoes of Nimai Mahana continued to possess the suit land all through till the suit. The hostile animus thus squarely lacks in the matter of possession of the property and intent behind possession in the admitted facts and circumstances was never to deny the title of the true owner. That apart, an Encroachment case being initiated against the father of the Plaintiff No.1, he having paid the fine for the unauthorized occupation, the same further fortifies the position as to lack of hostile animus in possessing the property so as to say that it was never in denial of the title of the true owner and claiming title unto themselves. The pleading is completely

silent that the Collector having recommended for settlement of the land in question in favour of the father of the Plaintiff No.1, when no approval was given by the Revenue Divisional Commissioner, any such overt act was displayed in showing that the possession since then was as of the owner in exercise of all the rights as such by denying the title of the true owner.

**10.** In that view of the matter even holding that the view taken by the lower Appellate Court that the suit as laid is not maintainable is not in consonance with the position of law as settled in the decision of the Hon'ble Apex Court in case of **Ravinder Kaur** (*supra*), the same hardly has any impact on the ultimate result of the Suit wherein the claim of declaration as to prescriptive title of the Plaintiffs over the suit land and confirmation of possession is found to have been rightly negated.

11. The factual setting of the cited case of Kshitish Chandra Bose (*supra*) are wholly distinguishable. There the Municipality had made several attempts to prevent the Plaintiff and his father from storing the building materials. It having been proved that the Plaintiffs father has been in possession of the land involved therein prior to and after the municipal survey, oral evidence let in by the Plaintiffs also established, his case of actual possession during all the period and that has been after the settlement by the landlord way back in the year 1921. With such

standing evidence on record, the High Court having interfered with the findings recorded by the Courts below, the Hon'ble Apex Court has negated the same. In view of the aforesaid, the said decision does not come to the aid of the case of Plaintiffs.

**12.** In the wake of above discussion and reasons, the submission of the learned Senior Counsel for the Appellants (Plaintiffs) that there surfaces substantial questions of law in the case as indicated in para-6 meriting admission of this Appeal cannot be countenanced with.

Accordingly, the Appeal stands dismissed. No order as to costs.

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***D. Dash, J.***

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