

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA NO.377 OF 2012

From the judgment and decree dated 06.08.2012 & 14.08.2012 respectively passed by the learned District Judge, Rayagada in RFA No.13 of 2010 confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Rayagada in TS No. 9 of 2005.

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Tangudu Janaradhan Rao :::: **Appellant.**

-:: VERSUS ::-

Smt. Madhuritha Rath & Others :::: **Respondents.**

Appeared in this case by Video Conferencing Mode.

For Appellant :::: M/s. S.S. Rao, B.K. Mohanty,
S.Sailaja, Advocates.

For Respondents :::: None

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PRESENT :

THE HON'BLE MR. JUSTICE D.DASH

Date of Hearing & Judgment:: 13.07.2021

The unsuccessful Plaintiff has filed this Appeal under Section-100 of the Code of Civil Procedure (hereinafter called as 'the Code') in challenging the judgment and decree dated 06.08.2012 & 14.08.2012 respectively passed by the learned District Judge, Rayagada in RFA No.13 of 2010.

By the said judgment, learned First Appellate Court has confirmed the judgment and decree passed by the learned Civil Judge (Junior Division), Rayagada in TS No. 9 of 2005.

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. The facts of the rival case of the parties as necessary for the purpose are as under:-

The Plaintiff state that he with the Defendants (three numbers) are the joint owners of the suit property and they had purchased the same from one Dodla Satya Narayana for a consideration of Rs. 40,000/- by registered sale deed dated 29.3.1997. It is further stated that the Plaintiff and each of the Defendants had their equal contribution towards the said consideration. The Plaintiff now claims partition of the said property which is the subject matter of the suit by allotting 1/4th share over the same to him.

The Defendants admit the fact that the suit land had been jointly purchased by them and the Plaintiff and to have possessed the same jointly since the time of purchase as also the fact that the land had been accordingly mutated in their names.

It is next stated that the Plaintiff and the Defendants together had constituted a partnership firm on 4.1.1997 by executing

the deed to that effect. It was also so registered in the name of style “Sri Santosh Laxmi Rice Mill”. It is their case that the property had been purchased jointly and the rice mill was constructed over that by availing loan from Orissa State Financial Corporation (OSFC). It is said that to that effect they had executed an agreement. It is also their case that the partnership firm stood dissolved on 28.10.200 when three partners i.e. Plaintiff, Defendant Nos. 1, 2 made their exit on voluntary retirement, the partnership was reconstituted by induction of three new partners. From out of old partners, only Defendant No. 3 remained as such. The Plaintiff is said to have been paid with a sum of Rs. 1,60,000/- towards capital investment and Rs.40,000/- towards profit. So it is stated by the Defendants that the plaintiff has no further right over the suit land and suit for partition at his instance is liable to be dismissed.

4. The Trial Court with the above pleadings framed in total four issues. Amongst them, the vital is issue no. 2:-

As to whether the Plaintiff has any right over the suit land having his entitlement of a share of 1/4th over it.

In deciding the said issue by going through the evidence both oral and documentary answer has been given in the negative. This answer has led the Trial Court to dismiss the suit.

The First Appellate Court being moved by the unsuccessful Plaintiff has again confirmed the above finding recorded by the Trial Court.

5. Mr. S.S. Rao, learned counsel for the Appellant (Plaintiff) submits that when the document of title i.e. Ext. 1 which is the registered sale deed shows that the Plaintiff and the Defendants are the purchasers of the suit land in question which is not at all denied, the Courts below ought to have held the property to be joint and not that it became the property of the partnership firm.

He contends that the Courts below have overlooked the provision of section 14 of the Partnership Act and thus have erred in arriving at a finding that the suit land belongs to the partnership firm. According to him, the above are the substantial questions of law which arise for being answered in this appeal.

6. Keeping in view the submission made, I have carefully gone through the judgments passed by the courts below.

7. Admittedly, the parties were the partners of a partnership firm namely, M/s Sri Santosh Laxmi Rice Mill. This was constituted on 4.1.1997. The suit property has been purchased by the Plaintiff and the Defendants jointly by registered sale deed dated 29.3.1997. They had equal contribution towards the consideration amount involved in the said transaction. All the four partners i.e. parties to the suit appear

to have come from different background and do not belong to one family. The Defendants have proved an agreement executed by the parties Ext. B. It is stated therein that the partners in order to augment funds to overcome the financial crunch and run the rice mill of the partnership firm properly for availing loan from OSFC. It stands admitted that accordingly the loan had been availed of.

8. The Plaintiff examined in the trial as P.W. 1 has stated that he with the Defendants who happen to be the partners of the firm had purchased the property for the purpose of running of that rice mill. He has also admitted the fact that the loan from OSFC has also been availed for running of the rice mill, the only business of the partnership firm. It has been indicated in the judgment of the Trial Court at first sub-para of para-6 that in an earlier suit, the Plaintiff had deposed that he along with other Defendants had jointly purchased the property in question for running the rice mill as partners under that partnership firm and to obtain loan on that basis. It has also been admitted therein by him that M/s. Sri Santosh Laxmi Rice Mill is the owner of the suit land and that they had executed an agreement on 7.2.1998 i.e. Ext. B for the purpose of obtaining the loan.

With such evidence on record when the parties have jointly purchased the suit land when they were the then existing four partners of the partnership firm and they accordingly having executed Ext. B

have obtained loan for the partnership; the Courts below are found to have committed no such error either on fact or law in holding that it is the property of the partnership firm and is no more the joint property of parties to the suit and provision of section 14 of the Partnership Act does not come to the aid/rescue of the case of the Plaintiff.

In that view of the matter, the suit as laid by the Plaintiff for the relief of partition in my considered opinion has been rightly dismissed.

9. For the aforesaid discussion and reasons, this Court finds that no such substantial question of law arises in this case for admission of this Appeal.

10. Accordingly, the Appeal stands dismissed. No order as to cost.

11. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

(D. Dash)
Judge