

Parikhhit Baksi and ors. Vs. Ukis Singh Baksi and ors.

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Court : Orissa

Decided On : Jan-10-2003

Reported in : AIR2004Ori29; 95(2003)CLT812

Judge : B. Panigrahi, J.

Acts : Hindu Law; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Second Appeal No. 7 of 1982

Appellant : Parikhhit Baksi and ors.

Respondent : Ukis Singh Baksi and ors.

Advocate for Def. : N.C. Nayak, Adv. for Res. Nos. 3, 4, 6, 7 and 8

Advocate for Pet/Ap. : S.K. Padhi and ;S.C. Ghosh, Advs. for Res. Nos. 1, 2 and 5

Disposition : Appeal dismissed

Judgement :

B. Panigrahi, J.

1. The defendants have challenged the judgment and decree passed by the courts below in a suit for permanent injunction and alternatively for declaration of title and recovery of possession of the suit land. The plaintiff claimed to have purchased

the suit land from out of his own earnings when it was sold in auction sale by the Boudh Ex-Darbar Government and since then he has been in cultivating possession and enjoyment of the same and paying rental thereof to the authorities. After merger, he used to pay the rent to the State Government. But however, those rent receipts were stolen by some unknown persons during his service period. The defendants having no right, title and interest over the suit land, created disturbance. Therefore, the plaintiff filed the suit for the aforesaid relief.

2. The defendants claimed that the suit land belonged to the joint family, since it was purchased in the name of the plaintiff out of their joint family income.

3. The trial court relying on the evidence place on record, held that it was not the joint family property, but acquired out of the separate funds by the plaintiff. Accordingly, his suit was decreed. Being dissatisfied and aggrieved by the judgment and decree, the defendants filed the appeal before the learned Additional Subordinate Judge, Phulbani in Title Appeal No. 18 of 1980 in which the learned appellate court also confirmed the judgment and decree passed by the learned trial court. Therefore, the defendants have filed the present appeal.

4. Mr. Padhi, learned counsel appearing for the appellants has strongly urged that although this appeal has been filed against the confirming judgment and decree of the appellate court, yet there being substantial question of law, it should be admitted and notice should be issued against the plaintiff-respondents. Therefore, it is required to go through the contentions raised by the learned counsel appearing for the appellants.

It was alleged that although in the Revenue record the disputed land stands in the name of the plaintiff-respondents, yet there are sufficient evidence on record, which could establish that it was purchased in the name of the plaintiff out of the joint family nucleus. It has been further contended that in an earlier proceeding the plaintiff made an unequivocal admission that the properties belonged to the joint family. Thus, it is required to examine both the contentions carefully.

5. The first appellate court has examined the first ground as to whether the property was acquired out of the joint family nucleus. It is well settled in law that

the existence of joint family does not raise a presumption that it owns joint family properties. He who claims that the joint family had sufficient income, should place clear, clinching and unequivocal evidence that such joint family did possess sufficient property. In the instant case, the first appellate court having come to the conclusion that the appellants could not produce sufficient evidence with regard to joint family income, therefore, there appears to have little scope for this Court to again re-examine that aspect.

6. Accordingly, it can safely be concluded that the joint family did not possess sufficient nucleus out of which the suit land could have been purchased.

7. The plaintiff on the contrary had placed the Revenue sale deed from which an inference can be drawn that he was the owner of the suit land. Mere possession for some time by the appellants would not constitute a valid right to claim the property as their own.

8. So far the binding nature of admission as contended by the appellants in respect of an earlier proceeding by the respondents is concerned, it is found that a copy of the statement alleged to have been made in a connected proceeding under Section 107, Cr.P.C. has been filed which was marked as Ext. C. On a bare perusal of the statement; no clear idea can be gathered that the plaintiff has made a clear admission that the nature of the property was joint family property. Since such statement does not relate to any specific property, even accepting that such an admission was made by the respondents, but such admission would not constitute a valid title. A mere admission cannot create a title, which was non-existent, though it would have been binding upon the person making it if the title admitted had already existed. In other words, had a title of the suit land existed with the appellants, then the admission by the respondents could have further strengthened their case. Mere admission by the respondents cannot create a title in their flavour.

9. Considering the contention raised by Mr. Padhi from any angle, it appears that the defendants having been unsuccessful in both the courts below, there is no merit in this appeal. Accordingly, the appeal is dismissed and the decree passed by the trial court as well as the appellate court are hereby confirmed. There shall be

no order as to costs.

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