



IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No. 215 of 2022

[In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908.]

Belan Bibi

.....

Appellant

-Versus-

Sk. Allauddin and others

.....

Respondents

Advocate(s) appeared in this case :-

For Appellant : M/s. Ajit Chandra Mohapatra, A.K.
Panda, B.K. Panda, Advocates

For Respondents : None

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JUSTICE SASHIKANTA MISHRA

JUDGMENT

6th February, 2025

SASHIKANTA MISHRA, J.

Heard Mr. A.C. Mohapatra, learned counsel for the appellant.

2. This is an appeal by the plaintiff against a confirming judgment. The judgment passed by learned



Addl. District Judge, Jajpur on 29.06.2022 followed by decree in RFA No. 66 of 2008 is under challenge herein, whereby the judgment passed by learned Civil Judge (Jr. Division), Jajpur on 07.07.2008, followed by decree in Title Suit No.308 of 2001 was confirmed.

3. The facts, briefly stated, are that the appellant as plaintiff had filed the suit in question to declare the M.S. ROR of the suit land in the name of defendant Nos.1 to 4 as void and that the sale deeds of the year 1947 and 1964 are void, fraudulent and manufactured ones and to declare her right, title, interest and possession along with the proforma defendant Nos. 5 to 7 over the suit land along with permanent injunction and incidental reliefs.

4. The plaintiff's case is that the suit land appertains to C.S. Khata No.5, Plot No.134, measuring Ac. 0.32 dec. in Mouza-Taramadan corresponding to M.S. Khata No. 45, Plot No.140, measuring Ac. 1.15 dec. under Hal Mouza, Jajatinagar. It was recorded in C.S. Khata in the names of Sk. Majudi and Sk. Zafar. Majudi died leaving behind his daughter Toffa, who died leaving



behind proforma defendant Nos. 5 to 7. Zafar died leaving behind his daughter Zoffa, who died leaving her daughter Belan Bibi (plaintiff). It is stated that the recorded tenant Sk. Majudi was a leprosy patient having contracted the disease from 1958 till his death and that he had no fingers, palm and feet. As such, Sk. Majudi and Sk. Jafar never transferred the suit land in favour of Sk. Maniruddin, the father of defendant Nos. 1 to 4. When the said defendants tried to enter upon the suit land with the intention of taking possession forcibly, the plaintiff protested but to no avail. Hence, the suit.

5. The defendant Nos.2 to 4 contested the suit by filing their joint written statement denying all the plaint averments. The proforma defendant Nos.5 to 7 however, supported the plaintiff's case in their written statement. The contesting defendants pleaded that the suit is not maintainable being barred by limitation. Further, the suit land was recorded in the name of Sk. Majudi and Sk. Zafar having half-share each, out of which, Sk. Zafar sold his share to Sk. Maniruddin under RSD dated 28.02.1947



for consideration and delivered possession. Similarly, Sk. Majudi sold his half share also to Sk. Maniruddin under RSD dated 23.04.1964 for consideration and delivered possession. Certain other pleas were also taken but in view of the order proposed to be passed, it is not necessary to go into the details thereof.

6. Basing on the rival pleadings, the trial Court framed the following issues for determination.

- “(i) Whether the suit is maintainable?*
- (ii) Whether the plaintiff has cause of action to bring the suit?*
- (iii) Whether the suit is barred by Limitation?*
- (iv) Whether the plaintiff and proforma defendant No.5 to 7 have got right, title, interest and possession over the suit land?*
- (v) Whether the Regd. Sale deed executed by Sk. Zafar, the grandfather of the plaintiff on 28.02.1947 and the Regd. Sale deed executed by Sk. Majudi, the grandfather of proforma defendant No.5 to 7, on 23.04.64 in favour of Sk. Maniruddin are void, fraudulent and not acted upon?*
- (vi) Whether the plaintiff is entitled to the relief(s) as sought for?*

7. Taking up issue Nos. iii, iv and v for consideration at the outset, the trial Court, after analysing the oral and documentary evidence on record, found that the plea that Sk. Majudi was suffering from leprosy from the year 1958 till his death was not proved. Moreover, the



plea that the sale deed in question was fraudulently obtained was also not proved satisfactorily. That apart, the trial Court also took note of the inordinate delay in challenging the sale deeds. On such findings basically, the suit was dismissed.

8. The plaintiff carried the matter in appeal to the District Court. The First Appellate Court confirmed the findings of the trial Court more or less on the same terms.

9. Being further arrived, the plaintiff appellant has filed the instant Second Appeal.

10. Mr. Mohapatra, learned counsel for the appellant submits that the finding of the courts below that the plaintiff could not prove that the Sk. Majudi was suffering from leprosy is contrary to the evidence on record inasmuch as the trial Court in the impugned judgment has relied upon another sale deed, marked Ext.H, wherein there is clear mention of Sk. Majudi being a leprosy patient. As regards limitation, it is submitted by Mr. Mohapatra that the suit was filed as there was threat



to the plaintiff's possession and on enquiry she came to know about the existence of the sale deeds in question.

11. I have given my anxious consideration to the contentions raised and have also perused the impugned judgments. As it appears, the plaintiff seeks to challenge two sale deeds executed in the year 1947 and 1964 on the ground that they were fraudulently obtained. In so far as the sale deed dated 28.02.1947 is concerned, it is the case of the plaintiff that the executant being a leprosy patient and without fingers and palm could not have executed the same. From the copy of the plaint produced by Mr. Mohapatra in Court it is seen that such a plea was specifically averred under paragraph-4 thereof. However, as has been held by the trial Court and rightly so, except for pleading, no evidence worth the name was adduced by the plaintiff to show that the executant Sk. Majudi was a leprosy patient and that he had no fingers and palm at the relevant time. Mr. Mohapatra has heavily relied upon the endorsement in another sale deed, marked Ext.H, wherein there is mention of Sk. Majudi being a leprosy patient, but



then, even if it is accepted that Sk. Majudi was a leprosy patient it cannot, ipso facto, be held that he was incapable of executing a sale deed in the absence of any further evidence to show that he had no fingers and palm. This Court therefore, finds no reason to disturb the findings of both the Courts below in this regard.

12. As regards the other sale deed executed in 1964, the same was admittedly executed by co-sharer, Sk. Zafar in favour of the father of defendant Nos.1 to 4. It has not been demonstrated or even pleaded as to how the said sale deed is to be treated as a fraudulent document. It is well settled that fraud has to be specifically pleaded and proved to the subjective satisfaction of the Court for being accepted. After going through the impugned judgments, this Court finds no reason to accept the contention regarding fraud.

13. It is well settled that the concurrent findings of fact are not to be interfered in second appeal unless it is shown that the same are either perverse or against the weight of evidence on record or are otherwise such that no



prudent person would arrive at such decision. Reference in this regard may be had to the judgment of the Supreme Court in the case of **Damodar Lal vs. Sohan Devi and others¹**.

14. Thus, from a conspectus of the facts and the contentions raised, this Court finds no reason to interfere with the concurrent finding of facts rendered by both the Courts below so as to admit the appeal. There being no substantial question of law involved, the appeal is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 6th February, 2025 / A.K. Rana, P.A.

Signature Not Verified

Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: Personal Assistant
Reason: Authentication
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¹ (2016) 3 SCC 78