

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7858 of 1996@@
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State of Orissa ... Appellant (s)

Vs.

Gajraj Sahu ... Respondent (s)

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This appeal is preferred by the State of Orissa against the judgment and order passed by the High Court in Second Appeal No. 246 of 1984 upholding the judgment and decree passed by the trial court and the first appellate court.

Briefly, the facts of the case are that according to the plaintiff-respondent he had been in possession of the land in dispute since prior to 1950 in respect of which the Gountia of the village had executed a patta on 17.6.1950. He continued to be in possession of the land for all the time when in 1977 an entry was made in the Revenue records against the land in question indicating the forcible possession of the plaintiff-respondent. He thereafter filed a suit after notice under Section 80 of ...2/-

the Code of Civil Procedure, 1908, claiming the reliefs of declaration, right and title over the suit land and for confirmation of possession. It was also prayed that appropriate corrections may also be made in the parcha of major settlement. The trial court and the first appellate court considered the facts and circumstances of the case as also the oral evidence adduced by the plaintiff-respondent and accepted his case that he had been in possession over the disputed land for near about 35 years by reason of which the plaintiff-respondent had also perfected his right by adverse possession. So far as the challenge made to the authority of Satyabadi Gauntia in granting permanant patta is concerned, the trial court and the first appellate court have found that nothing has been indicated to show that he did not have such an authority to execute the patta. The second appeal preferred by the State also met with the same fate and it has been dismissed in view of the findings recorded by the trial court and the first appellate court.

Learned counsel appearing for the appellant has

vehmently urged that once the plaintiff-respondent had taken the plea of lawful possession under the patta, ...3/-

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there was no occasion to raise the plea of adverse possession. It has also been pointed out that issues which have been framed by the trial court, mainly, issue No. 4, in respect of the plea of adverse possession. It is submitted that claim of lawful possession and the plea of adverse possession cannot go together. In this connection suffice it to observe that on perusal of the plaint, a copy of which has been furnished to us by the learned counsel for the plaintiff-respondent, it appears that basically the plaintiff-respondent had based his claim on the basis of the patta in his favour executed in the year 1950. Alternatively, he has pleaded subsequently in the plaint, that in any case he has also perfected his right by adverse possession. It was in this view of the matter that all the courts have considered the pleas raised by the plaintiff-respondent. So far as duration of the possession is concerned, it has been found, in fact for a period of more than 30 years. We find that the High Court has also considered the question of validity of the patta executed in favour of the plaintiff-respondent and, in that connection, it has been observed that the State had not been able to show that Satyabadi Gountia was not an authority competent to grant such a patta. In view of concurrent findings of ...4/-

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the courts below, it is not necessary to deal with the other plea of adverse possession, alternatively taken. We also find that both the questions have been examined by the courts below, namely, the validity of patta as well as the question of adverse possession. In our view, the latter question, namely, the question pertaining to the adverse possession becomes irrelevant.

In view of the facts and circumstances of the case and the findings recorded by the courts below, we find no merit in the appeal. It is, accordingly, dismissed. There would, however, be no order as to costs.

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(Brijesh Kumar)@@
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(AR. Lakshmanan) @@
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New Delhi,
February 06, 2003.