

PETITIONER:
PARBATI DEVI

Vs.

RESPONDENT:
PURNA PATRA & ORS.

DATE OF JUDGMENT: 11/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Substitution allowed.

This appeal, by special leave, arises from the reversing judgment of the High Court of Orissa in Second Appeal No.8/75, dated 2.8.1978. The admitted position is that in Suit No.29/23 of 1937 in the Court of Small Causes, execution was laid in M.S. No.217/37. 1/4th share of the property bearing Touzi Nos.2498 and 2503/354 was brought to sale on 16.2.1938, One Babu Suryanarayan, a practicing advocate of that court, had become the auction purchaser. He had the possession of the 1/4th specified share therein from the court. Subsequently, he sold the self-same property by a registered sale deed in 1940 to one Hemamali Devi daughter of another practicing advocate. Hemamali Devi in turn sold the property to the appellant in 1950 under Ex.2(A), dated 14.10.1950. On the basis thereof, the appellant filed the suit for partition. The respondents had purchased the property and other properties from the judgment-debtor in the suit. They disclaimed the purchase made by Babu Suryanarayan and his sale in favour of Hemamali Devi and further sale in favour of the appellant. Thus it is a case of total denial of the title of the appellant. The trial Court decreed the suit and the appellate Court confirmed the same for partition of 1/4th share and delivery of possession by metes and bound by passing a final decree. The High Court reversed the said decree primarily on two grounds, viz. that there is no proof of possession of the property delivered under the court sale, and that the appellant has not proved what extent of the land they had purchased. Under these circumstances, the appellant cannot seek possession by partition of the land. The view taken by the high Court is clearly illegal. It is seen that the Sale Certificate issued by the court clearly indicates the particulars of the lands mentioned as under;

"1. Touzi No.2498 - Thana No.214,
Mouza - Baharabishabar in District
Cuttack, P.S., Thana and Sub-
registrar Cuttack Sadar, Ph.
Bakhrabad in Khata No.431 - Area -
Ac.0.19 - rent - Rs.0.12.6. From

this four annas share of the defendant - debtor is Ac.0.04 -7 Kadis rent Rs.0.3. 2-1/2. This land is auctioned at a sum of Rs.4/-

Schedule

Khasada No.1609 Ac.9.19.

Rs.9.4.0 annas share of the defendant debtor Ac.0.04 Kadis 0.07.

2. Touzi No.2502/354 - Thana No.214 in District Cuttack, P.S. and Thana and subregistrar Cuttack Sadar Ph. Bakhrabad, Mouza Baharabishnabar, Khata No.894 - Area Ac.0. 170 Dec. - rebd Rs.0.9.3. From this the share of the defendant-debtor and his brother is eight annas (Rs.0.3.0) Area Ac.0.84 Dec. 10 - Kadis - rent - Rs.0.4.7-1/2 which is auctioned at a price of Rs.20/-.

Description

From the Tafsil No. 811 Ac.0.170 Dec. the 4 annas share of this defendant-debtor is Ac.0.42 dec. 5 Kadis."

The same was sold with description of boundaries in the sale made in favour of Hemamali Devi and also in the subsequent sale to the appellant under Ex.2 (A). Thus it is clear that Babu Suryanarayan had purchased the 1/4th share in the above described property. Thereby he became a co-owner with other 3/4th shareholders whose property was purchased by the respondents. The High Court also is clearly in error in holding that there is no proof of possession. Since the appellant had sought summoning of the warrant of delivery of possession, which was not available, the court register was summoned which contained an entry regarding delivery of the possession. No doubt the description of the property delivered was not mentioned in the delivery warrant. When the entry maintained in the court register of delivery of possession is read with the sale certificate issued by the court, it is obvious that what was delivered to Babu Suryanarayan, a practicing advocate, was the property mentioned in the sale certificate. The property was leased out and rent was realised. Thereby he became the co-owner. The appellant being successor-in-interest having purchased the self-same property, had become co-owner along with the respondents. Thereby the suit for partition was rightly decreed by the courts below.

The appeal is accordingly allowed. The judgment and decree of the High Court stands set aside and that of the trial court as confirmed by the appellate Court stand confirmed. It is open to the parties to proceed with the execution of the decree in filing an application for passing a final decree and take further steps according to law. No costs.