

HEADING OF DECISION IN THE ORIGINAL SUIT.

DIST: KHORDHA.

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka  
Senior Civil Judge, Khurda.

**Dated this the 09<sup>th</sup> day of April, 2014**

**C.S. 25/ 2002**

Raghunath Puri, aged about 64 years, S/o- Late Dama Puri  
of Vill.- Khajuripada, P.O./P.S.- Nirakarpur, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Keluni Dibya, aged about    years, W/o- Late Manu Puri  
of Vill.- Khajuripada, P.O./P.S.- Nirakarpur, Dist- Khordha  
(Since dead, represented through her following legal heirs)
- 1a. Sauri Bharati, aged about 50 years, W/o- Gopinath Bharati of Vill.- Majhikera,  
P.O.- Sundarahat, P.S.- Satyabadi, Dist- Puri.
- 1b. Gouri Bharati, aged about 45 years, W/o- Kelu Charan Bharati  
of Vill.-Kanarapur, P.O.- Ranchha Sasan, P.S.- Nimapada, Dist- Puri.
- 1c. Ali Puri, aged about 35 years, W/o- Indramani Puri, of Vill- Onlasha,  
P.O.- Bilasini, Via./P.S.- Niali, Dist- Cuttack.
- 1d. Dali Bharti, aged about 32 years, W/o- Ramesh Bharti, of Vill- Chhotahara,  
P.O.- Rengala, P.S.- Nimapada, Dist- Puri.
- 1e. Jhali Bharti, aged about 30 years, W/o- Santosh Bharti, of Vill.- Baharana,  
P.O.- Durgeswar, P.S.- Nuahat, Dist- Puri.
2. Trinath Puri, aged about 40 years, S/o- Late Manu Puri

of Vill.- Khajuripada, P.O./P.S.- Nirakarpur, Dist- Khordha.

3. Krushna Chandra Puri, S/o- Late Narasingh Puri  
of Vill.- Khajuripada, P.O./P.S.- Nirakarpur, Dist- Khordha.  
(Since dead, represented through her following legal heirs)
- 3a. Dharendra Kumar Puri, aged about 35 years, S/o- Late Krushna Puri.  
3b. Jagannath Puri, aged about 38 years, S/o- Late Krushna Puri.  
3c. Arabinda Puri, aged about 32 years, S/o- Late Krushna Puri.  
3d. Basanti Dibya, aged about 58 years, W/o- Late Krushna Puri.  
Sl. No. 3a. To 3e. are of Vill.- Khajuripada, P.O./P.S.- Nirakarpur,  
Dist- Khordha.
- 3e. Gafuri Bharati, aged about 28 years, W/o- Prasanna Bharati, at Unit- III  
(Beside of Reserve Bank of India), at/P.O.- Bhubaneswar, P.S.- Capital,  
Dist- Khordha.

.....Defendants

Counsel for Plaintiff	...	Sri D.K. Chhotray and associates Advocates, Khordha
Counsel for defendants No. 1 (b) & 1 (e)...		Sri M. Behera and associates, Advocates, Khordha
Counsel for defendant No. 2-		Sri S.S. Pattnaik and associates, Advocates, Khordha
Counsel for defendant No. 3 (a)		Sri K.N. Roy and associates, Advocates, Khordha

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Date of Argument – 14.03.2014

Date of Judgment – 09.03.2014  
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**JUDGMENT**

The present suit has been filed for declaration, permanent injunction and recovery of possession of the homestead land appertaining to Hal khata No. 204, plot No. 500 measuring Ac. 0.53 decimals, corresponding to Sabik khata No. 101, plot No. 440/850 measuring Ac. 0.30 decimals and Sabik khata No. 140 plot No. 441 measuring Ac. 0.23 decimals (hereinafter referred to be the suit property).

02. The plaintiff's case is that the suit property was recorded in the name of Biswanath Puri as per the Sabik record of right of year 1929-30. He has three sons namely Chema Puri, Dama Puri and Narasingha Puri. His son Chema Puri died issue less leaving behind no legal heir of his own. Dama Puri has two sons namely Raghunath Puri (plaintiff) and Krushna Puri (D-3). Krushna Puri was adopted as son of Narasingha Puri, another son of Biswanath Puri. Therefore, after the death of the three sons of Biswanath Puri, the plaintiff and defendant No. 3 became the absolute owners of the suit property total measuring Ac. 0.53 decimals. The suit property is the homestead property and there is a monument over it. The specific case of the plaintiff is that defendant Nos. 1 & 2 are the wife and son of Late Manu puri. They have got no manner of right, title, interest and possession over the suit property in any manner. But in the current ROR published in the year 1962, the suit property was wrongly recorded in the name of Manu Puri. The plaintiff's further case is that no property has been transferred to Manu Puri by any of the owner or co-sharer to the suit property but, taking advantage of such wrong recording, the defendants on 20.07.1997 forcibly entered and cut a portion of green fence and Bamboo trees in the suit property and also damaged the monument (SAMADHI)

and also threatened the plaintiff to occupy the total suit property. On 03.08.1997, while the plaintiff was in a move to repair the monument, the above defendants also opposed the plaintiff. On 28.09.1999, the defendant Nos. 1 & 2 again forcibly entered inside the suit premises and forcibly occupied the suit property and remained their forcibly. Therefore the plaintiff filed the present suit.

03. The defendant No. 2, Trinath Puri submitted his written statement by saying that the suit is not maintainable as there is no cause of action, barred by limitation and accomplished by misconceived facts. By disputing the plaintiff's case, the defendant No. 2 has to say that prior to 1962; Manu Puri was in peaceful possession over the suit land by constructing his house and residing over it. The plaintiff is the nephew of defendant No. 1 and brother of defendant No. 2. The plaintiff was very much aware about the recording of the name of Manu Puri in the ROR and also regarding the peaceful possession of defendant No. 2 over the same. Initially the plaintiff has filed one case against the above defendant in T.S. No. 77/1997, for declaration, permanent injunction and correction of ROR before the Civil Judge Khordha and basing on the similar cause of action the plaintiff has filed the present suit which is not maintainable at all. In the Addl. Written Statement the defendant No. 2 again contended that he is the owner of the suit plot No. 500 measuring Ac. 0.53 decimals under khata No. 204 having his right, title, interest and possession over it. The same is the ancestral homestead land recorded in the name of his father. After his death, himself, his mother and sisters have inherited the

property. Their mother is dead now and his sisters are given in marriage and as such he has been in possession of the suit property.

04. The defendant No. 1 (b) & 1 (e) have also filed their joint written statement by supporting the exact contention as mentioned by defendant No. 2. In addition to the same they have to say that Manu Puri, their father purchased the suit land from Chema Puri and Narasingha Puri, who are the sons of Biswanath Puri, through a registered sale deed dated. 24.02.1951, measuring Ac. 0.28 decimals. Their further contention is that even though their father Manu Puri has purchased Ac. 0.28 decimals out of total 0.53 decimals, he has been in possession of the rest Ac. 0.25 decimals since long and as such the total land measuring Ac. 0.53 decimals has been recorded in his name and he had also built his house over the entire suit land with the knowledge and consent of the public at large including the recorded owners. The plaintiff has not objected their possession. Therefore, by virtue of adverse possession Manu Puri became the recorded tenant of the suit property.

05. Defendant No. 3 (a) Dhindra Kumar Puri has also submitted his separate written statement by saying that the suit property is the joint family property of plaintiff and Krushna Puri each having half share therein. After expiry of Krushna Puri, himself, Jagannath Puri, Arabinda Puri and his mother Basanti Dibya have succeeded to the half interest of the entire suit property measuring Ac. 53 decimals. But, the plaintiff mischievously has muted his name in respect of Ac. 0.25 decimals out of the suit plot in the revenue record during pendency of the suit. The

Ac. 0.25 decimals is now recorded in plot No. 500/10/67 under khata No. 269/134. But, in spite of such mutation, it continued to be a part and parcel of the entire suit property measuring Ac. 0.053 decimals. Therefore, the plaintiff is not entitled for declaration of his title over the entire suit property.

The suit against the other defendants' set-ex-party due to their non participation in the present proceedings.

06. It is worthwhile to mention that the suit was initially disposed of by this court on 01.12.2005 by dismissing the suit against the defendants. The defendant No. 2, Trinath Puri filed one revision before the Addl. District Judge, Khordha in RFA No. 04/2006. The Hon'ble Addl. District Judge, while remanding the case to the present court for fresh disposal in adherence to the following observations-

“The Learned Lower court has neither impleaded the L.Rs. of defendant No. 1 and proforma defendant No. 3 in the original suit nor discussed in that matter in his judgment regarding death of Keluni Dibya and Krushna Ch. Puri, during hearing of this suit, as well as before delivering the judgment, although the death of defendant No. 1 and proforma defendant No. 3 was within his knowledge. As the L.Rs. of defendant No. 1 and proforma defendant No. 3 are necessary parties in the original suit, so they should have substituted in the said suit. But, the learned Lower court ignoring their presence in the original suit, have delivered judgment showing the defendant No. 1 and proforma defendant No. 3 as set ex-parte, in the original suit, judgment was delivered on 01.12.2005. Whereas

defendant No. 1 died on 23.01.2003, and proforma defendant No. 3 died during April, 2005 i.e. sufficiently ahead of delivering of judgment”.

The Hon;ble Additional District and session Judge again directed this court for fresh disposal as per the above findings by giving liberty to the plaintiff to take necessary steps for amendment of the plaint by adding the necessary parties. This court after receiving the case record along with the above observations directed both the parties to take necessary steps and accordingly the amended plaint was submitted by the plaintiff by impleading the necessary parties. But surprisingly, during hearing of the suit, it is found that the cause title of the plaint has not been properly representing the parties and as such another amendment plaint was also filed and the case was disposed of accordingly. It is also worthwhile to mention that the written statement as filed by the defendant No. 3 (b) & 3 (e), which has been filed as per the previous cause title deemed to be filed by defendant No. 1 (b) & 1 (e) respectively. Similarly, the written statement filed by 1 (a) deemed to be filed by defendant No. 3 (a). But the defendants after the filing of the amendment plaint have not corrected the nomenclature of their respective written statements. But for the convenient sake this court in the present Judgment mentioned the participation of the parties as per the plaint by ignoring the nomenclature.

07. Giving emphasis on the factual disputes between the parties, the following issues have been settled for a purposeful adjudication.

### **I S S U E S.**

- i Is the suit maintainable in its present form?

- ii Is there any cause of action to bring the suit against the defendants?
- iii Is the suit barred by law of limitation?
- iv Whether the plaintiff has any right, title and interest over the suit property?
- v Whether the plaintiff is entitled to recovery of possession of the suit land from the defendants?
- vi Whether the plaintiff is entitled to a decree of permanent injunction against the defendants restraining them from interfering in the possession of the plaintiff over the suit land?
- vii What relief, if any, the plaintiff is entitled to?

08. In order to prove its case, the plaintiff examined himself as P.W. 1, to be the sole witness for his case. He also admitted the certified copy of the ROR under khata No. 140 as Ext. 1 and certified copy of a sale deed dated. 24.02.1951 as Ext. 2 with objection.

Similarly, defendant no-3(a), Dhirendra Puri examined himself as D.W. 1 for his own case. Pratap Bhujabala and Kartika Balabantara have been examined as D.W. 2 & 3 respectively on behalf of defendants No-11(b) and 1 (e). Trinath Puri, who is the defendant No. 2, is examined himself as D.W. 4. Two sets of documents have been exhibited on behalf of the defendants. Ext. A is the certified copy of the ROR in khata No. 204 of mouza Khajuripada and Ext. B to B/21 are the rent receipts.

FINDINGS.

**Issue Nos. iv, v & vi.**

09. The plaintiff came with a case for declaration along with permanent injunction against the defendants. His specific case is that Biswanath Puri, who is the common ancestor of himself and defendant No. 3 has three sons namely Chema Puri, Dama Puri and Narasingha Puri. Chema Puri died issue less leaving no legal heirs to him. Dama Puri has two sons such as the plaintiff himself and Krushna Ch. Puri. The said Krushna Ch. Puri was adopted as son of Narasingha Puri. However, after death of Chema Puri, Dama Puri and Narasingh Puri, the total suit property devolved upon the plaintiff and Krushna Ch. Puri. His further case is that Manu Puri is a stranger to the suit property, but, his name has been recorded in the current settlement ROR in respect of the total suit property measuring Ac. 0.53 decimals. But, in the evidence in chief the plaintiff himself has admitted that Chema Puri and Narasingha Puri sold Ac. 0.8 decimals out of Ac. 0.30 decimals towards eastern side from Sabik plot No. 440/850 and Ac. 0.20 decimals out of Ac. 0.124 decimals towards eastern side from plot No. 441 to the said Manu Puri. Therefore, a area total measuring Ac. 0.28 decimals out of Ac. 154 decimals has been sold to Manu Puri through registered sale deed No. 64 dt. 24.02.1951, but in the current settlement of year 1962 Manu Puri mischievously recorded his name in respect of the total suit property measuring Ac. 0.53 decimals in place of Ac. 0.28 decimals.

10. In face of such admission, it is became quite clear that the pleading is completely misleading and the claim of the plaintiff in respect of total Ac. 0.53 decimals of land is false and as such the relief claimed in respect of the total suit property cannot be granted to him. It is within his knowledge that he has no right, title, interest or possession over the total suit property and knowing the same he has preferred the present suit.

11. Secondly as per his admitted case the suit property devolved upon himself and Krushna Puri. In case his pleading is accepted, Krushna Ch. Puri having half interest over the suit property. But, the plaintiff ignoring Krushna Ch. Puri claimed his right, title and interest over the whole property, which is also not tenable in the eye of law.

12. After remand of the case the plaintiff again submitted his evidence in chief by admitting that he is in possession of Ac. 0.25 decimals out of Ac. 53 decimals and the rest Ac. 0.28 decimals is in possession of defendant No. 1 as the father of defendant no-1 had purchased the same from his father. The said fact has also been admitted in his cross-examination. Coming to the subsequent fact, the plaintiff in his cross-examination in Para – 12 has stated that his father died in the year 1948. In the year 1997 he came to know that the defendant No. 2 has been encroaching the suit land measuring Ac. 0.23 decimals. He further admitted that he has not yet taken over the possession of the encroached land of the defendants. In the cross-examination in Para – 14 he admitted that himself and Krushna Ch. Puri are in joint owner of the entire suit land. In view of the above facts and

circumstances of the case it is became quite clear that the plaintiff has no title over the entire suit property. Admittedly, Ac. 0.28 decimals out of total Ac. 0.53 decimals of suit property has been alienated to Manu Puri, which has been in possession of defendant No. 1 (a) to 1 (e) being the successors of Manu Puri. Therefore, the plaintiff is not entitled for any relief of his right, title, interest over the suit property and since it is admitted that Manu Puri has purchased Ac. 0.28 decimals of land and being the rightful owner, recovery of possession from him or his legal heirs is also not tenable in the eye of law. In view of the aforesaid discussion the relief of permanent injunction over the suit property by restraining the defendants is not tenable in the eye of law.

13. It is true that plaintiff can be served with an alternative relief. But in the present case if the admission of the of the plaintiff is taken in to count himself and his brother Krushana Chandra Puri having equal interest over the rest 25 decimal of land. The said portion of land is required to be identified by the plaintiff to get any relief over it. But he is not entitled for any relief against his brother Krushana Chandra Puri who has equal interest over the suit property. Therefore, the nature and character of the suit is such that this court is completely handicapped to provide any relief to the plaintiff.

**Issue Nos. i, ii, iii & vii.**

14. So far as the question of maintainability is concerned the same has not been pressed by both the parties and as such the same needs no further discussion, but so far as the question of relief is concerned, in view of the forgoing

discussion, the plaintiff is not entitled for any relief as he has come to the court with misconceived and misleading facts. Hence it is order.

**ORDER**

The suit of the plaintiff be and the same is dismissed on contest against defendants No. 2, 1 (b), 1 (e) and 3 (a) while Ex-party against the rest, but in the circumstances without any cost.

Advocate's fee at contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 09<sup>th</sup> day of April, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1                      Raghunath Puri.

List of witnesses examined on behalf of Defendants :-

D.W. 1                      Dharendra Ku. Puri.

D.W. 2                      Pradeep Bhujabala.

D.W. 3                      Kartika Balabantaray.

D.W. 4                      Trinath Puri.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1                      Certified copy of ROR.

Ext. 2                      Sale deed Dt. 24.02.1951.

List of documents admitted on behalf of Defendants :-

Ext. A                      Certified copy of ROR in khata No. 204 of mouza Khajuripada.

Ext. B to B/21              Rent receipts.

Sr. Civil Judge, Khurda.