

HEADING OF DECISION IN THE ORIGINAL SUIT.**DIST: KHORDHA.****IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA****PRESENT :-***Sri Raj Kishore Lenka
Senior Civil Judge, Khordha.**Dated this the 01st day of September, 2014***C.S. 41/ 2002**

Damodar Panigrahi, aged about 41 yrs, S/o- Balabhadra Panigrahi,
of Vill.- Samukapatna, P.O.- Gadiapalli, P.S.- Begunia, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Balabhadra Panigrahi, aged about 75 yrs, S/o- Late Padan Panigrahi,
expired on 14.03.2010 (suit abated) .
2. Shyam Sundar Panigrahi, aged about 34 yrs, W/o- Balabhadra Panigrahi
expired on 30.02.2003.
3. Nishamani Panigrahi, aged about 60 yrs, W/o- Balabhadra Panigrahi,
expired on 30.02.2003 (suit abated).
4. Sukanta Behera, aged about 42 yrs, S/o- Debaraj Behera
5. Sukanti Behera, aged about 35 yrs, W/o- Bula Behera,
All are of Vill.- Samukapatna, P.O.- Gadiapalli, P.S.- Begunia,
Dist- Khordha.

..... Defendants.

Counsel for Plaintiff	...	Sri H. Pattanaik & Associates Advocates, Khordha
Counsel for defendants	...	Sri B.K Samantasinghar Advocates, Khordha

Date of conclusion of Argument – 11.08.2014

Date of pronouncement of Judgment – 01.09.2014

JUDGMENT

The plaintiff has preferred this suit for partition.

02. The plaintiff's case is that the suit property appended in the plaint as schedule A property, recorded under khata No. 55 of mouza Samuka patna, schedule B property recorded under khata No. 45 of mouza Maheswarpur, Khata No. 46 of mouza Maheswarpur, Khata No. 45 of mouza Somanathpur and Khata No. 292 of mouza Salakhata and schedule C property recorded under Khata No-55, in Mouza Samuka patna total measuring Ac. 0.738 decimals are their ancestral property (Schedule A, B and C properties herein after called as suit property). Schedule A and C land are their homestead land and Schedule B land is their agricultural land. After death of the defendant No. 1 and 3 the entire suit property devolved upon the plaintiff and his only brother defendant No. 2 and as such both are entitled for half share each out of the entire suit property. It is again contended by the plaintiff that he was forced by defendant Nos. 1 & 2 to reside separately and accordingly he has been staying in a separate house. He was paying Rs. 1,500/- to Rs. 2,000/- per month of defendant No. 1 towards the joint family fund. Subsequently, he demanded a regular account of his joint family business from the defendant No-1 and as such the dispute between the plaintiff and defendants cropped up and for which the plaintiff demanded for partition on 30.01.2001 to which the defendants refused. It is subsequently learnt by the plaintiff that defendant Nos. 1 & 2 along with deceased defendant No. 3

have transferred a valuable piece of land measuring Ac. 0.072 decimals (schedule C land) to defendant Nos. 4 & 5 for a marginal consideration amount. The plaintiff has to say that the entire property being the ancestral property, the defendant Nos. 1 to 3 cannot sale their undivided interest to anybody else and as such the same is illegal and contrary to the law. He specifically prayed to include schedule-C property for partition. The plaintiff again stated that on 12.01.2001 and on 30.01.2001 he demanded for partition and subsequently on 09.02.2001 he came to know about the schedule C property has been transfered to the defendant No-4 and 5 and basing on such cause of action he filed the present suit claiming half share over the entire suit property.

Initially, the present suit was filed by the plaintiff against his father as defendant No-1 and his mother as defendant No-3 along with the existing defendants. During pendency of the suit the parents of plaintiff and defendant No. 2 such as defendant Nos. 1 & 3 died and as such the suit against them was abated as their legal representatives such as the plaintiff and defendant No-2 are existing as parties to the suit..

The defendant No 1, 2, 4 & 5 have initially filed their written statement by challenging the *locus-standi* of the plaintiff to file the suit. They have also stated that the suit is not maintainable and there is also no cause of action and the suit is also not maintainable due to non-joinder of necessary parties. The specific case of the defendants is that the suit property is not the joint family property of the plaintiff and defendants, rather the entire property is the self acquired property of defendant No. 1

as he had purchased the suit land out of his own income and accordingly the plaintiff has no right to sue them by demanding partition. They have denied that the plaintiff was never forced to reside in a separate mess nor they have any dislike to the plaintiff, rather the plaintiff at his sweet will has been residing in a different mess. It is further contended by the defendants that alienation of schedule C property to defendant Nos. 4 & 5 is valid and proper. The plaintiff has no authority to challenge the same as the property is the exclusive property of the defendant No-1. The defendants again refused to accept the cause of action by saying that these are completely false and fabricated stories advanced by the plaintiff only for the purpose of the case as such the plaintiff's case is liable to be dismissed.

04. After taking account of rival pleadings of both the parties, the following issues have been settled for final adjudication of the dispute.

I S S U E S.

1. Is the suit maintainable?
2. Is there any cause of action to bring the suit?
3. Whether the suit is barred by law of limitation?
4. Whether the suit property is the ancestral property of both the parties?
5. Whether the suit property is partible in nature?
6. Whether the plaintiff is entitled for 1/4th share out of the suit property?
7. Whether the defendant Nos. 1 to 3 have illegally alienated Ac. 0.072 decimals of land (schedule C property) in favour of defendant Nos. 4 & 5, which is not binding on the plaintiff?
8. To what relief, if any, the plaintiff is entitled for?

05. In order to prove its case three witnesses have been examined on behalf of the plaintiff including the plaintiff himself as P.W. 3. Six documents have been relied upon and exhibited in this case from the side of the plaintiff. The ROR in khata No. 55 of mouza Samukapatna is marked as Ext. 1, certified copy of ROR in khata No. 45 of mouza Maheswarpur as Ext. 2, certified copy of ROR in khata No. 46 of mouza Maheswarpur as Ext. 3, certified copy of ROR in khata No. 292 of mouza Salakhara as Ext. 4, certified copy of ROR in khata No. 45 of mouza Somanathpur as Ext. 5 and nine sheets of rent receipts as Ext. 6 to 6/h respectively.

On the other hand the defendants neither adduced any evidence nor relied upon any document in this case.

FINDINGS.

Issue Nos. 4,5,6 and 7.

06. The above issues being inter-related and most pivotal issues for an useful adjudication of this case, are taken up together for consideration.

Before having a discussion on the factual aspect of the above issues, it may be noted that defendant Nos. 1 & 3 are the parents of plaintiff and defendant No. 2. After the death of defendant No-1 and 3, the suit property naturally devolved upon the plaintiff and defendant No. 2. Initially the plaintiff has claimed 1/4th share out of the entire suit property including the property alienated to defendant Nos. 4 & 5, but after the death of defendant No 1 and 3, the plaintiff filed the consolidated plaint by demanding his half share. Therefore, the issues with relates to claiming of 1/4th share by the plaintiff may be read as half share in the present changing circumstances.

The plaintiff first raised that the suit property is the ancestral property of both the parties. Since he has raised such a legal point, the onus is on him to prove the same, as because the defendants on the other hand have to say that this the entire suit property is the self acquired property of defendant No. 1. The plaintiff is examined as P.W. 3 and in the evidence in chief he has also repeated that the suit property is the ancestral joint family property of both the parties. He relied upon the ROR under khata No. 55 of mouza Samuka patana as Ext. 1, under khata No. 45 of mouza Maheswarpur as Ext. 2, khata No. 46 of mouza Maheswarpur as Ext. 3, khata No. 292 of mouza Salakhara as Ext. 4 and khata No. 45 of mouza Somanathpur as Ext. 5. All the above properties have been recorded in the name of Balabhadra Panigrahi who is the deceased defendant No. 1. Not a single scarp of paper or any reliable evidence has been made available to show that the suit property has ever been recorded in the name of any of their common ancestor at any point of time or the suit property has been devolved upon Balabhadra Panigrahi from his common ancestor. Therefore, this court at this stage cannot even presume that the claim of the plaintiff over the suit property to be ancestral property has any basis at all. The suit property is the exclusive property of Balabhadra Panigrahi and recorded in his name and as such the suit property cannot be treated at this stage to be the ancestral property.

07. Lets now come to the subsequent question, whether the suit property is partible in nature or not? At the time of filing of the suit the parents of the plaintiff and defendant No. 2 were alive. They have raised a relevant question by challenging the claim of the plaintiff that, the suit property being the exclusive property of

Balabhadra Panigrahi, their deceased father, the plaintiff cannot claim for a partition, but now recorded tenant Balabhadra Panigrahi is dead and as such the suit property is devolved upon the plaintiff and defendant No-2 who are the natural sons of the recorded tenant of the suit property namely Balabhadra Panigrahi and as such whatever property remain intact is partible in nature and the plaintiff and defendant No. 2 are entitled for half share each, But before arriving into a conclusion it is now became quite relevant to decide the status of defendant Nos. 4 & 5 over the schedule C property and genuineness of transfer of such property by their vendors.

08. The plaintiff in his pleading has stated that a property measuring Ac. 0.072 decimals of mouza Samukapatana under khata No. 55 has been sold away to defendant Nos. 3 & 4 illegally and as such the schedule C property must have been included to be the subject matter of partition. Surprisingly, he has neither challenged the sale deed nor made any prayer for declaration or cancellation of sale deed executed in favour of defendant Nos. 3 & 4. The plaintiff in the evidence in chief as P.W. 3 has stated that the defendant Nos. 1 to 3 colluded with each other and to deprive him from his legitimate share, on 09.02.2001 transferred the valuable property measuring Ac. 0.072 decimals to defendant Nos. 4 & 5. Except mentioning the same the plaintiff has not sought for any relief over schedule C property except by saying that the schedule C property is required to be included for partition. In the evidence the plaintiff has not also challenged the sale deed. More over the forgoing discussion make it clear that the suit property is the self acquired property of the defendant No. 1 and as such whatever property has been alienated by defendant No. 1,

to others, if any, cannot be challenged by the plaintiff. Therefore, the suit property is partible in nature except the schedule C property, which is recorded under khata NO. 55, plot No. 365 total measuring Ac. 0.072 decimals of Mouza-Samukapatna.

Issue Nos. 1, 2, 3 and 8.

09. So far as the question of maintainability is concerned the plaintiff has assigned the cause of action in different dates as mentioned in the forgoing discussions and the plaintiff in his evidence in chief has also mentioned the last cause of action to be 09.02.2001 and the same has not also been challenged by the defendants. Therefore, the suit is filed in time. The suit is not also barred by non-joinder of necessary parties as all the necessary parties have been impleaded in the suit. The suit is maintainable in nature, but so far as the question of relief is concerned, it has already been elaborately discussed and this court has already reached into the conclusion that the entire suit property is partible in nature except the Schedule C property. The plaintiff and defendant No-2 are entitled for half share each out of the total schedule A & B property only and schedule C property belongs to the defendant No-4 and 5. Hence it is order.

ORDER.

The suit of the plaintiff be and the same is hereby preliminarily decreed in part, on contest against the defendants, but in the circumstances without any cost. The plaintiff and defendant No. 2 are entitled for half share each out of the entire suit schedule property, except schedule C property, which belongs to defendant No. 4 & 5.

The plaintiff and the defendants are hereby directed to effect partition among themselves as per the above observation of this court within three months hence. Failing of which, any of the party is at liberty to execute the order of this court by adopting the due procedure of law.

Advocates fees are at contested scale.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 1st day of September, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

- P.W. 1 Daitary Mohapatra.
P.W. 2 Rajkishore Swain.
P.W. 3 Damodar Panigrhi.

List of witnesses examined on behalf of Defendants :-

None

List of documents admitted on behalf of the Plaintiff :-

- Ext. 1 ROR in khata No. 55 of mouza Samukapatna.
Ext. 2 Certified copy of ROR in khata No. 45 of mouza Maheswarpur.
Ext. 3 Certified copy of ROR in khata No. 46 of mouza Maheswarpur.
Ext. 4 Certified copy of ROR in khata No. 292 of mouza Salakhara.
Ext. 5 Certified copy of ROR in khata No. 45 of mouza Somanathpur.
Ext. 6 to 6/h Rent receipts.

List of documents admitted on behalf of Defendants :-

Nil.

Senior Civil Judge, Khordha.