

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, Khurda.

Dated this the 29th day of April, 2014

C.S. 03/ 2006

1. Raghunath Rana, aged about 51 yrs, S/o- Late Gunduchi Rana.
2. Bichitrananda Barik, aged about 43 yrs, S/o- Late Padan Barik.
3. Afsar Khan, aged about 50 yrs, S/o- Late Akbar Khan.

All are of Vill.- Mukundaprasad, P.O.- P.N. College, Khordha,
P.S./Dist- Khordha.

..... Plaintiffs.

-Versus-

1. Sk. Gafar, aged about 56 yrs.
2. Sk. Jabar, aged about 51 yrs.
3. Sk. Abas, aged about 46 yrs.
4. Sk. Babu, aged about 41 yrs.

All are sons of Late Sk. Satar of Vill.- Mukundaprasad,
P.O.- P.N. College, Khordha, P.S.- Dist- Khordha.

..... Defendants.

5. Lasulan Bibi, aged about 75 yrs, W/o- Late Sk. Abdul
of Vill./P.o.- Banapanjari, P.S.- Jatni, Dist- Khordha.
6. Usran Bibi, aged about 60 yrs, W/o- Nasir Khan of Vill.- Mukundaprasad,
P.O.- P.N. College, Khordha, P.S./Dist- Khordha.
7. Basiran Bibi, aged about 55 yrs, W/o- Late Ismail Khan, At- Bachharapatna,
P.O./P.S.- Jatni, Dist- Khordha.

8. Kasiran Bibi, aged about 50 yrs, W/o- Sk. Inbrahim, At/P.O.- Khatbinsahi, P.O.- Chandinechowk, Dist- Cuttack. .
9. Sk. Amanulla, aged about 65 yrs, S/o- Late Sk. Barkutulla.
10. Sk. Sakur, aged about 55 yrs.
11. Sk. Motahar, aged about 45 yrs.
12. Sk. Altab, aged about 32 yrs.
13. Sk. Tahir, aged about 50 yrs.
14. Sk. Fakir, aged about 35 yrs, S/o- Late Samser.
15. Sk. Nizam, aged about 30 yrs.
16. Sk. Amzad, aged about 27 yrs.

Sl. No. 10 to 13 are sons of Late Sk. Athar.

Sl. No. 15 & 16 are sons of Late Maharam.

All are of Vill.- Mukundaprasad, P.O.- P.N. College, Khordha, P.S./Dist- Khordha.

..... Prof. Defendants

Counsel for Plaintiff ... Sri A. K. Pattnaik and associates
Advocates, Khordha

Counsel for defendants ... Sri A. K. Mohapatra and associates,
Advocates, Khordha

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Date of Argument – 19.04.2014

Date of Judgment – 29.04.2014
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JUDGMENT

The plaintiffs have filed the present suit for partition over a landed property situated at mouza Mukundaprasad under khata No. 104, plot No. 2265 total measuring Ac. 0.425 decimals (hereinafter called to be suit property).

02. The plaintiffs case is that the suit property is the undivided property of the plaintiffs and defendant Nos. 1 to 4. The proforma defendant Nos. 5 to 8 having no share over the same. The suit property was originally owned by Gunduchi Rana, Rohini Bewa, Maharam Khan and Sk. Inat. They were jointly holding the suit property as occupancy tenants and as such their names stand recorded in the settlement ROR of 1962 as "STITIBAN STATUS" having equal 1/4th interests each over the suit property. Gunduchi Rana expired around 45 years back succeeded by his son and sole successor namely Raghunath Rana, who is the plaintiff in this case. Another recorded tenant Rohini Bewa died being succeeded by her son Padana Barik. The said Padana Barik and his wife also expired being succeeded by their son Bichitrananda Barik, who is the plaintiff No. 2 in this case. Similarly, Maharam Khan expired about 60 years back. He was succeeded by his daughters, who are the proforma defendant Nos. 5 to 8 respectively. Plaintiff No. 3 is the son of one Akbar Khan, who is the brother of Maharam Khan. It is further contended by the plaintiffs that the above proforma defendants (5 to 8) while enjoying the suit property gifted their 1/4th interest in it to the plaintiff No. 3 orally in the year 1975, and delivered possession of it to him. Thus, the plaintiff No. 3 became the owner of 1/4th interest of the suit property previously held by Maharam Khan. It is further contended by the plaintiff that Sk. Inat is also died since long and succeeded by Sk. Satar, who is also died being succeeded by defendant Nos. 1 to 4. Therefore, the plaintiff Nos. 1 to 3 having 1/4th interests each over the suit property and defendant Nos. 1 to 4 jointly having 1/4th interest therein. The further case of the plaintiffs is

that the suit property has not been partitioned by metes and bounds amongst the plaintiffs and defendant Nos. 1 to 4 and the same is still in joint possession. Gradually it became inconvenient for the parties to enjoy the suit property jointly and therefore, the plaintiffs demanded partition thereof. But, the defendant Nos. 1 to 4 did not respond to it. The dispute was initially put before the village gentries for a solution, but all in vain. The plaintiffs again contended that the defendants No. 1 to 4 in the month of September, 2005, attempted to dig pinch over the suit property and as such the plaintiffs initiated a proceeding U/s 144 of Cr.P.C in the court of Executive Magistrate, Khordha. The plaintiffs by assigning the cause of action to be on 08.09.2005 and on 15.09.2005 averred that, the defendant Nos. 1 to 4 attempted to dig the soil over the suit property for construction as well as on 31.12.2005, when the plaintiffs for the last time demanded partition of the suit property. Failing of which the plaintiffs preferred the suit for partition claiming $1/4^{\text{th}}$ share each to all the three plaintiffs and rest $1/4^{\text{th}}$ to defendant Nos. 1 to 4 jointly.

03. After initiation of the proceeding, summons was issued to the defendants, but only defendant Nos. 2, 3 & 4 submitted their joint written statement. But, due to non-participation, the suit against defendant Nos. 1, 10 to 14 set ex-parte on 20.12.2013. Similarly, the suit against defendant Nos. 15 & 16 was set ex-parte on 04.07.2013. The suit against defendant No. 9 set ex-parte on 03.08.2012 and against defendant Nos. 5 to 8 on 15.04.2009.

The defendant Nos. 2, 3 & 4 in their joint written statement have stated that the suit is not maintainable, both in fact and law, there is no cause of

action to bring the suit and the same is also defective for non-joinder and mis-joinder of necessary parties and after all the plaintiffs have no locus standi to file the suit. It is again contended that the suit is also undervalued. The specific case of the above defendants is that plaintiff No. 3 is not a co-sharer to bring the suit with other plaintiffs as he has no interest over the suit property. The further case of the defendants is that the recorded tenants namely Maharam Khan, Sk. Inat, Gunduchi Rana and Rohini Bewa are dead, but their all successors are not made as parties by the plaintiffs. The above defendants submitted one detailed genealogy of Sk. Inat, wherein it is noted that Sk. Inat has five successors, who are dead now, but only the successor of Sk. Zafar have been made as party, but the successors of the other four sons of Sk. Inat have not made as parties. Similarly, Late Maharam Khan has four successors and they have not been made as parties. The above defendants finally contended that the suit is not maintainable at all and liable to be dismissed.

04. Now it is worthwhile to mention that after filing of the written statement, the plaintiffs amended the plaint and impleaded all the necessary parties as reflected in the written statement and accordingly proceeded with the case.

I S S U E S.

1. Is the suit maintainable?
2. Is there any cause of action to file the suit?
3. Whether the suit is defective for non-joinder and mis-joinder of necessary parties?

4. Whether the suit property is partible among the co-sharers by metes and bounds by allotting 1/4th share to each of the plaintiffs?
5. What relief, if any, the plaintiffs are entitled to?

05. In order to prove its case, the plaintiffs examined three witnesses in all. Out of whom, P.W. 1 is an independent witness, P.W. 2 is the plaintiff No. 1 & P.W. 3 is the plaintiff No. 2 respectively. The ROR in respect of the suit land and one rent receipt have been marked as Ext. 1 & 2 respectively. No evidence has been adduced from the side of the defendants nor any document produced thereof.

FINDINGS.

Issue Nos. 4.

06. The above issue being dealing with the core question of partition and the share of the parties involving thereof, is taken up first for consideration.

The admitted case of both the parties is that the suit property has been recorded in the name of Gunduchi Rana, Rohini Bewa, Maharam Khan and Sk. Inat, who were the original owners in possession of the suit property. The plaintiff No. 1 is examined as P.W. 2 and plaintiff No. 2 is examined himself as P.W. 3. The ROR relating to the suit property recorded under khata No. 107 of mouza Mukundaprasad has also been relied upon and exhibited as Ext. 1. There is absolutely no dispute that all the four recorded tenants having their respective 1/4th share each over the entire suit property. The parties to the present suit are the second and third generations to the recorded tenants. The plaintiff No. 1 & 2, who are the successors of the recorded tenants namely Gunduchi Rana and Rohini Bewa respectively and defendant No. 3 who claims to be acquired the share of Sk.

Moharam Khan on gift have claimed that due to increase of family members of the recorded tenants it would become quite impossible for them to possess the land jointly without any partition and as such they approached the legal heirs of others recorded tenants for partition to which they refused. Even though the cause of action has been disputed by the defendant Nos. 2, 3 & 4 for the sake of argument, it may be noted that the recorded tenants are dead now and most of their legal successors are also dead. So it is now become quite difficult for the other successors of the recorded tenants to possess the land jointly and it is also the right of the parties to sought for partition in order to avoid inconvenience over possession and enjoyment of the suit property jointly as well as for the betterment of all the individual co-sharers. Therefore, the suit being the joint property of the parties are liable to be partitioned and undoubtedly the suit property is partible in nature.

07. But, prior to deal with the subject matter of partition and the share individual parties, it is now become the primary duty of the court to decide a relevant question, which has been raised by the plaintiffs by claiming 1/4th share of the plaintiff No. 3 out of the suit property. Whereas the contesting defendants challenged such claim of plaintiff No-3 saying that he is a stranger having no interest over the suit property.

08. Coming to the plaintiffs case, they in their pleadings have stated that the proforma defendant Nos. 5 to 8, who are the successors of Maharam Khan, while in possession of the said property orally gifted their 1/4th interest to plaintiff No. 3 in the year 1975 and delivered possession of it. Thus, the plaintiff No. 3

became the owner of 1/4th interest of the suit property previously held by Maharam Khan. The plaintiffs being raised such a crucial question, onus lies on them to prove the same. Admittedly, no gift deed has been executed by the defendant No. 4 to 8 or the successors of Maharam Khan in favour of plaintiff No. 3. The surprising fact is that three witness have been examined on behalf of the plaintiffs including the plaintiff Nos. 1 & 2, but they have nowhere in their evidence in chief have uttered a single word regarding gifting of any share by the successors of Maharam Khan in favour of plaintiff No. 3. The same implies that even though the plea has been taken in favour of the plaintiff No. 3 in order to establish his 1/4th interest over the suit property, the same was ultimately withdrawn and not pressed by the plaintiffs during the course of hearing and as such they fail to establish the fact that Maharam Khan has acquired any property by virtue of any gift from the legal successors of Maharam Khan. Therefore, it is the conclusion opinion of this court that the plaintiff No. 3 has absolutely no interest over the suit property.

09. Reverting back to the question of partition, the suit property being partible in nature, all the legal heirs of Gunduchi Rana, Rohini Bewa, Maharam Khan and Sk. Inat having 1/4th share each over the entire suit property recorded under khata No. 104 of mouza Mukundaprasad under plot No. 2265 vide Ext. 4. Therefore, the plaintiff Nos. 1 & 2 being the legal successors of Gunduchi Rana and Rohini Bewa respectively, having 1/4th interest each over the suit property. The legal representatives of Late Maharam Khan are also jointly entitled for 1/4th share out of the total suit property and similarly, all the legal representatives of Sk. Inat are

entitled for the rest 1/4th share over the suit schedule property. The claim of plaintiff No. 3 over the suit property being not substantiated, he is not entitled for any share out of the suit schedule property. The above issue is answered accordingly.

Issue Nos. 1,2,3 and 5

10. The above four issues are involving with the question of maintainability of the suit, particularly on the question of non-joinder and mis-joinder of necessary parties as well as regarding cause of action. The above matters have already been discussed elaborately in the forgoing paragraph and it has already been held that the plaintiffs have properly aligned the cause of action to file the suit and accordingly, the question of partition and the share involving therein of all the parties to the suit have been decided and so far as the question of non-joinder and mis-joinder of parties is concerned, it is apparent from the record that after amendment of the plaint the question as raised by the defendants in the written statement lost its relevancy and subsequently not pressed during the course of hearing of the suit. So far as the question of relief is concerned, consequent upon the observations of this court, the respective share of all the parties over the suit property has already been specified and the parties are at liberty to carve out their share after effecting partition as per the observations of this court. Hence it is order.

ORDER

The suit of the plaintiffs be and the same is preliminarily decreed in part on contest against defendants No. 2, 3 & 4 while ex-parte against all the other defendants but in the circumstances without any cost.

The plaintiff Nos. 1 & 2 are entitled for 1/4th share each and the legal heirs of Maharam Khan and Sk. Inat are jointly entitled for 1/4th share each out of the suit property recorded under khata No. 104, plot No. 2265 of mouza Mukundaprasad. Plaintiff No-3 has no interest over the suit property at all. The parties are at liberty to effect partition over the suit property as per the observation of this court among themselves within three months hence, failing of which any of the party is at liberty to execute partition through the process of the court.

Advocate's fees are at contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 29th day of April, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

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| P.W. 1 | Prakash Chandra Behera. |
| P.W. 2 | Raghunath Rana. |
| P.W. 3 | Bichitrananda Barik. |

List of witnesses examined on behalf of Defendants :-

None.

List of documents admitted on behalf of the Plaintiff :-

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| Ext. 1 | ROR of mouza Mukundaprasad under khata No. 104. |
| Ext. 2 | Rent receipt dt. 10.06.2005. |

List of documents admitted on behalf of Defendants :-

Nil

Sr. Civil Judge, Khurda.