

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 1st day of July, 2014

C.S. 100/ 2006

B. Ghanashyam Patra, aged about 42 yrs, S/o- Late Hadibandhu Patra of Vill.- Ratanapur, P.O.- Kuhudi, P.S.- Tangi, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Ladu Kishore Patra.

(Since dead, represented through his following legal representative)

1a. Umakanta Patra, aged about 36 yrs, S/o- Ladu Kishore Patra of Vill.- Ratanapur, P.O.- Kuhudi, P.S.- Tangi, Dist- Khordha.

1b. Malati Patra, aged about 40 yrs, D/o- Late Ladu Kishore Patra, W/o- Narasingha Patra of Vill.- Mata Pokhari, P.O.- Kulsi, P.S.- Banpur, Dist- Khordha.

1c. Krushna Chandra Patra, aged about 62 yrs, S/o- Late Bhabani Patra, and adopted son of Late Ladu Kishore Patra of Vill.- Ratanpur, P.O.- Kuhudi, P.S.- Tangi, Dist- Khordha.

2. Nanda Kishore Manasingh, aged about 80 yrs, S/o- Maheswar Manasingh of Vill./P.O.- Kuhudi, P.S.- Tangi, Dist- Khordha.

..... Defendants.

Counsel for Plaintiff

... Sri B. Badajena and Associates
Advocates, Khordha

Counsel for defendant No-1(a) to 1(c)	...	Sri R.K. Patnaik and associates, Advocates, Khordha
Counsel for defendant No-2	...	Miss S. Patnaik & Associates, Advocates, Khordha

Date of conclusion of Argument –	23.06.2014
Date of pronouncement of Judgment –	01.07.2014

JUDGMENT

This is a suit for declaration and permanent injunction.

02. The plaintiff's case is that he has purchased a piece of land from defendant No. 2 by virtue of a sale deed bearing No. 292 dt. 14.03.2005, recorded under khata No. 218, plot No. 1869/2439 of mouza Ratanpur total measuring Ac. 0.081 decimals. The property under dispute is 0.005 decimals of land out of Ac. 0.081 decimals from the eastern side of the suit plot having a asbestos room over it (hereinafter referred to be the suit property), fully described in the foot of the plaint. The specific case of the plaintiff is that after purchase of the piece of land, his vendor delivered possession of such land to him after demarcation. There is an asbestos room having a dimension of six feet's in breadth and eight feet's in length situated over the suit property on its eastern side of his purchased land, which is used by the plaintiff and his family members. Since the date of purchase, the plaintiff became the owner in possession of the suit property and continuing his possession over the suit property. It is further contended by the plaintiff that the defendant No. 1 has no manner of right, title, interest and possession over the suit property in any manner and he is just a stranger to the suit property. He had been trying to occupy the suit property by using

muscle power. On 15.03.2006, the defendant No. 1 with the help of some henchman attempted to forcibly occupy the suit property and to disposes the plaintiff and his family members from the suit property and uprooted some demarcating stone pillars from the boundary of the purchased land of the plaintiff. On protest the defendant No-1 reacted violently and also threatened the plaintiff. On 19.03.2006, the said defendant also deposited some stones near the suit property and also tried to forcibly occupy the suit property, which was also protested by the plaintiff. The defendant No. 1 died leaving behind the defendant Nos. 1 (a) to 1 (c). They are now creating disturbances with the peaceful possession of the plaintiff over the suit property. On 19.03.2006, the present defendants also uprooted the demarcating stone pillars and tried to forcibly dig the plinth over the suit property and threatened the plaintiff with dire consequences. Taking account of the said fact and apprehending danger from the defendants, the plaintiff filed the suit for declaration of his right, title and confirmation of his possession over the suit property and to injunct the above defendants' permanently from entering upon the suit property and from creating any mischief over it.

03. Defendant No. 1 during his life time appeared and submitted his written statement, which was also taken over by his legal heirs. As per the written statement of defendant No. 1 the suit is not maintainable in the eye of law for defective facts, non-joinder of necessary parties and for lacking cause of action. Defendant No. 1 has to say that the plaintiff has not came to the court in a clean hand, rather he has averred misleading facts in his plaint. It is further contended by the defendant No. 1 that the suit property is used as temple of 'MAA NARAYANI' and a club house is also there. A

portion of the water top is there over the suit property for supply of water to the villagers and some portion is used as the concrete road for the villagers. The suit property is entirely under possession of the SAHI people. The defendant No. 1 is the elderly person of the SAHI to look after it. The defendant No. 1 in his written statement has not disputed the execution of the sale deed between the plaintiff and defendant No. 2, but so far as the question of delivery of possession is concerned the defendant No. 1 has to say that the possession was never delivered to the plaintiff at any point of time, rather the people of 'Ratanpur Chhelia Sahi', are in continuous possession of the suit property. It is also contended by the above defendant that himself along with his other brothers and SAHI people of Chhelia Sahi are Marfatdars of the deity called 'NARAYANI'. On the other hand the plaintiff has brought the present suit in order to harass the villagers as well as the defendant No. 1. It is specifically contended by the defendant No. 1 that he is an old man of 70 years and manages the entire affairs of the deity with the villagers as they are in possession of the suit property since long. The temple of 'MAA NARAYANI' situates over the suit property since more than 20 years. The plaintiff is creating problems with the possession of the villagers over the suit property. The specific case of the above defendant is that the plaintiff had applied for mutation of the suit property before the mutation officer, Tangi vide mutation case No. 427/2005 dt. 18.05.2009 and the Amin of the concerned locality after due inquiry found that the temple of 'MAA NARAYANI DEVI' situates over the disputed land along with a club building and a mental road is also passing over such property. The entire suit plot is in possession and

use of the general public of the village. The mutation officer after verifying all the documents came to the conclusion that the plaintiff is not in possession of the suit property from the date of his purchase and the suit property is being used by the public by constructing the temple, club and village road and accordingly the mutation case of the plaintiff was rejected. The plaintiff preferred one appeal before the Sub-Collector, Khordha vide mutation appeal No. 16/2006 and the same was also dismissed as the plaintiff was not in possession of the suit property. The defendant no-1 prayed for dismissal of the suit with cost

04. The defendant No. 2 has also filed a separate written statement by admitting the whole claim of the plaintiff and supported that he has sold the suit property to the plaintiff and delivered possession of it and as such the plaintiff is entitled for the relief as claimed for.

05. The rival pleadings of both the parties give rise of the following issues for an useful adjudication.

I S S U E S.

- i. Is the suit maintainable?
- ii. Is there any cause of action to bring the suit?
- iii. Whether the plaintiff has got right, title and possession over the suit property?
- iv. Whether the plaintiff is entitled to the relief of permanent injunction prohibiting the defendants from entering upon the suit property and from raising any construction over the same or creating any mischief thereon?
- v. What relief, if any, the plaintiff is entitled to?

vi. Whether the suit property is under continuous possession of defendant No. 1?

06. In order to prove its case, three witnesses have been examined on behalf of the plaintiff, out of whom P.W. 1 Dinabandhu Das is an independent witness. P.W. 2 is the plaintiff himself and P.W. 3 Laxmidhar Pradhan is the deed writer.

Plaintiff also relied upon the ROR recorded under khata No. 218, which is marked as Ext. 1 and the other documents such as the rent receipts as Ext. 2, sale deed No. 292 dt. 14.03.2005 as Ext. 3.

Similar three witnesses have been examined on behalf of the defendants. Madhaba Patra and Nrusingha Charan Das are the co-villagers. P.W. 3. Umakanta Patra is the defendant No. 1 (a) himself.

Two documents have been referred to this case by the defendants. The certified copy of the order in mutation case No. 477/2005 is marked as Ext. A and certified copy of the order of Sub-Collector, Khordha in mutation appeal No. 16/2006 as Ext. B.

F I N D I N G S.

Issue Nos. III, IV & VI.

07. The above issues are not only inter related to each other, but these are the core issues to adjudicate the matter under controversy and as such, taken up first for consideration.

Before dealing with the factual aspects involving in the above issues, it is quite necessary to deliver the basic facts of both the parties on the above context.

The plaintiff's case is that he has purchase a piece of land total Ac. 0.081 decimals from defendant No. 2 by virtue of a sale deed bearing No. 292/2005, which is marked as Ext. 3. This part of evidence has not been disputed by the defendants. It is also the very admitted case that initially the plaintiff has filed the present suit for the total Ac. 0.081 decimals of land, but after submission the written statement by both the defendants, the plaintiff amendment his plaint by confining his claim to 0.005 decimals. His specific case is that the suit property situates adjacent to the eastern side of suit plot. He is in possession of it having an asbestos house thereon. Defendant No. 2, who is the vendor to the plaintiff in his written statement, supported all the claim of the plaintiff.

Here the defendants No-1(a) to 1(c) have to say that the suit property belongs to the villagers, who are in possession of it. There is a temple called NARAYANI temple and a club called NARAYANI club are existing over the suit property. The village road is also passing over the suit property. The peculiarity in the claim of the defendants is that while the plaint was filed over total Ac. 0.081 decimals of land, their father had presented the written statement but, after amendment of the plaint, the present defendants were substituted and they entirely adopted the pleading of their father without any formal or essential amendments. But still the question remains, whether the plaintiff has a right, title, interest over the suit property? The plaintiff has came to the court with the above prayers seeking for relief of declaration and injunction and as such the onus lies on the plaintiff to prove the same.

08. It is undisputed that the entire Ac. 0.081 decimals of land originally belonged to the defendant No. 2 and he alienated the said land to the plaintiff by virtue of a sale deed vide Ext. 3. The said Ext. 3 reveals that the title was duly passed to the plaintiff followed by possession. Now, it is not under dispute that the title is absolutely with the plaintiff, whereas the possession of the plaintiff has been controverted. The plaintiff in his pleading and in evidence in chief claims that he is in possession of the suit property which is a part and parcel of the Ac. 0.081 decimals. P.W. 1 who is a co-villager of both the parties in support of the plaintiff's case has deposed that the plaintiff and his family members are in peaceful possession of the suit property. In the cross-examination he first stated that the temple of goddess NARAYANI and the NARAYANI club is there over the suit property. He again stated that the temple of goddess NARAYANI and NARAYANI club situated adjoining to the suit property. Making a clarification, P.W. 1 also stated that the house of the defendants situates adjoining to the eastern side boundary of the suit property. No other useful cross-examination has been made to him over the above issues. P.W. 2 is the plaintiff himself. Apart from the admitted facts, he exhibited the ROR in respect of the suit plot as Ext. 1, two sets of rent receipts in respect of the suit property as Ext. 2 & 2/a respectively. He also admitted the sale deed to be Ext. 3. In the cross-examination he has stated that initially he has filed the suit for Ac. 0.081 decimals, which has been purchased vide Ext. 3, but subsequently he amended his claim to Ac. 0.005 decimals of land. He again stated that the suit property has not been duly measured by any authorized person. He specifically admitted that the temple of MAA

NARAYANI is there in village Ratanpur since time immemorial He again admitted to the suggestion of the defendants that the said temple and the NARAYANI club is existing over his purchased land measuring Ac. 0.081 decimals. The same is used by Public in general. P.W. 3 is the deed writer, who drafted Ext. 3, but since Ext. 3 has not been disputed or challenger by any of the parties, the evidence of P.W. 3 needs no further discussion. At this stage, coming to the evidence from the side of the defendants, D.W.1, who is the paternal uncle of the defendants in his cross-examination, has stated that he has never gone through any document relating to the suit property nor to ascertain the exact area. He again stated that he cannot say as to who is the owner of the suit property as well as the claim of the plaintiff and the cause of institution of the suit. He has further stated that he cannot say the number of plot, wherein the NARAYANI temple has been existing. He further admitted that the suit property situates at the western side of the NARAYANI temple. He expressed his ignorance by saying that he cannot say if the suit property originally belonged to Nanda Kishore Mohapatra (D- 2) and if he had sold it to the plaintiff. D.W. 3 is the defendant No. 1 himself. His examination in chief is just a repetition of the written statement and as such the same need not be surfaced again. In the cross-examination he admitted that the asbestos house situates towards the east-south direction from NARAYANI temple. By making such a statement both the witnesses have clearly admitted that NARAYANI temple does not exist over the suit property particularly measuring Ac. 0.005 decimals. Making it further clear, D.W. 3 in his cross-examination in para – 15 has clearly stated that the village road situates towards the

western side of the suit property. The asbestos house over the suit property situates towards the east of the said road. The suit house situates at a distance of 7 to 8 feet far from the above noted village road. He again stated that he had no claim over the suit property.

09. The question of possession in this case is a delicate issue. Prior to have a discussion on that aspect of the case it must be remembered that possession always does not mean active or physical possession. It may be symbolic or passive. In the present case if the whole evidence of the witnesses is taken into count, the plaintiff adduced evidence regarding possession from the villagers, wherein the suit property situates and in token of his possession he also produced two sets of rent receipts in respect of Ac.0.081 decimals of land. Even though the suit property still stands recorded in the name of his vendor, the rent receipts vide Ext. 2/a reveals that the plaintiff has been paying land revenue to the state. So far as the defendants' evidence is concerned, their claim is completely different. They have claimed that the suit property is in possession of the villagers of 'Ratanpur'. The temple, NARAYANI club and the village road is passing over the suit property. While, dealing with the claim of the defendants, it should be noted that suit plot and suit property, which are the subject matter of the present case are skillfully different. Apart from that, the evidence as adduced from the side of the defendants is completely unsafe to rely upon as none of the witnesses has able to establish the claim of the defendants by providing a clear, concrete and cogent evidence to the effect that the plaintiff is not in possession of the suit property. Rather they in their cross-examination expressed there ignorance about

the suit matter. However, before arriving into any conclusion over the possession of the plaintiff, lets come to the subsequent plea of the defendants.

10. While the defendants came with a claim saying the suit property to be in possession and enjoyment of the villagers, gave birth of another vital question to the effect that whether in the above circumstances the defendants got any *locus-standi* to participate in the proceeding by representing the villagers in the present form. It is admitted that the suit property is a private property, which was sold to the plaintiff. The father of the defendants, who has filed the written statement, has clearly stated that the property is in possession and enjoyment of the SAHI people and the defendant No. 1 (Late Ladu Kishore Patra) is the elderly person of the SAHI to look after it. Therefore, it is clear that the defendant No. 1 himself has no claim over the suit property. He himself claims to be the representative of the villagers/ SAHI called Ratanpur. The plea taken by the defendant No. 1 has been adopted by his legal heirs. While dealing with the *locus-standi* of the present defendants, it is needless to mention that not a scrap of paper has been filed by the deceased defendant No. 1 to show that he has been either authorized by the villagers or SAHI people or a single person of that locality to represent them in the present suit. Where, it is very much within the knowledge of the defendant No. 1 that he was sued in his individual capacity. Secondly, after death of defendant No. 1, if the villagers were really interested to make their representation, they could have nominated their representatives in place of the deceased defendant No-1. But, while the present defendants were substituted in place of their father, they cannot take such a specific plea as taken by their father unless

there is a specific pleading to that effect. Moreover, when no authorization has been given to the defendants by the villagers, or the SAHI people or the managing committee of the village whatsoever, the defendants cannot take a plea that they have been representing the villagers. Coming to the evidence, D.W. 1 in his cross-examination has stated that he has never seen any document to ascertain that Ladu Kishore Patra was empowered by the villagers to look after the disputed property. Defendant No. 2 in his cross-examination has also admitted that he has never gone through any document to ascertain if Late Ladu Kishore Patra was looking the affairs of the temple with the help of the villagers. He further stated that he cannot say if the villagers had any interest over the suit property. D.W. 3 in his cross-examination also admitted that they have a ward member in their SAHI namely 'Basanti Patra. There is a village committee in their village consisting upon four members. He again admitted that he has never gone through any document to ascertain that the suit property is in active or passive possession of the villagers or used at any point of time by the villagers. This implies that neither the father of the defendants nor the present defendants have even taken any formal consent from the villagers or the village committee or the temple management or the club to represent them in the suit. If the villagers were really interested in this case they ought to have the opportunity to intervene into the matter, but they remained silent, which implies that neither the father of the defendants nor the present defendants at any point of time were authorized by the villagers or consented by them to represent them in the suit. The defendants have no *locus-standi* at all to adopt such a plea of representing the villagers. Their claim

that the villagers are in possession and enjoyment of the property is misconceived and not tenable in the eye of law.

11. So far as the question of existence of temple, village road and club over the suit land is concerned, it has already been noted in the earlier paragraphs that the written statement is not clear to the effect whether the aforementioned temple, village road and club situate over the entire purchased land of the plaintiff measuring Ac. 0.081 decimals or over Ac. 0.005 decimals. As because the written statement was filed by saying that the temple, club and the village road situates over Ac. 0.081 decimals of land, but not in respect of Ac. 0.005 decimals of land, which is the subject matter of the suit at the right stage. Further, during the course of cross-examination, it came to the light that defendant Nos. 1 & 3 have clearly admitted that the suit property situates in a different place keeping a distance from the club, temple and the village road and both the witnesses have also admitted that village road situates towards western side of the suit plot. The suit house situates at the distance of 7 to 8 feet far from the above noted village road and to the western side of the NARAYANI temple. Therefore, it has became crystal clear that neither the temple nor the club nor the village road is existing over the suit property, but in face of admission of the plaintiff the temple, club and the village road situates over his purchased land of Ac. 0.081 decimals, but not over the suit property, which is extending to Ac. 0.005 decimals only. This court finds no occasion to accept that except the asbestos house there is any other construction there over the suit property. Taking account of all the facts, rebuttal evidence from the side of both the parties as well as the documents as discussed in the forgoing paragraphs,

this court with all probabilities came to the conclusion that the suit property is in possession of the plaintiff and the defendant have no *locus-standi* at all to take a plea of representing the villagers and to contest the suit on behalf of the villagers. Their whole claim is liable to be rejected as not at all tenable in the eye of law.

12. Here the defendants have taken another plea controverting the possession of the plaintiff by saying that the plaintiff after purchase of the land applied for mutation vides mutation case No. 477/2005. In the said mutation case the local R.I. made inquiry and reported that the suit property is in possession of the villagers and accordingly his mutation case was rejected. The certified copy of the order in mutation case No. 477/2005 is marked as Ext. A. It is further contended that the plaintiff approached the Sub-Collector, Khordha against the order of the Tahsildar, Tangi in mutation case No. 477/2005. The Sub-Collector, Khordha while dealing with the case matter confirmed the order of the Tahsildar, Tangi by dismissing the case of the plaintiff. The order of the Sub-Collector, Khordha in mutation appeal No. 16/2006 is also marked as Ext. B. This court has visited the order of both the concerned revenue officers. Firstly, as per the report of the R.I., the Tahsildar, Tangi came to the conclusion that the purchased property of the plaintiff is in possession of the villagers. The report of the R.I. has not been submitted in this case. The property is a private property. The villagers or the managing committee of the temple or the SAHI people, whatsoever cannot themselves became the owners of the property without proving their lawful possession over it. Either they can prove their possession to be adverse to the real tenant within the scope and perview of section 65 (a) of limitation Act or

belonged to the community. It is very much within the knowledge of the revenue officer that the nature and type of the property is a private land. In spite of knowing the same to be a private land how and in which circumstances, the Tahsildar, Tangi accepted the R.I. Report by saying that the same is in possession of the villagers without inquiring into the nature of possession and legality involving therein. Whether the villagers have been noticed in the mutation case or not is shrouded in deep mystery. The order dt. 13.07.2005 of R.I., Kuhudi reveals that Krushna Chandra Patra, Ladu Kishore Patra (deceased defendant No. 1) and Narayan Patra appeared and presented a petition by saying that the suit plot situates in front of their house and the same is meant for the general public, wherein a temple, one club house and the village road situates. It may be true that the temple and the club house and the village road situates over Ac. 0.081 decimals of land, but after the claim of the plaintiff is amended and modified, it cannot be stated that the temple, club house and the road situates over the present suit property. At this outset it is also quite important to mention that the lawful owner of the property got a ample scope and power to evict illegal and unauthorized encroachment of his land. It is also clear that only basing on the application of three persons of their village who are the adjacent house owners; the order was passed without taking account of the legal aspect regarding possession and transfer of ownership. Both the orders of the revenue inspector are not binding on the civil court. The same is also not tenable in the eye of law as the order of the revenue officer in Ext. A & B appears to be improper and passed by overlooking the legal aspects relating to right, title, interest and possession. Therefore, Ext. A & B cannot be

accepted to be a piece of evidence against the possession of the plaintiff and in favour of the villagers.

Issue Nos. I, II & V.

13. So far as the question of maintainability of the suit is concerned, except regarding identification of the suit land nothing has been pressed by the defendants, therefore it would be wise enough to have a discussion on the said aspect of the case. Particularly, in the written statement, the defendants have not stated anything regarding the non-identification of the land with regards to the provision U/o- 7, R- 3 of CPC. Neither the witnesses from the side of the defendants nor D.W. 3, who is defendant No. 1(a) has raised anything in his examination in chief regarding non-identification of the land by the plaintiff, but for the first time during argument the said point was raised. However, being a question of law this court visited the pleading of the plaintiff. He has described the suit property, situates at mouza Ratanpur, under plot No. 218, plot No. 1869/2439 measuring Ac. 0.005 decimals out of total Ac. 0.081 decimals from the eastern side of the suit plot as indicated in the sketch map in red ink. Apart from such description, one rough sketch map has been appended in the plaint, which appears to be not as per the scale. The red ink which pointed out in the sketch map cannot be accepted as the same implies nothing except giving an impression to the court regarding the location of the disputed land and to that extent the sketch map is acceptable. The same is also ventilated to the defendants to get the exact position and location of the disputed land out of Ac. 0.081 decimals. But, for other reason the sketch map is of no avail. Coming to such identification, apart from the above

descriptions the plaintiff specifically described the boundary of the suit plot in the foot of the plaint under Schedule A property, which has also been clearly mentioned by the defendant in his cross-examination. This being the pleading and the picture regarding the location and description of the land, it cannot be stated that the plaintiff has not described the land with sufficiency and for which the suit is also maintainable. The plaintiff being the owner in possession of the suit property is entitled for the relief of declaration of his right, title as well as confirmation of possession over the suit property. For the sake of preserving and protecting his right and interest, it is desirable to injunct the defendants, who have been creating disturbances over the peaceful possession of the plaintiff and as such the plaintiff is entitled for the relief as sought for. Hence it is order.

O R D E R

The suit of the plaintiff be and the same is decreed on contest against the defendants, but in the circumstances without any cost. The right and title of the plaintiff over the property measuring Ac. 0.005 decimals at village Ratanpur, recorded under khata No. 218, plot No. 1869/2439 out of total Ac. 0.081 decimals as described in Schedule A property in the paint is hereby declared. His possession over the suit property is also confirmed. The defendants are here by permanently injunctioned not to interfere with the peaceful possession of the plaintiff over the suit property. Violation of this order entails the plaintiff to approach the court for implementation of the order by the due process of the court.

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 July, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

- P.W. 1 Dinabandhu Das.
P.W. 2 B. Ghanashyam Patra.
P.W. 3 Laxmidhar Pradhan.

List of witnesses examined on behalf of Defendants :-

- D.W. 1 Madhab Patra.
D.W. 2 Nrusingha Charan Dash.
D.W. 3 Umakanta Patra.

List of documents admitted on behalf of the Plaintiff :-

- Ext. 1 ROR in khata No. 218, plot No. 1869/2439 of mouza Ratanpur.
Ext. 2 & 2/a Rent receipts.
Ext. 3 Sale deed vide document No. 292/2005 executed by Nandakishore Manasingh.
Ext. 3/a Signature of P.W. 2 on Ext. 3.
Ext. 3/b Signature of scribe Laxmidhar Pradhan on Ext. 3.
Ext. 3/c Signature of Nandakishore Manasingh on Ext. 3.
Ext. 3/d Signature of witness Bibhuti Bhusana Champati on Ext. 3.
Ext. 3/e Signature of witness Godabarisa Patra on Ext. 3.

List of documents admitted on behalf of Defendants :-

- Ext. A Certified copy of order in mutation case No. 477/2005.
Ext. B Certified copy of order of Sub-collector, Khordha in mutation appeal No. 16/2006.

