

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.

Dated this the 28th day of November, 2013

C.S. 21/ 2008

Jemamani Sahoo, aged about 69 yrs., W/o- Late Bhikari Charan Sahoo,
of Vill.- Purushottampurpatna, P.O.- Olasingh, P.S.- Jankia,
Dist- Khordha. Plaintiff.

-Versus-

Sobha Manasingh, aged about 50 yrs., W/o- Iswar Manasingh
of Vill.- Purushottampur, P.O.- Olasingh, P.S.- Jankia,
Dist- Khordha.Defendant

Counsel for Plaintiffs :- Sri A.K Dash and associates,
Advocates, Khordha

Counsel for defendants Sri K. Roy, and associates,
Advocates, Khordha

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Date of Argument – 27.11.2013

Date of Judgment – 28.11.2013
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JUDGMENT

This is a suit for partition.

02. The case of the plaintiff is that the home stead landed property under Khata No. 105 measuring Ac. 0.50 decimals and khata No. 39 measuring Ac. 0.45 decimals in mouza Kamala Prasad Patna (hereinafter referred as the suit property) was recorded in the name of Bhobani Prusty and Kshetrabasi Prusty, who are the sons of Bidya Prusty. Both Bhobani and Khetrabasi being the recorded tenants having their half share each over the suit property. They died leaving behind their successors. Bhobani Prusty has one son namely Arakshita. Kshetrabasi has two daughters namely Rani and Buli. The property devolved upon their respective heirs. There was a residential house over the suit property which has been jointly owned by Bhobani Prusty and Kshetrabasi Prusty. After them, their legal heirs were residing in the said house. After the death of the recorded tenants their successors enjoyed the suit property after effecting one amicable partition between themselves and accordingly the eastern half was allotted to Arakshita Prusty and the western half was allotted to Rani Dei and Buli Dei. The plaintiff's further case is that Buli and Rani for their legal necessity sold and transferred their interest over the suit plot measuring Ac. 0.047 ½ decimals to the defendant through a registered sale deed bearing No. 2019 dated– 21.08.2006 and subsequently Arakshita Prusty also transferred his half share measuring Ac. 0.047 ½ decimals to the plaintiff. Both the vendors delivered possession of the suit property to their respective purchasers and the plaintiff and defendant became the exclusive owners in possession of their respective purchased property. In the above circumstances, the plaintiff advanced his case saying that the plaintiff and defendant started possessing the living room,

courtyard and the backyard over the suit plot jointly. But, due to rude behaviour and wrong attitude of the defendant, it is become difficult on the part of the plaintiff to possess the suit property jointly. He approached the defendant for partition on 24.02.2008, which the defendant give a deaf ear. Therefore he preferred the suit.

03. On the other hand, the defendant also participated in the proceeding and filed his written statement. She has to say that the present suit is not maintainable as misconceived both in law and in fact. The plaintiff has no subsisting right, title, interest and possession over the suit property and there is also no cause of action in the suit. It is further contended that the suit is also barred by limitation and for non-joinder of necessary parties. The defendant's further case is that Bhobani Prusty has two sisters namely Ullasaini and Bauri, who are the sisters of plaintiff are not impleaded as parties to the suit. Similarly, Sakuntala and Rajalaxmi who are tee daughters of Khetrabasi are also necessary parties to the present suit, while the question of partition is concerned. The defendant's specific case is that after death of Bhobani, his son Arakshita was never in possession of the suit property, rather Rajalaxmi and Sakuntala were in exclusive possession of the same. Bhobani Prusty never had a residential house over the suit property, she has a residential house at village Purusottampour Patna. Further it is contended by the defendant that as per the amicable division Bhobani Prusty was residing in his allotted home stead land in village Purusottampur Patna whereas Kshetrabasi Prusty was residing in the suit house and after the death of Kshetrabasi the suit house devolved upon his daughters namely Rajalaxmi and Sakuntala.

Subsequently, the defendant purchased the interest of Rajalaxmi and Sakuntala but, she has not purchased any specific western half of the suit property. Whereas the sale deed executed by Arakshita Prusty in favour of the plaintiff is null and void as Arakshita Prusty had no subsisting title or possession to sale any portion of the suit property to the plaintiff. It is again contended by the defendant that the plaintiff has no idea about the suit property. There are five 'ATTU' rooms and one straw thatched house over the suit property. The plaintiff who is a stranger has never possessed any portion of the suit property. The other allegations made by the plaintiff are baseless and false.

04. The above rival pleading gave rise of the following issues for an useful adjudication.

I S S U E S.

- i. Is the suit maintainable?
- ii. Has the plaintiff any cause of action to bring the suit?
- iii. Whether the suit is barred by law of limitation?
- iv. Whether the suit is defective for non-joinder of necessary parties?
- v. Whether there was any previous partition of the suit property between the successors of the recorded tenants?
- vi. Whether the sale deed dated – 17.01.2001 executed in favour of the plaintiff is a nominal and void document?

vii. Whether the suit property is partible by metes and bounds among the parties by allotting half share each?

viii. What relief, if any, the plaintiff is entitled to?

05. In order to substantiate his case plaintiff examined two witnesses in all, out of which P.W. - 1 Suresh Chandra Sahoo is the power of attorney holder of the plaintiff. P.W. - 2 Manguli Charan Barik is a co-villager having knowledge about the suit matter. Five documents have been relied upon by the plaintiff and exhibited at the time of hearing of the suit. The registered sale deed vide document No. 94 dated 17.01.2007 is marked as Ext. 1. The certified copy of the ROR of Khata No. 39 of Mouza- Kamalaprasad Patna as Ext. - 2, Certified copy of the ROR of khata No. 105 of mouza Kamalaprasad Patna as Ext. 3, land receipts as Ext. 4 to 4/b respectively and the special power of attorney executed by the plaintiff in favour of the P.W. - 1 as Ext. - 5.

06. Similarly, two witnesses have been examined on behalf of the defendant. D.W-1 Nilamani Biswal is also a co-villager and witness to the sale deed executed in favour of the defendant. Sri Srinibash Manasingh is the son of defendant. Three documents have been relied upon by the defendant. Ext. - A is the registered sale deed vide document No. 2019 dated – 21.08.2006, ROR in khata No. 73 of mouza Purusottampur Patna as Ext. - B and certified copy of the ROR in khata No. 27 of mouza Purusottampur Patna as Ext. C.

FINDINGS.

Issue Nos. v & vii.

07. The plaintiff while claiming partition of the suit property came with a specific fact that the the same has not been partitioned by me and bound by the successors of recorded tenants prior to alienation of the same to the plaintiff and defendant. The plaintiff has to say that only there was an amicable partition between themselves. This being the most crucial aspect of the case require to be determine basing on which the whole case is going to be adjudicated.

Certified copy of the ROR under khata No. 39 and 105 of mouza Kamalprasad Patna have been executed as Ext. - 2 and 3 respectively, which reveals that the same has been recorded in the name of Bhobani Prusty and Kshetrabasi Prusty. They died since long and it is the specific case of the plaintiff that the successors of Bhobani Prusty and Kshetrabasi Prusty partitioned the above property between themselves amicably. Therefore Ext-2 and 3 having no use at all except giving a good corroborative support to the case that the suit property is the property of the ancestors to the vendors of plaintiff and defendant. The successors are the sons of Bhobani and two daughters of Kshetrabasi Prusty. As per the defendants the two daughters of Kshetrabasi such as Rajalaxmi and Sakuntala are left out by the plaintiff. Arakshita Prusty alienated his share measuring Ac. 0.047 ½ decimals to the plaintiff and similarly, the daughters of Kshetrabasi executed their share of Ac. 0.047 ½ decimals to the defendant.

08. Firstly, it is not possible to ascertain on which basis the plaintiff came to the court with a claim of amicable partition between the parties. In case the plaintiff's case is accepted, she has to made the legal heirs of Bhobani Prusty and

Kshetrabasi Prusty as parties who are the vendors to the plaintiff and the defendant and the best persons to answer the same. Neither the plaintiff nor the defendant are answerable to the question of earlier partition to which they are no way concerned. Even though no relief has been sought for from the vendors, they are severally and jointly related to the common question of law and fact. In such case of partition, the plaintiff has to include all the properties are necessary parties to adjudicate the matter basing on which the relief is sought for. In case the entire ancestral property of the vendors have not been partitioned and they sold away certain property to the others, the purchasers has right of partition to curve out their share. But he can not claim a specific property only from the person who sold it to him. In case the same is allowed, it will be violate the basic principles of partition. A wrong cannot be corrected by committing another wrong. It is a settled principle that a co-personer may alienate his undivided interest in the joint family property to any other and in the above circumstances the bona-fied purchaser has a right to seek partition of the co-personer property for curving out the share, but in the present case, the plaintiff's case is completely different. She has purchased specific land from the co-perceoner and also took possession of the suit as per his own pleading. Accordingly, defendant purchased the respective share of another co-personer. In the above circumstances, if the plaintiff is interested to curve out his share on partition, he has to bring all the properties along with the necessary parties to execute a partition by metes and bounds. Unless and until the properties and the parties are included the claim of the plaintiff cannot be adjudicated properly. In other way, whether there

was a partition by meats and bound or not can be answered only by the persons involved with the same. The defendant is not the proper or necessary party to give a answer. His admission if any is also of no use.

09. For the sake of advancing the further discussion, let's accept that there was no partition between the successors of Bhobani and Arakshita over the suit property. Still, the question is whether the plaintiff is entitled for the relief of partition basing on the present facts and circumstances of the case. The answer depends upon the unit of title or possession. If the evidence of P.W. 1 is taken into count he has to say that after purchase of the land, the plaintiff is in exclusive possession of it. Regarding possession, P.W. - 2 has to say that he has never visited the two rooms as above and he is unable to say as to which is the bigger room between the both. He again stated that there is a passage from southern side of the suit land passing in between the two asbestos rooms. In case both the parties are possessing one common house over the suit property, it is their personal outlook and the plaintiff can sought for a relief of permanent injunction by excluding the defendant from entering into his property alienated by Arakshita Prusty, but unless the unity of right, title and interest is proved, the question of partition does not arise. So far as the unity of interest is concern, in view of the execution of the sale deed and the claim of the plaintiff regarding her exclusive possession of her purchased land the unity of title does not arise as no document can create or extinguish the interest. Ext. 2 and 3 have been recorded in the name of Bhobani and Kshetrabasi, who are the ancestors of the vendors of the plaintiff and

defendant. Those documents are irrelevant to establish the title of plaintiff and defendant as the plaintiff has admitted amicable partition between the successors of the recorded tenants. So, far as the question of possession is concerned the court cannot be instrumental for a settlement between the parties beyond the purview of the law. The unity of possession has assigned by the plaintiff is absolutely not tenable in the eye of law as the course is upon for the plaintiff to protect and preserve her right. While the plaintiff is claiming her right over a specific property as per the sale deed, she cannot go beyond the same again by challenging the same. Partition should be open and by way of partition a right, title, interest of a party will be identified and specified in order to exercise his right over the same. The plaintiff came to the court over a specific property which has been purchased by her again by claiming that the defendant who is the purchaser of the adjoining land is in joint possession of the common rooms, courtyards and the BARI with her over the suit property. Let's come to the basic facts, the plaintiff in the present case claimed half share over the suit property claiming another leaving the rest half to the defendant. If the plaintiff's case is reassessed, the same reveals that she purchased Ac. 0.047 ½ decimals from Arakshita Prusty. The property was in exclusive possession of Arakshita Prusty and he delivered possession of the suit land to the plaintiff and the plaintiff is in exclusive possession over her purchased land having her right, title, interest over it and similarly, the defendant effected his exclusive right, title and interest over her purchased land. Both the parties have relied upon their respective sale deeds. The sale deed executed in favour of the plaintiff is

marked as Ext. 1, where Arakshita Prusty has alienated Ac. 0.047 ½ decimals in favour of the plaintiff. The sale deed reveals the exact area of the land alienated to the plaintiff by the vendor Kshetrabasi by giving the exact description along with the boundary of the purchased land of the plaintiff. Therefore, the land purchased by the plaintiff has been specifically identified in the foot of the sale deed which has been executed in the year 1997. The plaintiff has not disputed the said sale deed. In that way she expressly admitted the exclusive right, title, interest and possession of Kshetrabasi over her purchased land. If she had have a little knowledge about the unit of possession of title or interest she would have approached the vendors and the owners of the suit property to carve out her share and if not possible she had also other options. Here the plaintiff admitted that, her purchased land has been specifically identified and as per the pleading the plaintiff she took possession of her purchased land from the vendor and became the exclusive and absolute owner of the property. Similarly the plaintiff has not also disputed the share of the defendant over the suit land. While the share have been identified, specified and already allotted to the plaintiff and defendants on record as well as admitted by the plaintiff, the question of unit of possession or title does not arise and while they are in exclusive possession of their respective share, no land is available for partition. The purpose of the partition is not to decide the disputes between the parties like encroachment and intervention by outsiders.

In the present case is the right, title, interest and possession has already been specified by virtue of the sale deed and both the parties are claiming their

possession since long even after execution of the sale deed and as such the claim of partition by the plaintiff is not permissible as per law.

Issues Nos. vi.

10. The defendant raised question on the legality of sale deed executed in favour of the plaintiff by Arakshita Prusty. The defendant has to say that the Rajalaxmi Sahoo and Sakuntala Sahoo were in possession of the property alienated to the plaintiff and Arakshita has no manner of right, title, interest and possession over the said property and as such, alienation by Arakshita is null and void. So far as the possession of Sakuntala and Rajalaxmi is concern the defendant fails to adduce any cogent and concrete evidence to that effect. She has only tried to establish that other co-personers have not been made as parties. In this regard it may be noted that the plaintiffs case is concentrated upon the property which is in possession of the plaintiff and defendant. If it is believed for a moment that Bhuboni and Kshetrabasi Prusty have other successors besides the vendors of the plaintiff and defendant , the same also do not affect the plaintiffs case. Because, it is clear from the very case of the defendant that Bhubani Sahoo and Kshetrabasi Prusty having their other properties besides the suit property. That being the defendant's case, if the question of amicable partition is accepted the allotment of share to the other co-owners including the daughters of Kshetrabasi Prusty in respect of some other properties cannot be ruled out. The defendant has also fails to establish that Sakuntala and Rajalaxmi are the daughters of Kshetrabasi Prusty. The defendant has also failed to produce a scarp of paper or any cogent evidence to establish their

subsisting interest over any property or if both are dead or still alive. Since the sale deed executed by Arakshita in favour of the plaintiff has not been substantially questioned by the defendant with convincing approach, this court has no hesitation to hold that the sale deed vide Ext. 1 is valid and effective one.

Issues Nos. i, ii, iii, iv & viii.

10. So far as the question of maintainability is concern the same has not been pressed by the defendant and as such the same needs no further discussion. It has been already discussed that the suit land is not partible at all and the claim of the plaintiff for partition of the suit property is not tenable in the eye of law, as such the plaintiff is not entitled for the relief of partition or any other alternative. Hence it is order.

O R D E R.

The suit of the plaintiff be and the same is dismissed on contest against the defendant but in the circumstances without any cost.

Advocate's fee is at the contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 28th day of November, 2013.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1 Suresh Chandra Sahoo.

P.W. 2 Manguli Barik.

List of witnesses examined on behalf of Defendants. :-

D.W.1 Nilamani Biswal.

D.W. 2 Srinibash Manasingh.

List of documents admitted on behalf of the Plaintiffs :-

Ext.1 R.S.D. No. 94 dated – 17.01.2007.

Ext.1/a to 1/g-Signature of P.W. - 1 on Ext. 1.

Ext. 2 C.C. Of ROR of Khata No. 39 of mouza Kamalaprasad Patna.

Ext. 3 C.C. Of ROR of Khata No. 105 of mouza Kamalaprasad Patna.

Ext. 4 to 4/b Rent receipts.

Ext. 5 Special power of attorney executed by plaintiff.

List of witnesses examined on behalf of Defendants :-

Ext.A R.S.D. Vide document No. 2019 dated – 1.08.2006.

Ext.A/1 Signature of D.W. - 1 on Ext. 4.

Ext. B ROR in Khata No. 73 of mouza- Purusottampur Patna.

Ext. C Certified copy of ROR in Khata No. 27 of Mouza Purusottampur Patna

Sr. Civil Judge, Khurda.