

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 18th day of April, 2014

C.S. 255/ 2008

Sri Dinabandhu Pradhan, S/o- Late Akura Pradhan, permanent resident of Vill.- Mukundaprasad, P.O.-P.N. College, Khordha P.S./Dist- Khordha at present residing at- Rathipur, P.O.- Kantia, P.S.- Jatni, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Harihar Pattnaik, aged about 43 yrs, S/o- Late Haris Chandra Pattnaik, resident of 74/B, Smriti Vihar, Sector- K/1, Aashiana Colony, Lucknow (U.P.), Authorised signatory of S.D. Propcon Pvt. Ltd., Housing Regd. Office at N-391, "C" Block, Sakarpur, East Delhi.
2. Neta Bewa, aged about 85 yrs, W/o- Late Akura Pradhan (Abated on 26.03.2013)
3. Nishakar Pradhan, aged about 62 yrs, S/o- Late Akura Pradhan.
4. Dibakar Pradhan, aged about 60 yrs, S/o- Late Akura Pradhan.
5. Krupasindhu Pradhan, aged about 55 yrs, S/o- Late Akura Pradhan.
6. Brajabandhu Pradhan, aged about 52 yrs, S/o- Late Akura Pradhan.
7. Jagannath Pradhan, aged about 40 yrs, S/o- Late Akura Pradhan.
Sl. No. 2 to 7 are resident of Vill.- Mukundaprasad, P.O.- P.N. College, P.S./Dist- Khordha.

8. Pramila Dei, aged about 64 yrs, W/o- Gandhi Samantaray, D/o- Late Akura Pradhan, At- Madhapur, P.O.- Angarpada, P.S./Via- Chandaka, Dist- Khordha.
9. Lokanath Khatei, aged about 32 yrs, S/o- Kertinaya Khatei.
10. Jagannath Khatei, aged about 30 yrs, S/o- Kertinaya Khatei.
11. Biswanath Khatei, aged about 26 yrs, S/o- Late Kertinaya Khatei.
Sl. No. 9 to 11 are At/P.O.- Gurujanga, P.S./Dist- Khordha.
12. Gitanjali Jena, aged about 20 years, W/o- Kelu Jena, D/o- Late Kertinaya Khatei, At- Majana, P.O.- Angarpada, P.S.- Chandaka, Dist- Khordha.

.....Defendants

Counsel for Plaintiff ... Sri B.K. Mohapatra and associates
Advocates, Khordha

Counsel for defendant No. ... Sri B. C. Mohanty and associates,
Advocates, Khordha

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Date of Argument – 02.04.2014

Date of Judgment – 18.04.2014
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JUDGMENT

The plaintiff has preferred the suit for partition of the property recorded under khata No. 81 of mouza Kanjiama, khata No. 7 and 179 of mouza Kumarabasta & Khata No. 5 & 183 of mouza Mukundaprasad (hereinafter called to be the suit property) among plaintiff and defendant Nos. 2 to 12 and permanent injunction against the defendants from alliterating or making any construction over the suit property until partition is effected.

02. The case in hand is that the entire suit property is their ancestral coparcenary property. Their deceased father, Akura Pradhan has seven sons and

two daughters. After the death of Akura Pradhan the entire suit property devolved upon the his legal successors who are the plaintiff and the defendants No-2 to 12 respectively. One of the daughters of Arkura Pradhan namely "Urmila" died during the dependency of the suit and as such her legal heirs have been impleaded as defendants No-9 to 12 respectively. Similarly, defendant No. 2, Neta Bewa also died during pendency of the suit and as such the suit against her was abated on 26.03.2013.

The specific case of the plaintiff is that the defendant Nos. 3 to 7 have alienated a portion of the suit property to defendant No. 1 by ignoring him. The said defendant No-1 is a stranger to the suit property and since some property have been alienated to him, he has been impleaded as a party. The plaintiffs also contended that such a transaction is voidable one as the same has been transferred out of an undivided interest, which is not permissible in the eye of law. The further claim of the plaintiff is that on 02.09.2008, he came to know about the sale deed and on 10.10.23008 he demanded for partition of the suit property which was ultimately refused by the other defendants. It is again contended by the plaintiff that since the suit property has not been partitioned by metes and bounds he has filed the suit for partition having his 1/9th share over the suit property.

03. After institution of the case the defendants have appeared. Defendant Nos. 1, 4, 5 & 6 jointly filed a written statement. Defendant Nos. 3 & 7 filed their separate written statement and defendant No. 8 has also filed a written statement of

her own. However the suit against the defendants No-9 to 12 set-exparte because of their approach of keeping themselves away from the proceeding.

If the written statement of all the above defendants is taking into consideration, except certain negligible differences of words and sentences, the facts contended in all the three written statements are quite similarly and as such the contents of written statement of the all the above defendants are surfaced as follows;

The defendants first dispute the suit on the question of maintainability, lacking of cause of action as well as non-joinder of necessary parties. However the defendants only admitted that the suit property is the co-parcenary property / joint family property of the plaintiff and defendants No-2 to 12. But, the specific case of the defendants is that the plaintiff is the natural son of late Akura Pradhan, but subsequently, he was adopted by one Chakradhara Pradhan on 13.05.1972 followed by giving and taking ceremony and the plaintiff has been considered as the legally adopted son of Chakradhar Pradhan. His marriage was solemnized with the natural daughter of his adoptive father. Therefore, the plaintiff is not entitled for any share as claimed for. The sale has been properly and legally executed by the defendants No- 3 to 7 wherein a portion of the suit property has been duly transferred to the defendant NO-1. Therefore, the plaintiff who has no manner of right, title, interest and possession over the suit property, only to grab the property of the defendants has filed the present suit with an ill-intention and as such the same is liable to be dismissed with cost.

04. 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 ?
- iii. Is the suit barred for mis-joinder or non joinder of the necessary parties?
- iv Whether the plaintiff has any manner of right, title, interest or possession over the suit property?
- v Whether the plaintiff is the adoptive son of any Chakradhar Baliarsingh of village Rathipur.?
- vi Whether the plaintiff has entitled for the relief of partition over the suit property?
- vii Whether the plaintiff is entitled to a decree of permanent injunction against the defendants over the suit property?
- viii What relief, if any, the plaintiff is entitled to?

05. 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 relied upon nine numbers of documents, those have been admitted in the evidence and exhibited by the court as Ext-1 to Ext-9 respectively. .

Similarly, only Krupasindhu Pradhan, defendant No-5 is examined on behalf of all the defendants as D.W. 1. They have not relied upon any documents

FINDINGS.**Issue Nos. IV, and V.**

06. It is the very admitted case that the suit property is the coparcenary property of all the parties except defendant No. 1. But, the defendants disputed the right, title, interest of plaintiff over the suit property by raising a new question that the plaintiff is the adopted son of one Chakradhar Baliarsingh. The defendant No. 8 more specifically contended that Chakradhar Baliarsingh adopted plaintiff on 13.05.1972, followed by giving and taking ceremony. She again contended that the plaintiff got married to the daughter of Chakradhar Baliarsingh. This part of the pleading being adopted by the defendants and raised before the court specifically, the onus lies on the defendant to proof the same before the court.

With regards to adoption, except oral evidence, not a single document has been produced or proved by the side of the defendants to establish that the plaintiff is the adopted son of Chakradhar Baliarsingh of village Rathipur. D.W-1 who has supported the said fact in his evidence, has ultimately admitted in his cross-examination in para 13 that Chakradhar Baliarsingh is the father in law of the plaintiff. This fact has already been admitted by the defendant No-8 in her written statement.

On the other hand the plaintiff apart from his oral evidence has also relied upon the public documents such as the voter identity card and ADHAR card to be Ext-8 and 9 respectively, to establish that he is the son of Arkura pradhan and

never been adopted by Chakradhar Baliarsingh. Therefore, the case of the defendant on that aspect of this case is highly misleading.

Similarly, D.W-1 in this cross-examination in Para-14 has again admitted that the suit property is the coparcenary property and the plaintiff has a subsisting interest in it. That being the admitted position of this case, the plaintiff being the son of Akura Pradhan having a definite interest over the suit property which is admittedly a coparcenary property of all the parties to the suit.

Issue Nos.VI and VII.

07. The above being the findings of the court basing on the admitted version of the parties, needless to say that the suit property is partiality in nature. Admittedly the suit property has not been partitioned in any manner and as per the case of the plaintiff, the defendants are not interested for partition and even refused his proposal for partition by meats and bounds. It is the further case of the plaintiff that in order to deprive him from the suit property, the defendants are avoiding partition. However basing on the above cause of action it is the clear and conclusive opinion of this court that the suit property is partible and liable to be partitioned as per the share of individual co-owners, in order to identify their respective share.

Now, the recorded tenants such as Dasa Pradhan and Akura Pradhan are dead. Their wives have already been given farewell to the mortal world. Therefore, the suit property has been devolved to the plaintiff and the defendants No. 3 to 12. Here, it is quite important to note that the plaintiff and defendants No-3 to 8 are the brother and sisters and as such each have equal share over the suit

property. Their another sister namely Urmila is dead being survived by defendants No-9 to 12, who having jointly a share over the suit property which belongs to their mother.

Coming to the question of partition, the plaintiff and defendants N0-3 to 8 have $1/8^{\text{th}}$ share each over the suit property and defendants No-9 to 12 jointly having the rest $1/8^{\text{th}}$ share over the suit property.

08. The plaintiff even though not sought for any relief for deceleration of the sale deed executed in favour of the defendant No-1 by the defendants No-3 to 7, the certified copy of the said sale deed bearing registration No-2648 Dt-02.09.2008 has been relied upon and admitted by the plaintiff's as Ext-6 without any objection. Since a part of the suit property has already been alienated by the defendants, a partition as per the above observation of this court is not possible unless a direction to that effect is not imparted by this court. Keeping in mind the said aspect of this case, this court would like to invite the reference of the Hon'ble High Court of Orissa reported in '**104 (2007) CLT-575 a case between Sukadev Jena – versus- Kuna Rout and others**'? In the said judgment the Hon'ble Court have observed as follows;

“A coparcener may alienate his undivided interest in the joint family property but he cannot alienate his interest in any specific property belonging to coparcener for the simple reason that no coparcener can before partition claim any such property as his own and that any such alienation would remain valid only to the extent of the seller's interest in the alienated property. Any sale by one of the

coparcener of the undivided interest in the coparcener property without the consent of other coparceners would not be void ab-initio, but would be voidable at the option of others coparcener and therefore a bonafied purchaser has right to seek partition of the coparcenary property for carving out his share”

The above being the settle principle of law, it is the further observation of this court that the land which has been alienated to the defendant No-1 by the other defendants shall be curved out from the share of the venders/ defendants of the sale deeds bearing No- No-2648 Dt-02.09.2008 and be allotted to the defendant No-1.

09. But so far as the question of permanent injunction is concerned, the plaintiff sought for the said relief in order to restrain the defendants to alienate the suit property until the partition is executed. It is worthwhile to mention that the suit property is joint family property and all are in joint possession over it. The share of the parties over the suit property has not yet been identified. However, after pronouncement of the judgment, the plaintiff is at liberty to proceed in accordance with law for due partition of the suit property. In case the parties proceed to alienate any part of the suit property, the same will not be binding on the plaintiff as observed in the forgoing paragraphs and as such an order of injunction against the defendants as sought for by the plaintiff is not necessary to be entertained at this stage. The said prayer of the plaintiff is therefore rejected.

Issue Nos.I,II,III and VIII.

10. 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 only entitled for the relief of partition. Hence it is order.

ORDER

The suit of the plaintiff be and the same is preliminarily decreed in part on contest against the defendants No-1 to 8 while Ex-party against the defendants No-9 to 12, but in the circumstances without any cost. The plaintiff and defendants NO-3 to 8 have 1/8th share each over the suit property and defendants No-9 to 12 are jointly having the rest 1/8th share over the suit property. The defendant No-1 shall carve out his share of land from his vendors/defendants out of their share over the suit property at the time of partition.

The parties are directed to effect partition of the suit schedule property among themselves as per the observation of this court amicably within three months hence; otherwise the plaintiff is at liberty to effect partition through the process of court.

Advocate's fee 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 18th day of April, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1 Dinabandhu Pradhan.

List of witnesses examined on behalf of Defendants :-

D.W. 1 Krupasindhu Pradhan.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1 Certified copy of ROR in khata No. 81 of mouza Kanjiama.

Ext. 2 Certified copy of ROR in khata No. 07 of mouza Kanjiama.

Ext. 3 Certified copy of ROR in khata No. 179 of mouza Kumarabasta

Ext. 4 Certified copy of ROR in khata No. 183 of mouza Mukundaprasad.

Ext. 5 Certified copy of ROR in khata No. 05 of mouza Mukundaprasad.

Ext. 6 Certified copy of sale deed bearing No. 2648 dt. 02.09.08.

Ext. 7 Death certificate of Neta Bewa @ Pradhan vide Registration No. 347
dt. 17.12.11.

Ext. 8 Voter I.D. Card of P.W. 1.

Ext. 9 Adhar card of Plaintiff.

List of documents admitted on behalf of Defendants :-

Nil.

Sr. Civil Judge, Khurda.