

**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 5<sup>th</sup> day of August, 2014***C.S. 302/ 2007**

Badri Prasad Ram, aged about 63 yrs, S/o- late Srinibas Ram, of Main Road, Khordha, P.O./P.S./Dist- Khordha.

..... Plaintiff.

-Versus-

Muralidhar Mohapatra, aged about 60 yrs, S/o- Late subal Charan Raula, of Vill.- Kokasingh, P.O.- Kunjuri, P.S./Dist- Khordha, presently residing at near Eagal club, Khordha, P.O./P.S./Dist- Khordha.

..... Defendant.

Counsel for Plaintiff ... Sri S. K. Das and Associates  
Advocates, KhordhaCounsel for defendant ... Sri R.C Dash & Associates,  
Advocates, Khordha

.....

Date of conclusion of Argument	–	22.07.2014
Date of pronouncement of Judgment	–	05.08.2014

.....

**JUDGMENT**

This is a suit for permanent injunction simpliciter.

02. The plaintiff's case is that he is the exclusive owner in possession of a piece of land/case land measuring Ac. 0.414 decimals out of his total Ac. 5.000

decimals pertaining to plot No. 2650/3015, khata No. 648/2 of Mouza Jajarsingh (hereinafter called as suit land), which has been allotted to him as per their amicable family partition. The defendant is the eastern side adjoining land owner to the suit land pertaining to mutated plot No. 2652/84879. He has no manner of right, title, interest or possession over the suit land, but having some ulterior motive in his mind and also to grab the suit land, the defendant on 04.11.2007 gathered raw materials for construction over his own land. He tried to dig the foundation by encroaching some portion of the suit land, but due to strong resistance of the plaintiff, the defendant could not able to succeed with his attempt, but threaten to fulfill his wanton desire within a day or two, even at the cost of life of the plaintiff. Therefore the plaintiff finding no alternative presented the suit.

03. The defendant filed his written statement. He has challenged the suit on the question of maintainability. The defendant has to say that the joint family property of the plaintiff is recorded in the name of the plaintiff and his two brothers jointly which has never been partition nor the suit land was allotted to the plaintiff. The suit land as per the plaint is not identifiable as the sketch map has not been attached to the plaint nor proper description has been provided to the court. He has again stated that there is no cause of action and the pleading of the plaintiff is incorporated with misconceived facts. The plaintiff has to prove all those facts as well as the status of the suit land to be their ancestral property and partitioned by the co-sharers. The defendant's further case is that there was a public road appertaining to Sabik plot No. 2860 under Sabik khata No. 27 measuring An area of Ac. 504 decimals in between the

suit land and the plot of the defendant along with others. The said road is used by the general public, which runs from north to south direction as per the Settlement ROR and map of year 1929-30 and the said public road on the adjoining east of the suit land with an area of Ac. 0.223 decimals has been wrongly included within the suit plot No. 2650/3015. The road alignment has been plotted in the village map by putting "S" mark in the eastern alignment of plot No. 2650/3015, is shown to be a part of the suit plot. But, in fact the plaintiff has no manner of right, title, interest and possession over the said portion of the land, which is a road in between the suit land and the land of the defendant. The defendant and the other co-villagers have been using the said portion of the land as their road. It is further contended by the defendant that himself and others have also filed a suit vide CS No. 78/2004 for declaration of easementary right, permanent injunction and mandatory injunction against the State of Orissa, Badriprasad Ram and Ashok Kumar Agarwal in respect of the said road in the court of learned Civil Judge (Jr. Divn.), Khordha, which is sub-judice now. The said suit has been filed in respect of the land under Sabik khata No. 27 and plot No. 2860 with an area of Ac. 0.229 decimals out of Ac. 0.504 decimals. That is a suit for declaration filed by the aggrieved persons who have challenged merger of the village road, which has been marked as "S" in the Sabik village map, within the suit plot of the plaintiff. The Sabik plot No. 2860 was intervened by Sabik plot No. 2861 in the east and plot No. 2859 to the west. Now in the Hal settlement ROR the total area of Ac. 0.504 decimals covering under Sabik plot No. 2860 has been included under three plots and one "S" mark has been put covering an area of Ac. 0.229 decimals. Taking advantage

of the same, the plaintiff and his sons are now bent upon for illegal construction over the said land, which is meant for road. The defendant again contended that marking of “S” mark in the Hal map is arbitrary, illegal and contrary to the rule framed under the Survey and settlement Act. Therefore, he has challenged the same before the CJ (JD), Khordha, which has not been decided and for which the present suit is liable to be dismissed.

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 in the present form?
- ii. Is there any cause of action for the plaintiff to bring the suit?
- iii. Whether the plaintiff has got the locos-standi to file the suit?
- iv. Whether the plaintiff is the exclusive owner in possession of the suit land?
- v. Whether the defendant has been creating disturbances in the peaceful possession of the plaintiff over the suit land?
- vi. Whether the plaintiff is entitled for a decree of permanent injunction against the defendant and over the suit land?
- Vii. To what relief, the plaintiff is entitled for?

06. In order to prove its case, three witnesses have been examined on behalf of the plaintiff. Out of whom P.W. 1, Sudarsan Parida and P.W. 2 Sayed Firoz Alli are the co-villagers of both the parties. P.W. 3, Ashok Kumar Agarwal is the attorney holder of the plaintiff, who deposed evidence in favour of the plaintiff after getting

permission from the court. Three documents have been referred to the court in support of their case. Which are mentioned as follows.

The ROR in khata No. 648/2 of mouza Jajarsingh is marked as Ext. 1, Rent receipt as Ext. 2, Power of attorney executed by plaintiff Badri Prasad Ram in favour of P.W. 3 as Ext. 3.

On the other hand defendant examined himself as D.W. 1 for his own case and admitted the following documents.

The Certified copy of mutation ROR in khata No. 648/523 of mouza Jajarsingh is marked as Ext. A, 18 numbers of rent receipts as Ext. B to B/17 respectively, Certified copy of ROR in khata No. 1108 of mouza Jajarsingh as Ext. C, Hal-Sabik information sheet dt. 15.10.2004 as Ext. D, Money receipt issued by THE SAMAJA as Ext. E, Copy of new paper THE SAMAJA DT. 12.11.2004 as Ext. F, Hal-Sabik information sheet dt. 07.11.2005 as Ext. G, Sabik sketch map of Vill.-Jafarsa and Jajarsingh showing plot No. 286 as Ext. H, Hal sketch map of Vill.-Jafarsa and Jajarsingh showing plot No. 2651 as Ext. J.

### **FINDINGS.**

#### **Issue Nos. iv, v & vi.**

07. The above issues being the pivotal issues and related to each other are taken up first for consideration.

Prior to discuss the factual aspect of the case it is obligatory on the part of the court to surface the admitted facts of both the parties. It is the very admitted case of both the parties that the suit plot is not belong to the defendant nor he has any sort

of individual claim over the suit plot bearing Plot Nos. 2650/3015. It is also the admitted case of both the parties that the land of the defendant bearing plot No. 2652/84879 exclusively belongs to the defendant. But, the disputed facts involving in this case is follows :-

- i) The defendant has to say that the suit land is not exclusively belongs to the plaintiff rather this a part of joint family property of the plaintiff.
- ii) The suit plot includes the common road/ passage existing in between the suit plot and the plot of the defendant, which has been reflected in the Sabik village map, but amalgamated to the suit plot of the plaintiff in the Hal village Map and therefore, the right of the defendant and other tenants over the said passage has been illegally curtailed.
- iii) The defendant has not been interfering with the peaceful possession of the plaintiff over the suit plot. Rather he has a right to use the road amalgamated to the suit plot.

08. Now coming to the first question whether the suit land is the exclusive property of the plaintiff or not? The plaintiff's case is that the suit plot along with other properties have been recorded jointly in the name of Mahabir Prasad Ram, Kisanlal Ram and Badri Prasad Ram vide Ext. 1. Out of them Badri Prasad Ram is the plaintiff in this case. It is also not under dispute that the tenants are natural brothers being sons of Srinibas Ram of Village – Jajarsingh. The rent receipts relating to the suit land has also been relied on as Ext. 2. In his cross-examination the defendant himself who has been examined as D-W-1 has categorically admitted that the suit plot

has been amicably partitioned among the brothers of the plaintiff and the eastern side suit plot extending to Ac. 5.000 is allotted to the plaintiff. Lets now assume that the suit land is the joint family property of the plaintiff, which has been recorded in the name of the plaintiff and his two brothers and the plaintiff has not proved the partition of such property by metes and bounds. In such circumstances, law is well settled that any of the co-sharer of a property owes a natural right to preserve and protect his property from the outsiders even in absence of the other co-sharers. Therefore, the plea of the defendant that the suit property is not exclusively belong to the plaintiff yield just nothing as because it is the very admitted case that the plaintiff is one of the owner of the property and as such he owes the right to prevent and protect the property from the outsiders and as such institution of the suit for permanent injunction is tenable in the eye of law.

09. The defendant has put more emphasis on the fact that there was a road as per the Sabik Village map in between the suit plot bearing No. 2650/3010 and the plot of the defendant bearing No. 2652/84879. The written statement as well as the evidence of D.W. 1 is very specific and clear and in support of the same he has also relied upon two village maps such as Ext. H & J. If one go through the sketch map with regards to Ext. H, can well as certain that there is a road in between the suit land and the land of the defendant from north to south touching the main road. One "S" mark has been pointed/marked in the road passing through the suit plot and the plot of the defendants, Such mark has not been mentioned on the rest portion of the road passing in between the suit plot and sabik plot No. 2651. The said "S" implies that the

road in between the suit plot and the plot of defendant as per the sabik record has been amalgamated to the suit plot of the plaintiff. The revenue authority while preparing the Hal sketch map vide Ext. J has amalgamated the said road with the plot of the plaintiff. This being the factual aspect of the case as it reveals from the sketch maps, it is the opinion of this court that this is the prerogative of the revenue authority and being not challenged before this court nor a subject matter of this present suit, this court cannot interfere with the said act of the revenue authority. On the other hand the defendant has admitted that he has challenged the same act of the revenue authority before the Civil Judge (Jr. Divn.), Khodha in a suit bearing C.S. No. 78/2009, which is still sub-judice. Apart from that there is no scope for this court to adjudicate such a matter, which is in fact not a subject matter before this court. Rather the suit land of the plaintiff, which is the subject matter of the case is to be looked into on the question whether the right, title and possession of the plaintiff has been violated by the act of the defendant or not? If the road is not the part and parcel of the original plot of the plaintiff then the defendant would have no objection regarding the right, title and enjoyment of the plaintiff over the suit plot. If at all it is accepted that the revenue authority has included the road with the existing plot of the plaintiff then it is upon to the defendant to adopt the recourse of law, but he cannot interfere with the peaceful possession of the plaintiff over the suit land unauthorizedly and illegally. Therefore, the claim of the defendant that the road has been amalgamated to the suit plot of the plaintiff is of no use in this case, rather he has to take all endeavor to approach the appropriate forum or to proceed with the civil suit as filed earlier, which would be the proper recourse for him to take

away and to curve out the said portion of the land, which is meant for the use of the general public or the community, if any.

10. Lets now come to the most crucial aspect of the case. The plaintiff has to say that the defendant is interfering with his peaceful possession over the suit land. P.W. 1 & 2 have supported the case of the plaintiff by saying that the defendant is trying to encroach some area from the eastern side of the suit land. The plaintiff vehemently opposed to it and brought the present suit against the defendant. In the cross-examination, P.W. 1, has specifically stated that the defendant was trying to encroach the suit land by extending its boundary and by depositing stones there. P.W. 2 in the cross-examination has stated that when he tried to unload the sand on the suit land the defendant obstructed. Surprising fact is that not a single suggestion has been given to P.W. 1 and 2 by the counsel for the defendant denying such an allegation. P.W. 3, who is the power of attorney holder to the plaintiff, has supported the exact version as reflected in the plaint regarding the act of the defendant towards interfering with the peaceful possession of the plaintiff over the suit land. He in the cross-examination has stated that the cause of action arose on 04.11.2007, when the defendant started digging soil over their land. He has filed a criminal case against the defendant in G.R. Case No. 914/2004. He has been cross-examined elaborately by the counsel for the defendant, but this court find not a pinch of evidence to be retracted by the counsel for the defendant during cross -Examination of P.W-3 even to cast a doubt on the allegation of the plaintiff. It should be remembered that P.W. 3 is the son of the plaintiff, who by virtue of power of attorney has deposed his evidence with the

permission of the court. On that aspect of the case the defendant also adduced his evidence as D.W. 1. He has relied upon several documents out of which this court has already dealt with the village maps, which has been marked as Ext. H & J. Other documents are not disputed by the plaintiff which reveals that the land pertaining to the plot No. 2652/84879 is exclusively belongs to the defendant and as such the same need no discussion. D.W. 1 in his examination chief has deposed that he has never tried to threaten the plaintiff in any manner nor dig foundation by encroaching some portion from the eastern side of the suit plot. He has again stated that himself and the general public having their every right and interest over the "S" marked portion of the land which has been wrongly and illegally amalgamated in to the plot of the plaintiff. This is a clear admission on the part of the defendant that the approaching road as per the Sabik village map, which has been subsequently included in the plot of the plaintiff is used by the defendant. Now the question arises whether the plaintiff got any individual right to use the land that has been used as road and subsequently included in the plot of the plaintiff by the revenue authority? Firstly, nothing has been produced or adduced in term of evidence to form an opinion that the road approaching in between the land of the plaintiff and defendants as per the sabik village map has been wrongly and illegally included to the existing Hal plot of the plaintiff. This is a complete prerogative of the state, who is the owner of the land to explain the circumstances, wherein the approaching road has been allotted or hypothecated to an individual. Nothing has also been put forwarded by the defendant to assume that the "S" marked land was a public road or a private land or a temporary road existing during pre-sabik settlement. Unless

and until the subject matter is duly and legally raised before a appropriate forum or finally adjudicated, no court can form any opinion to the effect that illegality has been committed by the state. This is not the subject matter of the present suit. Now, for the sake of discussion, let's assume that the approaching road has been amalgamated in to the suit plot and now the plaintiff became the exclusive owner in possession of the suit plot. The defendant has not come to the court for any declaration against the state for such illegal act nor came to the court in a representative capacity for the general public. It has already been noted down in the forgoing paragraphs that it is not the subject matter of the suit to decide whether the approaching road was a part and parcel of the plaintiffs plot or belong to the government. If the said road was a part and parcel of the plaintiffs land than a subsequent amalgamation is not illegal. At this stage, the defendant has to prove that the road as mentioned in the Sabik map vide Ext. H is a government/public road and wrongly amalgamated to the plot of the plaintiff. Unless and until the same has been decided by an appropriate forum, no presumption can be taken up by any court that the so called road as per the Sabik village map is a government road and illegally included to the plot of the plaintiff, whereas the evidence reveals that the defendant has a public road to his own plot. But by agitating his right over the said road, which has already been included in the plot of the plaintiff, the defendant has admitted that he has been interfering with the possession of the plaintiff and dispute has been cropped up between themselves. He has also in his cross-examination in para – 26 admitted that in the month of November, 2007 disturbances between the himself and the plaintiff took place in respect of the suit land

and for which the plaintiff filed the present suit. At this outset it may further be noted that a person in possession has a good title as against any stranger and one, who tried or dispossess him, having no title in himself is a wrong doer and cannot defend himself by showing that title is in some third person. This clearly establishes that the act of the defendant is illegal and he by claiming the eastern portion of the suit plot to be public road exercising his right, which is illegal and not tenable in the eye of law as well as against the interest of the plaintiff and as such he is to be permanently restrained from doing such illegal act against the right, title, interest and possession of the plaintiff. The plaintiff is entitled for the relief of permanent injunction.

**Issue Nos. i, ii, iii & vii .**

11. So far as the question of maintainability is concerned, except the identification of the suit land the defendant has not pressed the other questions regarding the limitation, cause of action and non-joinder of necessary parties whatsoever supplemented in his written statement. But regarding identification of land, the defendant has to say that no clear description has been mentioned in the plaint nor a sketch map has been provided to the court to see the exact area of the suit land. This court has gone through the plaint and evidence of P.W. 3. So far as the plaint is concerned, the plaintiff has mentioned that the suit land measuring Ac. 0.414 decimals is a part and parcel of Ac. 5.000 in the plot No. 2650/3015, which is the eastern side of the said plot. Giving more descriptions and clarifications, the plaintiff in the foot of the plaint clearly mentioned the boundary and the whole description of the property. Therefore, a sketch map is completely unnecessary. Apart from that it is quite clear

that the plaintiff is the eastern side neighbor to the plaintiff's plot and the detail description of the suit land reveals that the portion of the land touches the land of the defendant and its extend has been clearly pointed out in the plaint and as such the claim of the defendant that a clear description has not been given in the plaint appears to be misconceived and improper. The suit is maintainable and the plaintiff is entitled for the relief of perpetual injunction. Hence it is order.

### **ORDER**

The suit of the plaintiff be and the same is hereby decreed on contest against the defendant but in the circumstances without any cost. The defendant is hereby permanently enjoined not to interfere with the peaceful possession of the plaintiff over the suit property in any manner. Violation of this order entails the plaintiff to adopt the proper recourse of law against the defendant.

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 5<sup>th</sup> day of August, 2014.

Senior Civil Judge, Khordha.

#### **List of witnesses examined on behalf of Plaintiffs :-**

- |        |                      |
|--------|----------------------|
| P.W. 1 | Sudarsan Parida.     |
| P.W. 2 | Sayed Firoz Alli.    |
| P.W. 3 | Ashok Kumar Agarwal. |

List of witnesses examined on behalf of Defendants :-

D.W. 1 Muralidhar Mohapatra.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1 ROR in khata No. 648/2 of mouza Jajarsingh.

Ext. 2 Rent receipt.

Ext. 3 Power of attorney executed by Badri Prasad Ram in favour of P.W. 3.

Ext. 3/a to 3/c Signature of Badri Prasad Ram on Ext. 3.

Ext. 3/d Signature of P.W. 3 on Ext. 3.

Ext. 3/e Signature of Janmejaya Jena on Ext. 3.

Ext. 3/f Signature of Susanta Kumar Hota on Ext. 3.

List of documents admitted on behalf of Defendants :-

Ext. A Certified copy of mutation ROR in khata No. 648/523 of mouza Jajarsingh.

Ext. B to B/17- 18 numbers of rent receipts.

Ext. C Certified copy of the ROR in khata No. 1108 of mouza Jajarsingh.

Ext. D Hal-Sabik information sheet dt. 15.10.2004.

Ext. E Money receipt issued by THE SAMAJA.

Ext. F Copy of new paper THE SAMAJA DT. 12.11.2004.

Ext. G Hal-Sabik information sheet dt. 07.11.2005.

Ext. H Sabik sketch map of Vill.-Jafarsa and Jajarsingh showing plot No. 2860

Ext. J Hal sketch map of Vill.-Jafarsa and Jajarsingh showing plot No. 2651.

Senior Civil Judge, Khordha.