

## IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka  
Senior Civil Judge, Khurda.**Dated this the 12<sup>th</sup> day of March, 2014****C.S. 313/ 2007**Smt Susama Panda, aged about 50 years, W/o- Raj Kishore Panda,  
at./P.O.- Atharanga, P.S.- Begunia, Dist- Khordha.

..... Plaintiff.

-Versus-

1. State of Odisha, represented through Collector, Khordha,  
At/P.O./P.S./Dist- Khordha.
2. Rama Chandra Panda, aged about 70 years, S/o- Late Lingaraj Panda,  
at./P.O.- Atharanga, P.S.- Begunia, Dist- Khordha.  
( Since dead, represented through his following legal representatives)
  - 2(a) Prafulla Kumar Panda, aged about 40 years, S/o- Late Rama Chandra  
Panda, at/P.O.- Dhanakuda, Dist- Sambalpur.
  - 2(b) Prasan Kumar Panda, aged about 35 years, S/o- Late Rama Chandra  
Panda At- Bikas Nagar, P.O./P.s.- Jatni, Dist- Khordha.
  - 2(c) Narayan Panda, aged about 60 years, S/o- Late Rama Chandra Panda,  
at/P.O.- Gadakhurda, P.S./Dist- Khordha.

.....Defendants

Counsel for Plaintiff	...	Sri B. K. Patra and associates, Advocates, Khordha
Counsel for defendant No-1	...	Govt. Pleader.
Counsel for defendant No-2(a) to 2 (c)	...	Ex-parte.

.....  
Date of Argument – 06.03.2014

Date of Judgment – 12.03.2014  
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### JUDGMENT

This is a suit for declaration, correction of ROR and permanent injunction.

02. The plaintiffs case is that the land recorded in khata No. 340, plot No. 1302 of mouza Atharanga measuring Ac. 1.255 decimals corresponding to Hal khata No. 443, plot No. 1482 measuring Ac. 1.200 decimals (Suit property) originally belonged to Rama chandra Panda, deceased defendant No-2. He sold away the entire suit property in favour of Baidyanath Das through a registered sale deed bearing No. 7208/73. Thereafter the said Baidyanath Das, who was in possession of the suit property sold the same to the plaintiff by virtue of a sale deed bearing No. 6297 Dt. 12.06.1974 and also handed over it's physical possession to the plaintiff after receiving the due consideration amount and from that date the plaintiff has been in exclusive physical possession of the suit property having her right, title, interest and possession over it. The specific case of the plaintiff is that in the ROR published in the year 2000, the suit property was recorded jointly in the name of the plaintiff and defendant No-2, to be the owners of the suit property. On that score the plaintiff has to say that since she has purchased the suit property from the rightful owner and as the defendant No. 2 has no manner of right, title,

interest or possession over the suit property, recording his name as co-owners of the suit property is illegal and wrong. The plaintiff again contended that taking advantage of such wrong entry in the ROR, the defendant No. 2 is threatening to disposes her and also interfering with her peaceful possession over the suit property. The plaintiff also impleaded the state as defendant No-1 giving the reason in the plaint that wrong recording in the ROR over the suit property is irresponsible affairs of the state and as such she issued pleader notice to the defendant No. 1 under section 80 of CPC dated 25.08.2007 for necessary correction of the ROR and as no action was taken by the state, she filed the suit. The plaintiff again averred that the cause of action arose in the month of August, 2007, when the defendant No. 2 threatened the plaintiff to disposes her from the suit land and as well as the date of issuance of notice to the defendant No. 1, i.e. on 25.08.2007. The plaintiff in the plaint, sought for the relives of declaration of her right, title, interest and possession over the suit property, correction of the Hal ROR by deleting the name of defendant No. 2 by the Tahsildar, Begunia and permanent injunction against the defendant No. 2 prohibiting him from entering inside the suit land.

03. During pendency of the suit defendant No. 2 died and his legal representatives are made as parties. They have been noticed, but they did not participate in the proceeding and as such the suit against them set Ex-parte on 25.03.2013. However, the defendant No. 1 submitted his written statement.

The defendant No. 1 in his written statement raised objection over the very initiation of the suit on the question of maintainability, limitation, non-joinder of necessary parties, cause of action as well as under valuation of the suit property by the plaintiff. The case of the defendant No-1 is that, originally the suit property as per the Sabik settlement ROR of year 1962 stands recorded in the name of the deity called "SRI SATYABADI GOPINATH DEV- BIJE- PHULA ALASA, C/o- Gopinath Pani and others TRUTIYA KHEWAT No. 1". The defendant No-2, Rama Chandra Panda and others are the recorded tenants of the property of the deity recorded under holding No. 340, plot No. 1302. The suit land/property is another fraction plot of the original suit plot bearing No-1302, that has been originally stands recorded in the name of Krushna chandra Panda and others as per the Sabik ROR. In the Hal settlement the original plot No-1302 has been converted into two plots, such as plot No. 1482 & 1482/2471 under khata No. 443. The defendant No. 1 again stated that the cause of action is imaginary one and baseless. It is again contended by the above defendant that after getting information from the present defendant, the Tahsildar, Begunia issued notice to the plaintiff to appear in the Begunia Tahsil with the registered sale deed and other documents for verification. Two notices were issued to the plaintiff by the Tahsildar, Begunia but the plaintiff did not turn up, for the above purpose. Therefore, no proper action could be taken by the defendant No. 1. For the above reason the defendant No. 1 claims that the suit 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.**

1. Is the suit maintainable?
2. Is there any cause of action to bring the suit by the plaintiff?
3. Is the suit barred for non-joinder of necessary parties?
4. Whether the suit property has been duly transferred to the plaintiff by its rightful owner?
5. Whether the plaintiff is the exclusive owner in possession of the suit property?
6. Whether the recording of the ROR in respect of the suit property in the name of defendant No. 2, Rama Chandra Panda jointly with the plaintiff is illegal and wrong?
7. Whether the plaintiff is entitled for a declaration of his right, title, interest and possession over the suit land?
8. Whether the plaintiff is entitled for permanent injunction against the defendant No. 2?
9. Whether the prayer for correction of ROR at this stage is permissible in the eye of law?
10. To what other relieves, the plaintiff is entitled for?

05. In order to prove its case, two witnesses have been examined on behalf of the plaintiff. Out of which P.W. 1 Raja Kishore Panda is the husband of the plaintiff and P.W. 2 Smt. Susama Panda is the plaintiff herself. No witness has been examined on behalf of the defendant No-1.

During course of evidence, plaintiff relied upon seven sets of documents, those have been exhibited as below-

The ROR under khata No. 443 of mouza Atharanga is marked as Ext. 1, Rent receipts as Ext. 2 & 2/a respectively, registered sale deed bearing No. 6297 dt. 12.06.1974 as Ext. 3, registered sale deed bearing No. 7709 dt. 23.07.1973 as Ext. 4, Certified copy of the Sabik ROR of mouza Atharanga under khata No. 340 as Ext. 5, Copy of the pleader notice U/s 80 CPC as Ext. 6 & the Hal Sabik information sheet as Ext. 7.

#### FINDINGS.

#### **Issue Nos. 4, 5 & 7.**

06. The above three issues are most vital issues for the subsequent discussion as well as for an useful adjudication and as such both are first taken up together for consideration.

Before entering in to the discussion it is worthwhile to mention that the property under Khata No-340, plot No-1302 extending 1.255 decimal was the property of the Ramachandra Panda. He sold away the same to the vendor of the plaintiff. But, the vendor of the plaintiff namely Baidyanath Dash sold away Ac.1.200 decimal to the plaintiff. The documents relied upon by the plaintiff make it clear that

she has purchased Ac.1.200 decimal and as such the extend of the suit property Ac.1. 200 decimal, recorded under Khata No-443, plot N0-1482 of Mouza-Atharanga, corresponding to Sabik Khata No-340, plot No. 1302.

Coming back to the above issues, even though not pleaded by the plaintiff, it is admitted by both the parties that the suit property along with other properties originally belong to the deity namely "SHRI SATYABADI GOPINATH DEV- BIJE- PHULA ALASA". Marfat Gopinath Patri and others. The plaintiff himself relied upon the Sabik ROR in respect of the suit property recorded under Khata No-340, of Mouza-Atharanga, plot No. 1302 measuring Ac. 1.255 decimals. Therefore, no doubt that the suit property belongs to the deity as noted above as the owner. The Sabik ROR also reveals that deceased defendant No. 2 is the recorded tenant in possession of the above properties of the deity including the suit property. The further undisputed case of both the parties that Rama Chandra Panda sold away the suit property to one Baidyanath Das by virtue of the sale deed No. 7709 dated 23.07.1973. The said sale deed has also been marked as Ext. 4. Thereafter, the suit land was again alienated by Sri Baidyanath Das to the plaintiff. However, after purchase of the suit property the plaintiff claims to be the rightful owner of the same. Now the question arose whether the property of a deity has been rightly and legally alienated by adopting the due procedure. All the properties of a deity whether public or private guided under the Orissa Hindu Endowment Act. The property of the deity cannot be alienated without the permission of the authority of endowment. But, so far as the property of a private deity is concerned, the same can be alienated

only for the benefit of deity as per the provision of Orissa Hindu Religious Endowment Act. Here the case is completely different. The defendant has not raised any objection regarding legality of transfer of the property of the deity by his caretaker/ marfatdar or tenant under possession. The current status of the suit property reveals that the same has been recorded in the name of the plaintiff and defendant No. 2 in the Hal ROR under khata No. 443 plot No. 1482 measuring Ac. 1.200 decimals. It may further be noted that the Hal-Sabik information sheet has also been produced by the plaintiff for necessary inference of the court which is marked as Ext. 7 and the same reveals that the Sabik plot No. 1302 of Sabik khata No. 340 has been converted to Hal Khata No. 443 plot No. 1482 measuring Ac. 1.200 decimals. Further, the sale deed vide document No-7709/73 clearly reveals that the property alienated to Baidyanath Bash is the property of the deity. Since the property, which has been initially recorded in the name of deity, but subsequently alienated to others by virtue of registered sale deed and ultimately the revenue authority basing on such sale deed recorded the name of the purchaser as the owner of the property by waiving out the name of the deity, it shall be presumed that the sale in respect of the land of the deity (suit property) has been properly executed by adopting due procedure by the vendors in favour of the vendees. So far as both the sale deed vide Ext. 3 & 4 are concerned, by virtue of Ext. 4 the original tenant Shri Rama Chandra Panda, who is the deceased defendant in this case has alienated the suit property to Baidyanath Das and subsequently the said Baidyanath Das alienated the same to the plaintiff. The said alienation being not

under dispute, it is the opinion of this court that the land under plot No. 1302 has been duly transferred to the plaintiff by the rightful owner. So far as the question of possession is concerned, the defendant NO. 1 remain silent and not disputed the same. The said fact remain unchallenged. Therefore this court has no hesitation to accept that the plaintiff is in possession of the suit plot being the rightful owner of it.

**Issue Nos. 6 & 9.**

07. It is held by this court in the aforesaid discussion that the suit property has been recorded jointly in the name of Susama Panda and Rama Chandra Panda. The reason of recording of such property in the name of joint tenants has not been justified by the defendant No. 1, who is representing the state. Where as the undisputed fact is that Rama Chandra panda since alienated the suit property and delivered its possession to the vender of the plaintiff, he owes no manner of right, title, interest and possession over the suit land. On the other hand, the defendant No-1 has claimed that after receiving the pleader notice, the plaintiff was summoned by the Tahsildar, Begunia for production of the ROR for consideration of his matter and necessary action. In this way the defendant No. 1 fairly conceded that since the sale deed has not been produced before him, the correction could not have been made. At this stage, it is quite necessary to peruse both the sale deed. In the sale deed vide Ext. 4 Rama Chandra Panda alienated property recorded under plot No. 1302 measuring Ac. 1.255 decimals and plot No. 1304 measuring Ac. 0.195 decimals total measuring Ac. 1.450 decimals out of Sabik khata No. 340 of mouza Atharanga to Baidyanath Dash. Thereafter, the said Baidyanath Das

alienated measuring Ac. 1.200 decimals from plot No. 1302 out of total measuring Ac. 1.255 decimals to the plaintiff. Therefore, it is clear that the plaintiff has purchased Ac. 1.200 decimals out of the plot No. 1302 from Sabik Khata No. 340. Subsequently the said area of land which has been purchased by the plaintiff have been recorded in the name of the plaintiff along with the deceased defendant Rama Chandra Panda. The entire pleading of the plaintiff has not been disputed by the defendant, rather in the cross-examination the defendant No. 1 suggested the plaintiff (P.W. 1) that notice was issued to her to appear before the R.I., Siko along with all the documents to place her grievance, but she was absent in the village and as such notice could not be served and due to her non-co-operation with the state her matter could not be adjudicated by the collector, Khordha. The matter stood thus, it is the opinion of this court that the plaintiff being the rightful purchaser of an area measuring Ac. 1.200 decimals, which has been recorded under Hal khata No. 443, Hal plot No. 1442, recorded of the name of Rama Chandra Panda, who having no manner of right, title, interest and possession over it is absolutely wrong. But, with regards to the correction of ROR, it may be noted that the same has been published in the year 2000 as reveals from the Hal Sabik information sheet. The plaintiff is silent as to when he came to know about the wrong recording of her name in the Hal ROR. The plaint is also silent regarding any approach of the plaintiff to the revenue authority for correction of such ROR. Therefore, it is quite clear that except approaching the court of law by instituting the present suit, the plaintiff has not taken any action for correction of his ROR and as such approaching

the civil court for correction of ROR after expiry of the stipulated period of three years from the date of final publication is barred by Sec. 42 of the Orissa Survey and Settlement Act 1958. The plaintiff cannot avail relief of correction of ROR at this stage and she has to approach the revenue authority as per the provision of law.

**Issue Nos. 8 & 10.**

08. While determining the above two issues, this court has again gone through the entire pleading. The peculiarity of the plaintiff's case is that the original suit was filed against defendant No. 2 on a specific allegation that defendant No. 2, Rama Chandra Panda taking advantage of wrong recording of his name, in the month of August, 2007, threatened the plaintiff to dispossess her from the suit land. Rama Chandra Panda during pendency of the suit died and the consolidated plaint was filed by the plaintiff on 13.09.2010 by impleading his legal heirs as defendants No 2 (a) to 2 (c). In the consolidated plaint she again repeating the same pleading that defendant No. 2 has been threatening to disposes her. The plaintiff in the consolidated plaint raised no allegation against the newly added defendants. Therefore, in absence of any allegation against them, a prohibitory order by the court against them would be improper and may cause the abuse of the process of the court. The plaintiff, in absence of any specific pleading, is not entitled for the relief of permanent injunction against the defendant No. 2(a) to 2(c).

**Issue Nos. 1, 2 & 3.**

09. The above issues relate to the question of maintainability. Particularly the defendant No. 1 during the course of hearing has only raised the question of

cause of action and non-joinder of necessary parties. During the course of Cross-examination, defendant No. 1 agitated that Baidyanath Das has not been made as a party to the suit. While coming to the said aspect of the case, it must be noted that the plaintiff has come to the court for correction of ROR and declaration. There is no dispute regarding alienation of the property in this case. Therefore, the vendor of the plaintiff are not the necessary or proper parties. Regarding cause of action the plaintiff assigned the same to be the month of August, 2007, when the defendant No. 2 threatened her to disposes from the suit land. The pleading of the plaintiff goes to show that after such incident she make a dig in to the background of the incident and came to know that the suit land has been recorded in the name of herself and deceased defendant NO. 2. Law provides that a suit for declaration must be filed within three years from the knowledge of the plaintiff; therefore the suit is in time. The suit is maintainable. But so far as the question of relief is concerned, it is already held that the plaintiff is only entitled for the relief of declaration of her right, title, interest and possession over the suit property. The other prayers regarding correction of ROR and permanent injunction against the defendant No. 2 being not tenable in the eye of law stands rejected. Hence it is order.

### **ORDER**

The suit of the plaintiff be and the same is decreed in part on contest against defendant No. 1, while ex-parte against defendant No. 2(a), 2(b) & 2(c), but in the circumstances, without any cost. The right, title, interest and possession of the plaintiff over the property corresponding to Hal khata No. 443, plot No. 1482

measuring Ac. 1.200 decimals of Mouza Atharanga is hereby declared. The petitioner is at liberty to approach the revenue authority for necessary correction of the ROR as per the observation of the court as above.

Advocate 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 12<sup>th</sup> day of March, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1                      Raja Kishore Panda.  
P.W. 2                      Susama Panda.

List of witnesses examined on behalf of Defendant :-

None.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1                      ROR under khata No. 443 of mouza Atharanga.  
Ext. 2 & 2/a              Rent receipts.  
Ext. 3                      Regd. Sale deed No. 6297 dated 12.06.1974.  
Ext. 4                      Regd. Sale deed No. 7709 dated 23.07.1973.  
Ext. 5                      C.C. Of Sabik ROR under khata No. 340 of mouza Atharanga.  
Ext. 6                      Advocate notice U/s- 80 CPC.  
Ext. 6/a                    Postal Receipt.  
Ext. 6/b                    Postal acknowledgment.  
Ext. 7                      Hal-Sabik information sheet.

List of documents admitted on behalf of Defendants :-

None.

Sr. Civil Judge, Khurda.