

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.**Dated this the 10th day of January, 2014****C.S. 191/ 2008**Smt. Basanti Das, aged about 55 years,
W/o- Sri Bishnu Charan Das of Vill.- Sandhapur,
P.O.- Golabai, P.S.- Jankia, Dist- Khordha. Plaintiff.

-Versus-

1. Sri Nanda Kishore Pattanaik, S/o- Late Udayanatha Pattanaik,
of Vill.- Srinibaspur Sasan, Samil Mohanty Sahi, P.O./ P.S.- Banpur,
Dist- Khordha.Defendant
2. Smt. Kamala Kumari Das, W/o- Pramod Kumar Das, Vill.- Chhanaghar,
P.O.-Kusumati, P.S.- Jatni, Dist- Khordha.Proforma Defendant

Counsel for Plaintiff ... Sri S. Pattanaik and associates,
Advocates, KhordhaCounsel for defendants ... Sri N.K.Dash and associates,
Advocates, Khordha.....
Date of Argument – 09.01.2014Date of Judgment – 13.01.2014
.....**JUDGMENT**

This is a suit for declaration.

02. The plaintiffs case is that herself and proforma defendant No. 2 are the daughters of Sudhakar Mohanty and Rekhamani Dei, who are dead now. Defendant No. 1 who is their cousin brother, by claiming himself to be the adopted son of Sudhakar Mohanty recorded the property of Sudhakar Mohanty measuring Ac. 0.184 decimals under khata No. 111 of mouza Srinibaspur Sasan (hereinafter referred to be the suit property) in his own name. The specific case of the plaintiff is that, after the death of Sudhakar Mohanty , the defendant No-1 by virtue of a deed of acknowledged of adoption alleged to have been executed by Sudhakar Mohanty, started claiming himself to be the successor of Sudhakar Mohanty. Therefore, Rekhamani Dei, wife of Sudhakar Mohanty filed a suit against the defendant No. 1 before the Civil Judge (Jr. Divn.), Banpur bearing suit No. 20 of 1981-I, for declaration of the alleged acknowledged of adoption executed by Sudhakar Mohanty to be illegal, in operative and invalid one. The Civil Judge (Jr. Divn.) in the said case decreed the suit in favour of Rekhamani Dei. The aggrieved defendant No. 1 preferred appeal before the Civil Judge (Sr. Divn.), Khordha against the order of the Civil Judge (Jr. Divn.), Banapur. His appeal was again dismissed and as such he again challenged the same before the Hon'ble High Court of Orissa. The Hon'ble court while conforming the findings of the lower courts, finally declared that defendant No. 1 is not the adopted son of Sudhakar Mohanty. The defendant No-1 has not yet challenged the order of the Hon'ble court. It is the further case of the plaintiff that in spite of the clear findings of the Hon'ble Court regarding the claim of adoption of the defendant No-1 as above, the defendant No-1 managed to get his

name muted before the Tehsildar, Banpur in respect of the suit property presenting himself to be the adopted son of the recorded tenant Sudhakar Mohanty. The plaintiff further contended that before such mutation, no notice was issued to herself or her sister (D-2) and the mutation proceeding was executed behind the back the plaintiff. The plaintiff came to know about such mutation from the villagers and obtained the computerized certified copy from the office of the Tehsildar, Banpur on 12.08.2008 and immediately preferred the present suit.

03. The defendants participated in the proceeding and submitted their joint written statement. The defendants have to say that the suit is not maintainable both in fact as well as in law as the defendant No-1 has been staying over the suit property, which is a homestead land along with a residential house. The suit is also not maintainable as the plaintiff has not claimed title and recovery of possession of the suit property from the defendants. The mutation was held in the year 1980 and after such a belated stage the declaration for correction of mutation is also not permissible as barred by limitation. While disputing all the basic contentions of the plaintiff, the defendants have to say that Late Sudhakar Mohanty had no male issue and the defendant No. 1 being his nephew, brought by Sudhakar Mohanty to his house and nourished as his son. Subsequently, defendant No. 1 was regarded as the adopted son of Sudhakar Mohanty. Out of love and affection Sudhakar Mohanty without any deed of convenience gifted the suit property to defendant No. 1. Such gift of suit property is very much within the knowledge of the plaintiff and proforma defendant. The defendant No-1 has been staying over the suit property since long

by making a lot of improvements to such house along with electricity connection. The defendants further case is that at the time of mutation, notice was duly issued to the plaintiff and proforma defendant NO. 2, but they did not take any action and as such the land was duly mutated in his favour. Taking an alternative plea, the defendants again contended that during such period plaintiff has not taken any step for recovery of possession of the suit land from defendant No. 1 and as such the present case coming within the purview of Sec. 27 of Limitation Act and ultimately conveys title to the defendant No. 1 by virtue of adverse possession. By contradicting the basic facts of the plaintiff's case, the defendants have to say that the suit of the plaintiff being devoid of any merit liable to be dismissed with cost.

04. In view of the rival stands of both the parties as above, the following issues have been settled for a useful adjudication.

I S S U E S.

- i. Whether the case maintainable?
- ii. Whether there is any cause of action to file this case?
- iii. Whether the suit is bad for non-joinder of necessary parties?
- iv. Whether this court is estopped from dealing with the question of adoption of the defendant No. 1 by Sudhakar Mohanty?
- v. Whether the defendant NO-1 acquired the title over the suit land by virtue of adverse possession?

- vi. Whether Sudhakar Mohanty has gifted the suit property to the defendant No-1?
- vii. Whether the mutation of the suit property in the name of the defendant No. 1 is illegal, void, in-operative and not binding on the plaintiff?
- viii. Whether the plaintiff is not entitled for any relief of deceleration as sought for without making a specific prayer for declaration of her right, title, interest and possession over the suit property?
- ix. What relief, the plaintiff is entitled to?

05. In order to prove her case plaintiff only examined her husband Bishnu Chandra Das, to be the sole witness for her case. During evidence, P.W. 1 also admitted the certified copy of the ROR of the suit property as Ext. 1, Certified copy of the Judgment of the Hon'ble High Court of Orissa in "Second Appeal No. 208 of 1984" as Ext. 2 and the Certified copy of the decree of the Hon'ble High Court of Orissa on 27.11.95 as Ext. 3.

06. Similarly, the defendant No. 1 examined himself as the sole witness for their case. D.W. 1 admitted the mutation ROR of the suit property as Ext. A, the rent receipts dated 11.12.2000 relating to the suit property as Ext. B and the holding tax receipt dated 03.04.2001 to the suit property as Ext. 3.

FINDINGS.

Issue Nos. iv, v & vi.

07. The plaintiff's case is that the defendant No. 1 presenting himself to be the adopted son of Sudhakar Mohanty muted the suit property in his name. In this

regard the plaintiff apart from oral evidence relied upon the certified copy of the ROR to the suit property and the Judgment of the Hon'ble High Court of Orissa in S.A. No. 208/ 1984. It is worthwhile to mention that initially the wife of Sudhakar Mohanty, namely Rekhamani Dei challenged the claim of the defendant No. 1 to be the adopted son of Sudhakar Mohanty before the Civil Judge (Jr), Division Banapur. The suit was decreed in favour of the Rekhamani Dei. Subsequently the appeal against the said Judgment was also confirmed by the Civil Judge (Sr. Divn.) and the defendant NO. 1 preferred the second appeal before the Hon'ble High Court and the Hon'ble High Court in the above case confirmed the finding of both the lower courts and dismissed the appeal of defendant No. 1 with an observation that defendant No. 1 is not the legally adopted son of Sudhakar Mohanty. Therefore, this court is thereby estopped to deal with the subject matter of adoption of the defendant No-1 by Sudhakar Mohanty, as the same has already been finally adjudicated by the competent forum.

08. This court before going to the subsequent plea of the defendant No. 1, would like to peruse the ROR relied upon by the plaintiff as well as by the defendants. The ROR which is marked as Ext. 1 from the side of the plaintiff reveals that the suit property recorded in the name of defendant No. 1 mentioning himself to be the adopted son of Sudhakar Mohanty and natural son of Udayanath Pattanaik. The mutation ROR in respect of the suit property reveals that the same was earlier recorded in the name of Sudhakar Mohanty and subsequently by virtue of mutation case No. 1368/ 1980, muted in the name of defendant No. 1 being the

adopted son of Sudhakar Mohanty. The plaintiff's case has already been discussed. She has to say that defendant No-1 is not the adopted son of her father Sudhakar Mohanty as the said question has already been finally decided by the court of law. Therefore, mutating the suit property in the name of the defendant No. 1 considering him to be the adopted son of Sudhakar Mohanty is illegal and wrong. In the above circumstances, the defendants have taken a different plea. They have to say that Sudhakar Mohanty gifted the suit property to defendant No. 1. The plea appears to be quite baseless and false as not been supported by a single scrap of paper or evidence to that effect. Hence the said plea cannot be accepted at all.

09. So far as the claim of the adverse possession is concern, the burden lies on the defendants to prove such an plea before the present forum. Therefore, it would be quite wise to look at the evidence from both the side. The plaintiff's case is that their mother during her lifetime preferred the suit and she was staying over the suit property till her death. After her death, the suit property devolved upon the plaintiff and proforma defendant No-2. Admittedly Sudhakar Mohanty died in the year 1980. The wife of Sudhakar Mohanty preferred the appeal before the lower court in the year 1981. The plaintiff has to say that the suit property was in the possession of their mother and after her death they are in possession of the same. The defendant No. 1 in his cross-examination in Para-12 has stated that Rekhamani Dei, mother of the plaintiff died in the year 1990. She was all along in occupation of the suit property till her death. This much of evidence D.W-1 is an admission on the part of defendant No. 1 wherein he admitted that Rekhamani Dei

who has filed the case against him was in possession of the suit property since 1990. The entire evidence of the defendant is silent as to how and from which date he effected his possession over the suit property and on which dated his possession tendered adverse in respect of the suit land. Admittedly, defendant No-1 had a antagonistic term with the Rekhamani Dei, mother of the plaintiff. Therefore it is the legal obligation of the defendants to make it clear from which period defendant No-1 took absolute possession of the suit property and when the same became adverse. Even though, the defendants have stated that the suit land was recorded in the name of the defendant No-1 in the year 1981, and from that date the defendant No-1 has been in possession of the same, it is now needful to mention that after death of Sudhaker Mohanty, his widow, who is the mother of the plaintiff and defendant No-2 challenged the claim of the defendant No-1 to be the son of Sudhaker Mohanty and during her life time she was in possession of the suit land as admitted by the defendant himself. She died in the year 1090. Therefore the claim of the defendant No-1 that he has been staying in the suit house since 1981, appears to be not only baseless but also having no pitch of evidence to it, rather by claiming adverse possession, the defendants have admitted the antecedental title of the plaintiff over the suit property.

Issue Nos. vii & viii

10. Lets come to the crucial fact regarding the legality of the mutation of the suit property in favour of the defendant NO. 1. The plaintiff has to say that the suit land has been cunningly muted by the defendant No. 1 in his favour by

presenting him to be the adopted son of Sudhakar Mohanty. Wherein, he is declared by the court of law not to be the adopted son of Sudhakar Mohanty. Therefore, the mutation proceeding is quite peculiar in nature and contrary to the judgment of the Hon'ble High Court. The evidence of the plaintiff is supported by the Judgment of the Hon'ble High Court of Orissa which is marked as Ext. 2. On perusal of the mutation ROR it reveals that the same has been recorded in the name of the defendant NO. 1. It has been mentioned in the said ROR (Ext. 1) that defendant No-1 is the adopted son of Sudhakar Mohanty and natural son of Udayanath Pattanaik. The mutation ROR has also been relied upon by the defendant No. 1 which is marked as Ext. A. The same reveals that the said property was originally recorded in the name of Sudhakar Mohanty, father of plaintiff and proforma defendant No. 2. By virtue of the mutation case No. 1368/ 1980 the same was recorded in the name of defendant No. 1 as he is the adopted son of Sudhakar Mohanty. If the whole case to that effect is taken into consideration, the mutation case appears to be improper, illegal and void as the said act is contrary to the judicial pronouncement. In the above circumstances the burden is now shifted to the defendants to prove the legality of such mutation.

The defendant No. 1 has claimed that the said property has been gifted to him by Sudhakar Mohanty. In this regard the onus is upon the defendant No. 1 to prove that the suit property was rightly and duly gifted to him. It has already been discussed that the plea of receiving the suit property from Sudhakar Mohanty on gift is far from the real truth. The defendants have already failed to substantiate

the same before the court. Needless to say that, the record of right neither confers nor extinguishes any right, title, interest or possession by its own. The plaintiff has successfully proved that the suit property belongs to her father and after death, their mother was in possession. And after her, the same was devolved upon them as the owners having their subsisting interest over it. The defendants on the other hand claimed to be in possession of the suit land by submitting the land revenue along with the holding tax receipts of the Municipality, Banpur of the year 2001. The revenue receipt was obtained in the year 2010. So far as the holding tax receipt is concerned, the same is issued in the year 2001, wherein the name of the assessee has been mentioned to be Nandakishore Pattanaik, S/o- Udayanath Pattanaik. At this stage it would be more relevant to surface the Judgment of the Hon'ble High court of Orissa reported in 2008, "2008 (SUPP. - I) OLR – 829" as relied upon by the plaintiff. Wherein the Hon'ble High Court of Orissa Observed that

"Rent receipts do not themselves create any right, title interest or possession". In view of the above discussion it is well settled that whatever claims may the defendant No-1 has been imposing in, neither convey any title to him nor he is entitle for the relief of any adverse possession. The plaintiff and proforma defendant No. 2 being the legal heirs of Sudhakar Mohanty are entitled to succeed the property of their father. The defendant No. 1 has no manner of right, title, interest of possession over the suit property and as such the mutation of the suit property in favour of the plaintiff is illegal, wrong and not binding on the plaintiff.

11. The defendants in the written statement specifically controverted the maintainability of the suit on the ground that the above suit for without claiming right, title, interest and possession over the disputed property is not tenable in the eye of law and the relief sought for by the plaintiff cannot be entertained.

The real fact and the evidence adduced therein by the parties to the suit have already been discussed elaborately. It is already asserted that the right, title, interest and possession over the suit property as claimed by the defendants by virtue of adverse possession has already been discarded by this court in the forgoing discussion. The plaintiff in her case nowhere stated that her right, title, interest or possession of the suit property has been violated in any manner by the act of the defendant No-1. Before explaining the peculiarity of the present suit it may be noted that the plaintiff came to the court for declaration of the mutation ROR to be wrong and illegal. She has not challenged the settlement ROR. The mutation record of right has no similar legal effect as the settlement record of right. Both the revenue proceedings are guided by different Acts. Sec. 42 of Orissa Survey and settlement act also put impediment on the jurisdiction of the Civil Court and restricted the aggrieved person beyond the time limit, wherein the mutation case is guided under the mutation act. In case of mutation, the authority by relying upon the transfer of ownership, records the name of the parties in whose favour the properties got transferred, by adopting the approach of law as per the mutation act. In the mutation cases, parties are required by the mutation authority by notice. In the present case, the plaintiff has stated that without serving any notice to her the

mutation was executed whereas the defendants have to say that the mutation was duly executed. Both the parties have not produced the copy of the mutation proceeding to substantiate their claim. So far as the defendant's case is concern, the present case has been filed against him on the ground that by pretext ting himself to be the son of Sudhakar Mohanty muted the case in his favour. It is quite important to mention that the defendant No. 1 by virtue of an acknowledgement of adoption was claiming himself to be the adopted son of Sudhakar Mohanty. The land was muted in the year 1981. However, the wife of Sudhakar Mohanty challenged such adoption and filed the case in the year 1981 and the said case before the Hon'ble High Court of Orissa was finally decided on 21.09.1994. Therefore, the mutation proceeding, which has been initiated in the year 1980 and muted in the name of defendant No. 1 on 19.08.1981 became voidable as per the subsequent finding of the court of law that the defendant No. 1 is not the adopted son of Sudhakar Mohanty. At the time of attending the mutation proceeding finality, the adoption of defendant No. 1 was not challenged. There is convincing material before the court to believe that the recording of the name of the defendant No-1 over the suit property was within the knowledge of the plaintiff or her mother. Therefore, it is the opinion of this court that the onus is now on the defendant to establish on which basis the land was muted in his favour. So far as the claim of getting the property from Sudhakar Mohanty in gift is concern the same has already been discussed and the plea of the defendant has been refused by this court. It is therefore, clear that the defendant No. 1 by virtue of an acknowledge deed of

adoption succeeded to mutate the suit property in his favour but at the moment the adoption deed is declared to be null and void by the Hon'ble High Court, such mutation lost its legal sanctity and became a voidable document having no force at all. The plaintiff need not be required to make a further prayer of declaration of her right, title, interest and possession over the suit property.

Issue Nos. i, ii, iii & ix.

12. Coming to the question of maintainability, apart from the other issues as discussed above, the defendants have also raised that the suit is barred by limitation. At this stage it is needful to mention that the other question of maintainability has already been discussed in the forgoing discussion, but so far as the question of limitation is concern, this is a declaratory and the limitation period for filing of the same is three years from the time when the right to sue first accrues, as per the provision under Article 58 of the limitation Act, 1963. The plaintiff has stated that he came to know about the mutation of the name of defendant No. 1 in respect of the suit land on 12.08.2008 and she preferred the suit on 25.09.2008, which is in time. The defendants failed to establish that such mutation proceeding or recording of the name of defendant No-1 over the suit property was within the knowledge of the plaintiff or any notice was issued to her. The suit is in time and maintainable in all respect. But, so far as the question of relief is concerned, as per the observation as reflected in the forgoing discussion, the plaintiff is entitle 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 hereby decreed on contest against the defendants but in the circumstances without any cost. The mutation of the suit property in favour of the defendant No-1 is hereby declared to be wrong and illegal and not binding on the plaintiff. The plaintiff is at liberty to approach the revenue authority for necessary correction of the mutation ROR in respect of the suit property basing on the facts and findings of this court. In such event the appropriate revenue authority is directed to dispose of the matter within three months from making such application of the plaintiff if any. Failing of which, the plaintiff is at liberty to execute the order by the process of this court.

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 13th day of January, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Bishnu Charan Das.

List of witnesses examined on behalf of Defendants. :-

D.W.1 Nanda Kishore Pattanaik.

List of documents admitted on behalf of the Plaintiff :-

- Ext.1 Certified copy of ROR under khata No. 111 of mouza Srinibaspur Sasan.
- Ext. 2 Certified copy of the judgment of Hon'ble High Court of Orissa in IInd appeal No. 208/ 1984 dt.- 20.09.1994.
- Ext. 3 Certified copy of the decree in IInd Appeal No. 208 of 1984.

List of witnesses examined on behalf of Defendants :-

- Ext. A Certified copy of ROR under khata No. 111 of mouza Srinibaspur Sasan.
- Ext. B Rent receipt.
- Ext. C Holding tax receipt dated 03.04.2001 of Municipality, Banpur.
- Ext. D Electricity Bill vide consumer No. 02077671.

Sr. Civil Judge, Khurda.