

**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 14<sup>th</sup> day of November, 2014*

**C.S. 09/ 2004**

Adhikari Bansidhar Das Goswami, Chella of Guru Adhikari Gopinath Das Goswami, Mahanta, At Oriya Matha, Puri, At/P.O.- Baseli Sahi, Puri, P.S.- Town Thana Puri, Dist- Puri.

..... Plaintiff.

-Versus-

1. Babuli Pradhan, aged about 40 years, W/o- Sukanta Pradhan, At- Chhakodipur, P.O.- Biribadi, P.S.- Tangi, Dist- Khordha.
2. Narana Sasmal, aged about 70 years, S/o- Late Ananta Sasmal.
3. Charan Sasmal, aged about 65 years, S/o- Late Ananta Sasmal.
4. Govinda Sasmal, aged about 72 years.
5. Kumar Sasmal, aged about 60 years.
6. Manguli Sasmal, aged about 65 years.  
Sl. Nos. 4 to 6 are sons of Late Uday Sasmal. Sl. Nos. 4 to 6 are of Vill.- Ratanpur Samil Kuhudi, P.S.- Tangi, Dist- Khordha.
7. Bijay Sasmal, aged about 35 years, S/o- Late Gopal Sasmal.
8. Sabi Sasmal, aged about 50 years, W/o- Late Nilakantha Sasmal.
9. Amin Sasmal, aged about 75 years.
10. Kaibalya Sasmal, aged about 70 years (Expunged on 26.02.2011).  
Both are sons of Late Bhujja Sasmal.
11. Lochan Sasmal, aged about 65 years, S/o- Late Baji Sasmal.

12. Nisa Bewa, aged about 65 years, W/o- Late Godabari Sasmal.

Sl. Nos. 2, 3 & 7 to 12 are of Vill.- Chhakadidpur, P.O.- Biribadi, P.S.- Tangi,  
Dist- Khordha.

..... Defendants.

Counsel for Plaintiff ... Sri G.S. Pattanaik & Associates  
Advocates, Khordha

Counsel for defendant No. 1 . . . Sri A.K. Patttnaik & Associates  
Advocates, Khordha

Counsel for defendant Nos. 2 to 12 . . . Ex-Parte.

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Date of conclusion of Argument – 21.10.2014

Date of pronouncement of Judgment – 14.11.2014  
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### **JUDGMENT**

This is a suit for declaration and permanent injunction in respect of a piece of land recorded under khata/ holding No. 51, plot No. 1952 total measuring Ac. 0.055 decimals in mouza Biribadi under Tangi P.S (hereinafter referred to as the suit land), as well as recovery of possession in the event, if the plaintiff is dispossessed of by the defendant No-1 during the pendency of the suit

02. The case of the plaintiff is that he is the recorded owner of the suit land having his *sttiban* occupancy *raiyati* over it. In the settlement ROR the defendant No. 2 has been noted as a person in possession with *Sikkim* right under *Sikkim* holding No. 28 over the suit land, but in fact neither the defendant No. 2 nor the other defendants such as defendant Nos. 3 to 12 are in physical possession of the suit land in any manner, nor they have been paying any rent to the plaintiff as *Sikkim* tenants. But,

taking advantage of the wrong recording of their names, the defendant Nos. 2 to 12 executed a registered sale deed vide document No. 848 dt. 28.11.2003 by transferring the suit land in favour of defendant No. 1. The specific case of the plaintiff is that the *Sikkim* tenancy right is not heritable or transferable and as such the sale deed executed by the defendant Nos. 2 to 12 is illegal and void. After obtaining the sale deed defendant No. 1 attempted to take possession of the suit land intending to raise some construction there and for which the plaintiff came to know about the execution of such sale deed. The further case of the plaintiff is that, neither the defendant Nos. 2 to 12 nor the defendant No. 1 at any point of time are in possession of the suit land. The plaintiff has all along engaged one *khamari* (caretaker) to look after the property affairs including the suit land and he has been looking after the same till date. While, the defendant No. 1 applied for mutation, the plaintiff raised objection before the revenue authority. The plaintiff again contended that in case the defendant No. 1 will succeed to encroach any portion of the suit land, the same will cause material loss to him, which cannot be compensated at any cost. By assigning the cause of action the plaintiff has to say that on 07.01.2004 he objected the mutation proceeding of the defendant No. 1 and thereafter the present suit was filed.

03. After institution of the suit summons were issued to all the defendants. But, only defendant No. 1 participated in the proceeding and submitted her written statement. The suit against defendant Nos. 2 to 9, 11 & 12 set ex-parte on different dates. The suit against defendant No. 10 was expunged on 26.02.2011.

The defendant No. 1 in her written statement has disputed all the basic facts advanced by the plaintiff in the plaint and challenged the suit on the question of maintainability and cause of action. The specific case of the defendant No. 1 is that defendant Nos. 2 to 12 are the *Sikkim* tenants of the suit land, specifically noted in the names of defendants No-2 to 6, 8 to 11 and in the name of the deceased father of defendant Nos. 7 and deceased husband of defendant 12. The suit land was the homestead land of defendant Nos. 2 to 12, who were in possession of the same under occupancy *raiya* right. Therefore, the property is heritable and transferable. The defendants No-2 to 12 also have their residential house over it. Since they had been ordinarily residing over the suit land, transfer of the same in favour of defendant No. 1 is lawful and proper. After selling the suit land they also delivered its possession to defendant No. 1 and from that date the defendant No. 1 is in continuous possession of the same by using it as her homestead. She is the rightful owner in possession of the suit land. The sale of the land, delivery of possession and using the suit land by defendant No. 1 is very much within the knowledge of the plaintiff. It is again contended by the above defendant that the plaintiff is never in possession of the suit land at any point of time as he has been residing at Puri and only to harass the defendant No. 1, the plaintiff has instituted the suit and for which the suit is liable to be dismissed with cost.

04. Taking account of the factual disputes between the parties and in order to adjudicate the disputes lawfully and purposefully the following issues have been settled.

**I S S U E S.**

- i) Whether the suit is maintainable?
- ii) Whether the plaintiff has any cause of action to bring the suit?
- iii) Whether the defendant Nos. 2 to 12 being the Sikkim tenants are ordinarily residing over the suit land and acquired the heritable and transferable right as occupancy tenants as per the provision U/s- 236 of 'The Orissa Tenancy Act'?
- iv) Whether the defendant Nos. 2 to 12 being Sikkim Tenants in respect of the suit land can transfer the suit land to others?
- v) Whether the sale deed executed by defendant Nos. 2 to 12 in respect of defendant No. 1 is a valid sale deed?
- vi) To what relief, the plaintiff is entitled to?

05. In order to substantiate its case, the plaintiff has examined two witnesses including himself as P.W. 2. The certified copy of the ROR under khata No. 521 (suit land) of mouza Biribadi and the certified copy of the registered sale deed bearing No. 848 dt. 28.11.2003 have been admitted in the evidence by the plaintiff and accordingly marked as Ext. 1 & 2 respectively.

On the other hand three witnesses have been examined on behalf of defendant No-1. Out of whom, D.W. 3 is the defendant No. 1 herself. She has also produced six documents and exhibited the same in due recourse of trial in favour of her case. The ROR under khata No. 28 of mouza Biribadi is marked as Ext. A, the registered sale deed bearing No. 848 dt. 28.11.2003 as Ext. B, Rent Receipt dt.

11.01.2004 as Ext. C, ROR in khata No. 48 of mouza Biribadi as Ext. D, Hal-Sabik information issued by Tahasildar, Chilika as Ext. E and the Certified copy of ROR in khata No. 482 of mouza Biribadi as Ext. F.

**FINDINGS.**

**Issue No. iii, iv & v.**

06. The above three issues are not only interrelated, but also quite decisive to the real disputes between the parties and for which taken up first for consideration.

The undisputed case is that the suit land is recorded in the name of the plaintiff under *sttibam* status and to that effect Ext. 1 has been produced, which is the ROR, relating to the suit land recorded under khata NO. 521. Wherein, in the remark column of plot No. 1952, it has been mentioned that defendant No. 2, Narana Sasmal is in possession of the same as Sikkim tenant. For the convenient sake, this court has also visited the ROR under khata No. 28 in respect of the suit land, which is marked as Ext. A. In the said ROR the names of the defendant Nos. 2 to 6 and 8 to 11 and the names of the deceased father of defendant No. 7 and husband of defendant No. 12 are recorded as the *Sikkim* tenants. It is also undisputed that the *Kisama* of the suit land is homestead. At this stage, the plaintiff has raised two important questions. Firstly, the plaintiff has contended in his plaint as well as in his evidence that the *Sikkim* tenancy is not transferable and heritable. But, in case of a homestead land, under *raiya* right is not heritable and transferable, except by proof of custom. Whereas, the defendant No. 1 while disputing the above two contentions has stated that the defendant Nos. 2 & 12 were residing over the suit land, which is a homestead and by virtue of their

status, their under raiyati right is transferable and heritable. In order to substantiate their contentions both the parties have adduced evidence and more over they have referred several reported decisions.

07. Let's now come to the question, whether the *Sikkim* tenancy is heritable and transferable? The plaintiff first relied upon a decision of the Hon'ble High Court of Orissa reported in **33 CLT 721**, in a case between '*Biseswar Giri Vrs. Haraprasad Behera and Others*'. In the said Judgment the Hon'ble Court has observed that:-

“The Section and illustration give legislative recognition to the well established position of law that under-raiyati right is not heritable and transferable, except by proof of custom. The same view has been taken in *Bhikari Bhoi Vrs Jagannath Mohapatra*.”

In the said judgment in para – 7, the Hon'ble Court while dealing with the disputed homestead land within the meaning of Sec. 236 (1) of the Orissa Tenancy Act clearly held that:-

“If the Learned Lower Appellate Court comes to the conclusion that defendant Nos. 3 to 5 ordinarily resided there, he must hold that they have acquired the transferable right of an occupancy *raiyyat* and as such the transfer by Ext. F conveyed a valid title in favour of the defendant No. 1 & 2.”

The judgment as a whole provides that ordinarily an under-*raiyyati* right is not heritable and transferable, but provision 236 (1) is an exception to the rule and the

party, who claims to be in possession of the suit land in term of 'ordinarily resided there' has to prove the same.”

The Second decision reported in Volume – **33 (1991) OJD 154 (Civil)**, in a case between *Champa Bati Bewa @ Kabi and Others Vrs Kanhu Mallick and Others*. In the said Judgment the Hon'ble High Court of Orissa has confirmed that:-

“*Sikkim* Tenancy not being heritable, the status of the legal heir became trans-  
passer”.

The said observation has been made by the Hon'ble Court in the context, when the *Sikkim* tenancy has been ceased. This court has gone through the above judgment and it is the opinion of this court that the fact and circumstances of the present case is completely different to the case decided by the Hon'ble Court in the aforesaid decision. The plaintiff again relied upon another observations reported in **CLT (Notes) 34**. The Hon'ble Court in the said judgment observed while deciding a case between “*Kunja Rout and Others Vrs Radha Moharana and another*” that

“Orissa Tenancy Act 1913 Sec. 239 (G), mere residing in the house for want of accommodation cannot be said to be “Ordinarily residing” within the meaning of the Section, the word ordinarily how to be interpreted.

It is admitted that the defendants had another residential house of their own, but merely because defendant found to be insufficient to accommodate a large family and they went to move in the disputed house, it cannot be said that the defendants were ordinarily residing in that house.”



Since, the full judgment has not been referred to the court, it is quite difficult for the court to accept in which circumstances and basing on which context such an observation has been made by the Hon'ble Court.

08. At this stage the most appropriate decision has been cited by the defendant, which is completely akin to the present fact and circumstances of the case. The defendant referred a decision reported in '**2000 (II) OLR 363**, in a case between *Smt. Sarala Kumari Rath Vrs Khati Rout and Others*. In the said judgment the Hon'ble High Court of Orissa has observed that:-

“According to law applicable to this state, Sikkim Right in respect of the agricultural land was not heritable nor transferable. So far as homestead land is concerned, according to Sec. 236 of the Orissa Tenancy Act as amended in 1946, a *Sikkim* Tenant who ordinarily rights in a homestead would acquire occupancy right in respect thereof and in that view of the matter, it has been consistently held by this court that since a Sikkim Tenant in possession of homestead land acquires occupancy status and therefore, his right thereto is both heritable and transferable.”

After going through all the observations made by the Hon'ble High Court of Orissa in all the decisions discussed earlier, there would be no doubt that a *Sikkim* right in respect of a homestead land is guided U/s 236 of the Orissa Tenancy Act and such right is heritable and transferable on certain conditions and the two most vital conditions are that, the nature of the land must be homestead and the person, who claims his right to be heritable and transferable shall be ordinarily residing over the said land. But, in application to the present case, the plaintiff has raised that even

though the suit land has been recorded in the name of the defendant Nos. 2 to 12 as *Sikkim* tenants, they have never resided there at any point of time. Therefore, Sec. 236 of Orissa Tenancy Act is not applicable in relation to transfer of the suit land by the defendant Nos. 2 to 12. On the other hand defendant No. 1 in his written statement has denied such allegations and he has specifically impleaded that all the *Sikkim* tenants had been ordinarily residing there using the suit land as their *Gharabari* since the time of their fore fathers. This being the factual position of the dispute, the onus of proof heavily lies on the plaintiff who has denied the possession of the defendants No-2 to 12 over the suit land, to establish that the said defendants were not 'ordinarily residing' over the suit land.

09. Before entering into the discussion relating to the question, whether Sec. 236 of the Orissa Tenancy Act is applicable to the case of defendant Nos. 2 to 12, it must be noted that the counsel for the defendant No. 1 forcefully urged that there is no dispute that the suit land is the homestead land and while the suit land has been recorded by the consolidation authority as homestead, the term "ordinarily residing" lost its relevancy because of the reason that taking account of the possession and using of the land as homestead by the defendant Nos. 2 to 12 and their fore fathers, the same has been recorded as homestead. The suit land or any portion of the suit land, which is lying vacant as per the evidence of the witness, cannot be taken up seriously against the said defendants because the term homestead also includes ancillary to the homestead as per the provision of Sec. 2 (12) of OLR Act, which denotes that,

“homestead” means any land, whether or not recorded as such, ordinarily used as house site, ancillary or incidental to agriculture.”

10. The question raised by the defendant appears to be far from the logical, factual and ethical meaning and application of both the words. The term “homestead” and “ordinarily residing” are completely two distinct terms. So far as the term 'homestead' is concerned, the same defines the nature of the land recognized by the revenue authority for revenue purpose as well as to permit the recorded owner or tenant of the said land to use it accordingly. The tenant either by application or the settlement officer after due survey can convert an agriculture land into homestead. But, the term used “ordinarily resides” has been incorporated in the said provision simultaneously with the term “homestead”. Therefore, recording of a land to be homestead itself do not confer that the person in possession of such land is supposed to be ordinarily residing there as per the provision U/s- 236 (1) of the Orissa Tenancy Act. Even though the term “Ordinarily Resides” has not been defined in the Act, this court has invited reference from the judgments of the Hon'ble High Court of Orissa, to conclude its findings on the above issue. In the case, reported in '**1990 (1) OLR 261**' between *Hata Barik Vrs. Raghunath Srichandan and others*, the Hon'ble High Court of Orissa has clearly observed that-

“ Admittedly, “A” schedule land is homestead of plaintiff and Nata. In the decisions of this Court in 15 (1949) CLT 111 (**Dina Bhoi V. Another V. Janaki Ballav Das and another**), Sec. 236 (1) was applied on the finding that tenant was ordinarily residing in the disputed land. In the present case, there is no assertion in the

written statement that Hata was ordinarily residing in 57. ½ decimals of homestead land purchased by defendant No. 1”.

This court has also obtained two judgments from Internet sources to invite references to the use and application of the term “Ordinarily resides”. The Hon'ble High Court of Orissa in W.P.(C) Case No. 30007 of 2011 held that:-

“In the case of *Bibhuti Bhusan Mohanty (supra)*, this court laid down that language of Sec. 236 expressly mentions that the incidents of tenancy of a tenant in respect of the homestead in which he ordinarily resides shall be the same as the incidents of tenancy of an occupancy raiyat. There can be no doubt that the aforesaid section has been incorporated into the Act for the benefit of a tenant who ordinarily resides in a homestead irrespective of the nature of his tenancy. Therefore, any interpretation of the language used in the section which would go against the spirit and intendment of the section is not permissible. Further, a plain reading of the section clearly indicates that a tenant acquires the status of an occupancy raiyat in respect of the holding where he ordinarily resides. Under Section 236 of the Orissa Tenancy Act as amended in 1946, a tenant ordinarily residing in a homestead as such and not having occupancy right there in previously acquires occupancy right in respect of the homestead for all purposes”.

Similarly, in another case between *Hari Behera Vrs. Harekrushna Kantha*, the Hon'ble Court has clearly held that:-

“It appears to me that neither the courts nor the parties fully understood the implications of the amendment made to Section 236 by Orissa Act x [10] of 1946.

That section (as amended) says that in respect of the homestead is which a tenant ordinarily reside his incidents of tenancy shall be the same as those of an occupancy raiyat. Therefore, if a tenant claims the benefit of this section he must first establish that the plot is his homestead and secondly that he ordinarily resides therein.”

And again, “We are further not prepared to accede to the contention of the appellants that the expression homestead is used in Sec. 182 as a generic term descriptive of a particular kind of land; on the other hand, we think, it denotes land on which a raiyat has his homestead, that is, land used by him for residential purposes.”.

All the above pronouncements clearly establish that “ordinarily resides” convey an actual use of the land for homestead and the person, who claims to be ordinarily residing over a piece of land has to establish that he is in actual, real and active possession of the land having his residence over it. But, here in this case the onus is heavily on the plaintiff to establish that the defendants, who have claims to be residing over the suit land as their homestead are not in actual possession of the same and as such they are not entitled for the benefit of provision U/s-236 (1) of the Orissa Tenancy Act. On that score the evidence adduced by both the parties would help the court to reach at a destination. Coming to the evidence, the two witnesses on behalf of the plaintiff have clearly stated that the plaintiff is the owner in possession of the suit land. Even though the same has been recorded in the name of defendant Nos. 2 to 12 as *Sikkim* Tenants, they at no point of time were in possession of the suit land in any manner. There is no residential house of the above defendants over it nor they have used the same as their homestead. Rather the plaintiff is in exclusive possession over

it having his right, title and interest. Only taking advantage of recording of their name they have alienated the suit land to defendant No. 1. They have been cross-examined by the Learned Counsel for the defendant No. 1, but so far as the present issue is concerned nothing has been contributed by the above two witnesses in support of the defendants claim that they are in actual possession of the suit land and using the same as their homestead or they have been residing over the suit land.

11. Coming to the evidence from the side of the defendants, D.W. 1 in his cross-examination has stated that defendant No. 1 is the owner of the suit land. The house of Narana Sasmal (D-2) falls at a distance of around 200 meters far from the suit land. The said house of Narana is his ancestral property and he has been residing there since long. Charan Sasmal (D-3), Godabari Sasmal (husband of D-12) and Lochan Sasmal (D-11) having their own residential houses inside the village and they have been residing there since the time of their grandfathers. The suit land is now piled up with wood, stones, straw hips and cow dunk pit. He again stated that he has been coming across the suit land since his childhood. Prior to the massive cyclone of year 1999, there was a house over it. The said house was constructed by the previous tenants such as Narana Sasmal (D-1) and others as a watch house.

Now, it may be noted that D.W. 1 is the witness from the side of the defendant No. 1 and even though the defendant Nos. 2 to 12 have been set *ex-parte*, D.W. 1 is produced before the court in support of the claim of the defendant No-1, but while facing the truth, he has categorically and clearly stated that prior to 1999 there was a watch house over it and the same was subsequently demolished. The recorded

*Sikkim* Tenants such as Narana Sasmal and others have been residing in their village since the time of their grand fathers. His evidence implies that at no point of time the defendants No-2 to 12 have used the suit land as their homestead. D.W. 2 is another witness to the locality. He in his cross-examination stated that the plaintiff is the owner of the suit land. From the record of right he could ascertain that Babuli Pradhan (D-1) is the *Sikkim* Tenant of the suit land. He stated that the cow dunk pit, a fire wood hip, stones and paddy bundles are lying over the suit land. He in para – 5 of his cross-examination has clearly stated that at the time of selling the suit land to Babuli Pradhan (D-1) the broken houses were existing over it. Babuli Pradhan is the owner of the house in front of the suit land intervened by a road. Bansidhar Dash Goswami (Plaintiff) is the owner of the respective houses of Narana Sasmal, Kaibalya Sasmal, Amin Sasmal, Kumara Sasmal, Sashi Sasmal, Bijay Sasmal and Gobinda Sasmal (Recorded *Sikkim* Tenants). Their houses of the above *Sikkim* tenants situate at a distance, intervened by 50 houses. He again stated that while the suit land was in possession of Narana Sasmal and others, they were also using the portion of the suit land for cultivation. The above persons were residing with their respective family members so also by occupying another house. The above persons having their own ancestral houses in their respective villages. The evidence is self explanatory, which implies that the defendant Nos. 2 to 12 at no point of time have used the suit land as their residence. They have their own ancestral houses in different villages and they have been residing there. Therefore, the defendant No-1 cannot claim that the suit land is ancillary to the actual homestead of the defendant Nos. 2 to 12.

12. D.W. 3 is sole defendant, who is contesting the suit against the plaintiff. Her evidence is quite desirable for her own case. In the examination in chief she has stated that she is in peaceful possession over the suit land and using the same as her homestead. In the cross-examination she admitted that the plaintiff Adhikari Bansidhar Dash Goswami is the owner of the suit land. She again stated that she has been paying land revenue to the plaintiff as the owner of the suit land since her purchase and she again stated that she is no way concerned about the payment of land revenue as her husband is looking after the suit land. She has made the real disclosure in para – 10 of her cross-examination. As her evidence, at the time of purchase of the suit land there was a two roomed house over it which was demolished due to cyclone. Her vendors/ defendant Nos. 2 to 12 were using the suit land for keeping the paddy crops, cow dunk pit etc. A bare perusal of the evidence of D.W. 3 reveals that there was a broken house over it, which was demolished during the cyclone and consequent upon the evidence of D.W. 1, the same was broken in the year 1999. The D.W. 1 has admitted that the house belongs to the plaintiff. There is absolutely no evidence in the hand of the defendant Nos. 1 to establish that there was a residential house over it at any point of time. Rather the witnesses from the side of the defendant admitted that the recorded Sikkim Tenants to the suit land have been residing in their respective ancestral houses in different villages. Even for the sake of discussion it is accepted that there was a two roomed house over the suit land at any point of time, the same is not sufficient at all to accommodate 12 recorded tenants to use the same as their residence. If so, they must have reconstructed the same after demolition in the year



1999. The sale deed was executed in the year 2003, four years after demolition of the two roomed house over it. There is absolutely no evidence from the side of the defendant to show that her vendors at any point of time were residing over the suit land and using the same as their residence. The plaintiff through the mouth of the defendant witnesses successfully established that at no point of time the suit land was used as the homestead by the recorded *Sikkim* Tenants such as defendant Nos. 2 to 12 and therefore, the occasion of residing there does not arise at all.

13. At this stage the counsel for the defendant No-1 has urged that the suit land being used by the defendants No-2 to 12 for other purposes like keeping cow dung pit and waste agricultural products, the same can be treated to be ancillary to their homestead.

Sec. 2 (12) of the Orissa Land Reform Act defines the term “Homestead”, as, “Homestead” means any land, whether or not recorded as such, ordinarily used as house-site, ancillary or incidental to agriculture”. The Hon'ble Court of Orissa while deciding a case between *Hari Behera Vrs. Harekrushna Kantha*, in its judgment dt. 04.08.1949 has also described the term 'homestead' in the following manner:-

“I do not think, there can be any doubt about the preposition that a dwelling house would include not only the house, but also the land and its appurtenances, which are ordinarily and reasonably necessary for its enjoyment. The expression “homestead” would, therefore, include not only the side on which the dwelling house stands, but also that portion of the land which is ordinarily and reasonably necessary for the enjoyment of the house.”

The said expression clearly provides that the ancillary to the homestead must be connected with the original homestead land, which is ordinarily and reasonably necessary for the enjoyment of the house. But, in the present case the defendant No-1 has not taken any plea to the effect that the suit land is ancillary to the homestead of her vendors. While, the evidence goes against her existing and specific pleading, the learned counsel for defendant No. 1 during argument for the first time moved in to the above plea. But, in view of the forgoing discussions, the real homesteads of defendant Nos. 2 to 12 situate in a distance place to the suit land. Therefore, the same cannot be treated to be ancillary to their homestead.

14. When the law disqualifies the vendors of defendant No. 1 to transfer the suit land, alienation of the same to defendant No. 1 by virtue of the sale deed bearing No. 848 dt. 28.11.2003 vide Ext. A is not a valid document and the same is hereby declared to be a voidable document and not enforceable in the eye of law so also not binding on the plaintiff. Ext. C, which has been relied upon by the defendant No. 1 reveals that the rent was paid for the suit land only in the year 2004 by the defendant No-1. But while the sale deed is itself a voidable document, the rent receipt cannot be a piece of document to establish anything more.

**Issue Nos. i, ii & vi.**

15. So far as the question of maintainability of the suit is concerned, the defendant No. 1 in her written statement has only contended that the suit land is not maintainable and there is no cause of action to bring the suit. But, during course of evidence, the defendant No. 1 remained silent without advancing the cause and reason

upon which she has challenged the maintainability of the suit. The forgoing discussion is sufficient enough to bring the fact to the court that the plaintiff is the recorded owner of the suit land. He has challenged the alienation of the suit land by his tenants to other and thereby raised a bonafied question for an useful and proper decision. The cause of action has been rightly assigned by the plaintiff in his pleading as well as during course of evidence. The suit is maintainability in all respect. So far as the relief is concerned, needless to say that the sale deed executed by the defendant Nos. 2 to 12 in favour of defendant No. 1 is a voidable document and for which the same is not enforceable in the eye of law. The plaintiff is entitled to the decree of declaration.

16. So far as the question of permanent injunction is concerned, since a valid and reasonable dispute has been put forwarded against defendant No. 1 that by virtue of a voidable sale deed she has been attempting to encroach the suit land, appears to be quite just and proper. The defendant No. 1 has purchased the suit land with an aim to take possession of the same and as such the question of her attempt to raise construction cannot be rulled out. But, since the sale deed is a voidable document and not enforceable in the eye of law, she cannot be permitted to exercise her right over suit land and for that reason the right of the plaintiff is required to be preserved. Hence the plaintiff is also entitled for the decree of permanent injunction against the defendant No. 1 as he sought for. Hence it is order.

**ORDER.**

The suit of the plaintiff be and the same is decreed on contest against defendant No. 1, while ex-parte against defendant Nos. 2 to 9, 11 & 12, but in the circumstances without any cost.

The sale deed executed by defendant Nos. 2 to 12 in favour of defendant No. 1 vide document No. 848 dt. 28.11.2003 is hereby declared a voidable document and not binding on the plaintiff. Defendant No. 1 is hereby permanently enjoined not to interfere with the peaceful possession of the plaintiff over the suit land in any manner. Violation of this order entails the plaintiff to adopt the proper recourse to law.

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 14<sup>th</sup> day of November, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiff :-

- P.W. 1        Bairagi Pradhan.  
P.W. 2        Adhikari Bansidhar Das Goswami.

List of witnesses examined on behalf of Defendants :-

- D.W. 1        Durga Charan Harichandan.  
D.W. 2        Kuna Mohatwo.  
D.W. 3        Babuli Pradhan.

List of documents admitted in the evidence on behalf of the Plaintiff :-

- Ext. 1        Certified copy of ROR under khata No. 521 of mouza Biribadi.

Ext. 2 Certified copy of sale deed bearing No. 548 dt. 28.11.2003.

List of documents admitted in the evidence on behalf of Defendants :-

- Ext. A ROR under khata No. 28 of mouza Biribadi.  
Ext. B Sale deed No. 848 dt. 28.11.2003.  
Ext. B/1 Signature of D.W. 1 on Ext. B.  
Ext. B/2 Signature of Narana Sasmal on Ext. B.  
Ext. B/3 Signature of Charan Sasmal on Ext. B.  
Ext. B/4 Signature of Kumar Sasmal on Ext. B.  
Ext. B/5 Signature of Bijay Sasmal on Ext. B.  
Ext. B/6 Signature of Jogendra Sasmal on Ext. B.  
Ext. B/7 Signature of Gurubari Parida on Ext. B.  
Ext. C Rent Receipt dt. 11.01.2004.  
Ext. D ROR in khata No. 48 of mouza Biribadi.  
Ext. E Hal-Sabik information issued by Tahasildar, Chilika.  
Ext. F Certified copy of ROR in khata No. 482 of mouza Biribadi.

Senior Civil Judge, Khordha.