

**HEADING OF A DECISION IN A CIVIL SUIT  
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

Sri Abhilash Senapati, BALL.B  
Civil Judge , Khurda.

Dated the 11<sup>th</sup> day of July, 2014

**C.S.110 /2012**

1. Baikunthanath Godi, aged about 56 years

S/o: Late Dhuli Bandhu Godi

Vill/P.O: Mukunda Prasad, P.S/DIst: Khordha

..... Plaintiff.

-Versus-

1. Nishamani Dei, aged about 70 years

W/o: Late Bhagaban Patra

2. Krushna Chandra Patra, aged about 40 years

S/o: Late Bhagaban Patra

Both are of Vill: Belapada, P.S: Jatni, Dist: Khurda

3. Dhuli Biswal, aged about 60 years

4. Hulasa Biswal, aged about 62 years

Both are ov Vill: Taraboi, P.S: Jatni, Dist: Khordha

At/Pr.: Malisahi, Ward No.21, Mukunda Prasad, P.S/Dist: Khurda

..... Defendants.

Counsel for Plaintiffs ... Sri B. Patra, Advocate  
& Associates  
Counsel for Defendants ... Sri A.K Pattanaik, Advocate  
& Associates

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Date of Argument – 27.06.2014

Date of Judgment – 11.07.2014

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### **JUDGEMENT**

1. The plaintiff has filed this suit with a prayer for declaration of right title, interest over the suit land along with permanently restraining the defendants from entering over the suit land.

2. The plaintiffs case in short is as follows;

That he has purchased a piece of land of an area of Ac0.036 decimal under khata No.385 in plot No.1914 out of Ac0.065 decimal towards the south and western side from one Jema Bewa i.e mother of defendant No.1 through registered sale deed No.2677 on dtd.23.04.1977 and at that time the vendor had handed over the physical possession to the plaintiff. When the plaintiff was in physical possession over the case land he had purchased Ac0.011 decimal from defendant No.1 through registered sale deed No.388 on dtd.10.02.1992 as at that time Jema Bewa was dead and defendant No.1 was the only legal heir. After purchasing the same the plaintiff constructed his dwelling house over a portion of his purchased land on an area of Ac 0.047 decimal and the rest was lying vacant. There was a well over the rest

portion of the case land which was used by the plaintiff. Defendant Nos. 1&2 were residing at Belapada and defendant nos. 3 &4 were residing over the land of defendant Nos. 1&2. The defendants have got no right, title, interest or possession over the suit land and for their illegal gain, to remove the plaintiff from over the suit land, they have started building materials over the same. Defendant Nos. 3 &4 are litigant person being influenced by defendant Nos. 1&2 and are creating various troubles in the peaceful possession of the plaintiff over the suit land. On 12.05.2012 when the defendants wanted to start building materials over the case land, the plaintiff opposed it, he was threatened by the defendant. The cause of action arose on 12.05.2012 when the defendants illegally wanted to start building materials over the suit land. Hence the plaintiff has prayed for declaration of right, title and interest over the suit land in their favour along with permanently restraining the defendants from creating any disturbance in the peaceful possession of the plaintiff.

3. The defendants have appeared and have filed their W.S denying the claims of the plaintiff. The defendants have stated that the suit is defective for non-joinder and mis-joinder of parties, is grossly under valued and is barred by law of limitation. The defendants have stated that there are no different sale deeds in favour of the plaintiff relating to the suit property, rather the plaintiff has totally purchased an area of Ac0.047 decimal. The deed upon which the present suit has been filed has not been acted upon as the land described in the first deed has been executed wrongly i.e as per possession of the plaintiff, the plot No. and area has been wrongly mentioned in the deed. The plaintiff thereafter returned the deed to the vendor again with an endorsement that he will not claim right, title or

possession , whatsoever over the land mentioned in that deed. The suit area is now under complete possession of the defendants having their name along with right title, interest and possession over the suit property.

4. From the rival contention of the parties in their pleadings and hearing, the following issues are drawn up for consideration.

### **ISSUES**

- i. Whether the plaintiff has any cause of action to file the suit ?
- ii. Whether the suit is maintainable according to law ?
- iii. Whether the plaintiff has any right, title, and interest over the suit land ?
- iv. Whether the first deed was not acted upon ?
- v. whether the defendants are trying to encroach the suit land ?
- vi. Whether the suit is liable to be dismissed due to lack of identity ?
- vii. To what relief, is the plaintiff entitled ?

6. In order to prove its case the plaintiff has examined 2 witnesses and has exhibited 5 documents which includes Ext.1 which is the affidavit evidence of P.W.1, Ext.2 is the Certified copy of R.S.D No.2677, dtd.23.04.1977. Ext.3 is the Certified copy of R.S.D No.388, dtd.10.02.2012, Ext.4 is the Holding tax receipt, Ext.5 is the Affidavit evidence of P.W.2 . While on the other hand to disprove the averments of the plaintiff, the defendants have examined three witnesses and have exhibited 5 documents Ext.A is the Original sale deed of 1997, Ext.B is the V. Nama executed by P.W.1 at the time of filling of case, Ext.C is Affidavit evidence of D.W.1, Ext.D is the Evidence on affidavit of D.W.2, Ext.E is

the Affidavit evidence of D.W.3.

7. **Issue NO. 3,4 &5**

These issues are taken up together as they deal with common matters in dispute. Let us now analyze the evidence in the light of the above issues .

P.W.1 has in his evidence stated that he is the plaintiff in the suit and has filed the suit against the defendants for declaration and permanent injunction in support of the suit land. He had purchased an area of Ac0.036 decimal towards the south -western side from plot No.1994 under Khata No.385 of Mouza Mukunda Prasad through registered sale deed No.2677 on dtd.23.04.1977 from Jema Bewa i.e mother of defendant No.1, who had handed over the physical possession to the plaintiff. The plaintiff had again purchased Ac0.011 decimal from defendant No.1 through registered sale deed No.388 dtd.10.02.1992 as at that time Jema Dei had died. The plaintiff has constructed his dwelling house over Ac0.047 decimal and the rest portion of the plot was lying fallow. There was a well over the rest portion of the plot which was used by the plaintiff . Defendant Nos. 3&4 used to remain in plot No.1995 which is adjacent to the suit land towards the south -western side. The defendant Nos. 3&4 have no right, title , interest or possession over the case land but they are again trying to dig plinth over the suit land giving rise to the cause of action. In his cross-examination he has stated that he has filed the certified copy of the registered sale deeds as one of them was of the year 1977 and the another one is of 1977. He has not mentioned the reasons for non-production of the original deed in Ext.1. The boundary details of the suit land are as follows ;

On north of suit land there was land of Padma Barik on the south of

suit land there was his land , on the east of suit land there is a main road and on the west of suit land is his vendor's land. Through deed No.1977 he had purchased Ac0.036 decimal, where as vide deed No.1992 he had purchased AC0.047 decimal. All these Ac0.083 decimal of land are in one compact area . Vide deed No.1977 he had purchased Ac0.036 decimal of plot No.1994. Vide deed of 1992 he had purchased Ac0.011 decimal of plot No.1994 and AC0.036 decimal from south-eastern portion of plot No.1995. He could not say the length and breath of these two pieces of land. Ext.A is the original sale deed of 1997, however the signature at the back does not belong to him. He had not made any such endorsement at the back of Ext.A. All the signatures in the plaint are of his. The V.Nama has been executed by him. He could not say as to what has been inserted in the midst of second page of Ext.3. The suit plot NO.1995 situates to the adjacent south -east of plot No.1994. He is in possession of Ac0.036 decimal out of plot No.1995 and AC0.047 decimal out of plot No.1994. The width of the entire purchased land (AC0.083) decimal must be around 34-35 feet. Leaving a part of the land in his possession, the rest part of plot No.1994 is under the possession of the defendants. The wall of his house stands on the boundary line between his portion and the defendants's portion. The said wall in fact functions as the boundary between the suit land. He has got separate entries and doors on his portions, whereas they have got separate entry and exit door for their portion. He was present at the time of execution of registered sale deed of 1992. He had also signed the said deed. He had never filed the original of those deeds which corresponds to the certified copies of th Registered sale deeds. The said documents of 1992 is available in their office as he had obtained loan against it by mortgaging the same. He had obtained house building materials against such deed , the

boundary details of the suit property described by him tallies with the boundary details shown in respect of the suit land. The defendants are in occupation of their portion on the western side of plot no.1994. His entire plot No. Ac0.047 decimal out of plot No.1994 situates adjacent to the aforesaid portion of suit land. He had gone through the deed of 1992 before its execution. He has got no objection as regards to the boundary of land described in it. The suit land stands recorded in the name of Banchha nidhi Jena . He is survived by one daughter only i.e Nisamani. Defendant No.3 is the son-in-law of defendant No.1. The house of the defendant situates on the western portion of plot No.1994 and on east the ancestral house of defendant No.1. Apart from this case he has not filed any other case since 1977 and 1992 for possession of any such portion of plot no.1994 . He could not say as to what was the approximate value of the suit property. He could not say as to in respect of how much land Ext.4 had been issued. The defendants have forcefully occupied around Ac0.025 decimal to Ac0.030 decimal of his purchased land.

8. P.W.2 has in his evidence stated that he knows both the parties and has seen the suit land constituting of 2 and 1/2 Gunthas. The plaintiff had purchased the same from one Jema Dei and Nisamani Dei through two sale deed in the year 1997-1992 . The defendants have their residential house adjacent to the suit land towards the south -western side. The defendants Nos. 3 &4 have no right, title over the case land, but they are trying to dig plinth over the case land and have stacked building material which was opposed by the plaintiff. In his cross-examination he has stated that he is deposing as a witness as per the request of the plaintiff. He could not say the number of deed of the two deeds about which he had referred in Ext.5.

He was not present at the time of preparation and execution of the two deeds. Vide deed of 1997 Jema Bewa had sold two Gunthas of suit land from plot No.1995 or 1996 or 1994. He could not remember the plot No.. Vide the second deed Nisamani had sold  $\frac{1}{2}$  gunthas of land out of the same. The house is present over the suit land and the rest portion thereof is lying vacant. He could not say the area of the vacant land nor can he say the area of the land over which the house is situated. The boundary details of the suit land can be described as on east a road , on west the land of Nisamani , on north land of Padma Barik and in the south a road. The distance between his house and the suit land is around 200 meters, the land of nisamani and the suit land are intervened by a boundary wall. The plaintiff has filed this case against Nisamani as Nisamani removed the building materials over the plaintiffs land and did not even bother about his request , and request of village gentries, hence plaintiff has filed this case.

9. D.W.1 has in his evidence stated that he knows the defendants as also the plaintiff in the suit . He has seen the suit land and the land of the defendants. The land of the plaintiff comprises an area of Ac0.047 decimals of land. Except the area of AC0.047 decimals the plaintiff have no other land near the said Ac0.047 decimal. The plaintiff have no manner of right, title , interest or possession over the suit land. The plaintiff is the stranger to the suit property. In his cross-examination he has stated that the house of Baikuntha Godi and Nisamani are adjacent to each other. Both of them were residing in their respective houses. Baikuntha has purchased the land over which the house situates from Nisamani. In order to grab another piece of land by forging the documents, the plaintiff has filed this case.

10. He has seen the suit land in respect of which this case has been filed. His house situates at a distance of about 60 meters from the suit land. The land over which the plaintiff has constructed his house is not a complete plot and it is only a part of the plot. The plaintiff has constructed his house after purchasing Ac0.047 decimal out of the suit plot.

11. D.W.2 has in his evidence stated that she is the defendant No.1 in this suit. The plaintiff has totally purchased AC0.047 decimals for the second time in the modification deed in the year 1992. The suit property is under the possession of the defendants with all sorts of right, title, interest and possession over the same. Except the area of Ac0.047 decimals the plaintiff has no other land under the said AC 0.047 decimal. The plaintiff has no manner of right, title, interest or possession over the suit land. The deed of which the present suit has been filed has not been acted upon. The plot No. and the area has been wrongly mentioned in the deed, for which the plaintiff returned the deed to them with an endorsement that he will not claim right, title or possession over the said land. In his cross examination he had stated that the suit property originally belongs to their father. She and her mother Jema Bewa are the only legal heirs and successors in interest of Banchhanidhi. After death of her father her mother in 1997 had sold Ac0.036 decimal out of plot No.1994 to the plaintiff vide a registered sale deed and that she had acquired title soon after the sale transactions. And that possession of such land was delivered to the plaintiff. The plaintiff has constructed his house over such Ac0.036 decimal purchased by him. She executed the second deed after first deed was returned to her. She could not say if the factum of return of first deed was mentioned in the second deed or not. She has been residing over her land. There was no delivery of

possession over the suit land. But the second deed was acted upon and delivery of possession was given. D.W.3 has in his evidence corroborated with the evidence of D.W.s 1&2 and has in his cross-examination stated that the plaintiff has filed this case in respect of Ac0.036 decimal of plot No.1994. The Khata No. of the suit land is khata 785 and plot No.1994 . Both the suit land does not stands recorded in his name but the said land stands recorded in the name of Nisamani. The plaintiff has not constructed any house over the suit land. In 1992 the plaintiff has purchased Ac0.011 decimals of land and plot No.1994 and AC0.036 decimals from plot NO.1995. The plaintiff purchased the same from Nisamani. As the plaintiff has purchased AC0.047 decimals in 1992 in exchange of the deed of 1977, it cannot be said that the plaintiff had purchased ac 0.047 decimals from plot No.1994. The plaintiff has constructed his house over plot NO.Ac0.047 decimals . The plaintiff has got no such house over the land in plot No.1994, which he had purchased vide deed No.1977. No separate registered sale deed was executed for Ext.1 of land. In the back side of the first deed of 1977 the endorsement and signature of the plaintiff were given before village gentries. The said deed was also returned to them. He could not say as to whether the factum of exchange was mentioned in the contents of the deed of 1992. They have also never reported to the sub-registrar about endorsemnt and signature of the plaintiff over backside of Ext.1. Coming into the document filed by the plaintiff it is seen that Ext.2 is the registered sale deed No.2677 wherein Jema Bewa had sold to Baikunthanath Goda from Khata No.785, plot No.1994 an area on Ac0.036 decimal from Ac0.047 decimal. The said Ext.2 clearly shows that consideration was paid to the vendor and thereafter he delivered possession over the said land. Ext.3 which is another sale deed bearing No.388 shows

that Nisamani i.e the vendor had sold to the plaintiff an area of about 0.11 decimal from plot No.1994 and an area of Ac0.036 decimal from plot No.1995 and in total Ac0.047 decimal. The above sale deed shows that consideration was paid and delivery of possession was given by the vendors to the plaintiff. Ext.4 , is the “Jha” form which shows about the rent being paid i.e the holding tax . On the other hand they exhibited only one document i.e Ext.A which clearly shows that Jema Bewa had sold to Baikuntha Natha vide registered sale deed No.2677 an area of about Ac0.036 decimal from Khata No.785 and plot No.1994 . On the back side of Ext.A it has been endorsed that as the land mentioned in Ext.A is not traceable and hence as Ext.A was wrong hence another registered sale deed was made , wherein Nisamani had sold Ac 0.047 decimals in total to the plaintiff i.e AC0.011 decimals from plot NO.1995 and Ac0.036 decimal from plot No.1994. Ext.A1 further shows that the said Exhibit was then returned to Nisamani as another sale deed was prepared.

The whole crux of the dispute now lies as to whether the endorsement made at the back of Ext.A marked as Ext.A/1 is genuine document or not. The plaintiff has filed the certified copy of Ext.A in Ext.2. The said Ext.2 nowhere states about any such cancellation of any such exchange of land. Further more the said Ext.3 which has been admitted by the defendants also nowhere states about any such cancellation of Ext.2 or exhibit on Ext.2. To add to it neither in the recitals of Ext.2 or Ext.3 any such cancellation or exchange has been mentioned . Further more no such further registered deed of cancellation or exchange has been made by the defendants to show the cancellation or exchange before the sub-registrar. To add to it Ext.A/1 which has been claimed by the defendants as having been scribed by the plaintiff does not contains the signatures of any other

witnesses. Hence the said Ext.A/1 creates a doubt. The defendants had earlier prayed for sending the signatures of the plaintiff for examination in his plaint , V. Nama and A/1, but the plaintiff first needs to prove as to whether the said recitals of A/1 is genuine or not. As stated above nowhere has the plaintiff has been able to show as to how the said Ext.A or Ext.2 was cancelled. Neither by documentary evidence nor by oral evidence they have been able to prove the same. The plaintiff has through out in his evidence corroborated to the fact that he is entitled to the right, title ,interest over the suit land. The plaintiff's evidence has also been corroborated by other witnesses. Lastly, which is also beyond imagination as to how come at the back of the original sale deed , it has been mentioned that the said registered sale deed No.2677 were returned and the same factum has never been mentioned in the certified copy of the said document which clearly creates a doubt regarding the genuineness of the said document i.e Ext.A/1 . As the defendants has failed to prove regarding the validity of Ext.A/1 it can be clearly said that the defendant has failed to prove about cancellation as burden of proof lies on defendant and hence the plaintiff is entitled for possession over the suit land. P.Ws. 1,2 &3 have clearly stated that the suit land belong to the plaintiff and that the defendants has been trying to construct a boundary over the same. P.Ws. 1,2 &3 have equivocally stated that the plaintiff is in possession over the suit land and defendants are trying to encroach over the same. The defendants plea that the plaintiff is not entitled to the suit land clearly shows that they have a malafide intention for encroaching into the suit land. Hence , the above issues are answered accordingly.

12. **Issue NO.2 &6 :-**

The plaintiff has stated that the suit is liable to be dismissed as due to lack of identity. The plaintiff has relied on the citation in *Bandhu Das and Another Vrs. Uttam Charan 2006 (2) CC LR 105* wherein it has been held that in the description of property given in the plaint measurement of the disputed land in relation to the settlement map has not been given as the sketch map has not been drawn upto the scale. The boundaries and the disputed land have not been mentioned. The defendants in the written statement took a specific objection that the suit is bad for lack of identification. Honble Court has in many cases held that the decree is not executable and the suit land is unidentifiable without any proper direction and specific identification. The present suit differs in fact from the suit filed by the plaintiff. In the present suit the plaintiff has stated about the boundary. P.W.1 who is the plaintiff has in his evidence at Para 14 stated that on the north of the suit land is the land of Padma Barik in the south of the suit land is his land in the east the suit land is main road and on the west of the suit land is the land of his vendor. This evidence of the plaintiff regarding identity of suit land has been brought out during the cross-examination. Further more this evidence has also been corroborated by P.W.2 at Para 9 of his evidence. The plaintiff has clearly stated that the boundary with regard to the suit land hence it cannot be said that the suit land is bad for identity. The above issues are answered accordingly. Lastly the plaintiff has stated that the cause of action arose on 12.5.12 when the defendants stacked building materials, hence the question of limitation also does not arise.

13. **Issue NO.1 :-**

The plaintiffs have in his plaint stated the cause of action for filling the suit arose on 12.05.2012 when the defendants illegally wanted to stack building materials over the suit land. The defendants have clearly stated that there is no cause of action by the plaintiff to file the suit. They have never tried to encroach upon the land. In fact the suit area comes under their complete possession. Cause of action is a bundle of rights asserted by one party and denied by another. In this case as both the parties are on dispute it can be said that the plaintiff has got a cause of action to file the suit.

14. **Issue No.7 :-**

As no specific prayer has been made in this regard, hence ordered

**ORDER**

The suit be and the same is decreed on contest against the defendants, but without costs. The plaintiffs right, title over the suit land is hereby declared in his favour. The defendants are permanently restrained to enter upon the suit land.

(ABHILASH SENAPATI)  
CIVIL JUDGE. KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 11<sup>th</sup> day of July , 2014.

(ABHILASH SENAPATI)  
CIVIL JUDGE, KHURDA.

**List of witnesses examined on behalf of Plaintiff :-**

P.W.1: Baikuntha nath Godi  
P.W.2: Khalil Khan

**List of witnesses examined on behalf of Defendants. :-**

D.W.1 Radhakanta Behera  
D.W.2 Nisamani Dei  
D.W.3 Ullash Chandra Biswal

**List of documents proved on behalf of the Plaintiff :-**

Ext.1 Affidavit evidence of P.W.1  
Ext.1/1 &1/2 Signature of P.W.1 on Ext.1  
Ext.2 Certified copy of R.S.D No.388/ dtd.10.02.2012  
Ext.3 Certified copy of R.S.D No.388/ dtd.10.02.2012  
Ext.4 &4/1 Holding tax receipt  
Ext.5 Affidavit evidence of P.W.2  
Ext.5/1 Signature of P.W.2 on Ext.5

**List of documents proved on behalf of the Defendants :**

Ext.A: Original sale deed of 1977

Ext.B V-Nama executed by P.W.1 at the time of filling of case.  
Ext.B/1 Signatue of P.W.1 on Ext.B  
Ext.A/1 Signature and endorsement by the plaintiff at the back of  
Ext.C Affidavit evidence of D.W.1  
Ext.C/1 &C/2 Signatures of D.W.1 on Ext.1  
Ext.D Affidavit evidence of D.W.2  
Ext.D/1 to D/3Signatures of D.W.2 on Ext.D  
Ext.E Affidavit evidence of D.W.3  
Ext.E/1 &E/2 Signatures of D.W.3 on Ext.E

**(ABHILASH SENAPATI)**  
**CIVIL JUDGE, KHURDA.**  
**10.07.2014**