

JUDGEMENT

The plaintiff has filed this suit with a prayer for passing of a decree of permanent injunction against defendant Nos. 1 to 3 and prohibiting them from entering upon the suit land and from creating any sort of disturbances or mischief in their peaceful possession.

02. The plaintiff's case in a nut shell is that :-

The landed properties present in plot No. 1533 with an area of Ac. 2.211 decimals and plot No. 1533/1927 with an area of Ac. 0.243 decimals of khata No. 511 are the subject matter of the suit and are called as the suit properties. The suit properties belongs to LORD SHRI JAGANNATH AT PURI. The plaintiff is in peaceful possession over the suit land since the time of his ancestors. For the peaceful possession of the plaintiff and his deceased father have put boundary fence around the suit land. The plaintiff has planted several types of fruit bearing trees such as Mango, Jack fruit tree, Cashew nut tree and other varieties of trees such as AKASIA, Eucalyptus over the suit land. SHRI JAGANNATH TEMPLE, PURI is collecting "RAJA BHOG". The plaintiff had paid an amount of Rs. 1,000/- on dt. 09.1.2010 as RAJA BHOG to the SHRI JAGANNATH TEMPLE, PURI. Similarly, Rs. 20,316/- was paid as RAJA BHOG on 26.03.2010. After the death of his father, the plaintiff is in possession over the entire suit land. Defendant Nos. 1 to 3 are rich and highly influential persons and gwith an aim to grab the suit land, they are

creating disturbances in the peaceful possession of the plaintiff and his family members. The defendant Nos. 1 to 3 have cut away some trees standing over the suit land forcibly and wanted to demolish boundary fence of the suit land. The plaintiff has initiated a proceeding U/s- 144 Cr.P.C. before the Executive Magistrate, on 30.10.2010 apprehending breach of peace from the side of the defendants. On 24.12.2010, when the plaintiff was present over the suit land the defendant Nos. 1 & 2 being supported by their henchmen reached near the suit land and tried to remove the entire boundary fence with an aim to dispossess the plaintiff from over the suit same, but due to vehement protest by the plaintiff and some other village gentlemen, the defendant Nos. 1 to 3 could not succeed in their attempt. In the mean time defendant Nos. 1 to 3 are taking attempt to change the nature and character of the suit land by cutting all the trees standing over the suit land and also by excavating huge quantity of late-rite stone from the suit land. Looking into the high handed action of defendant Nos. 1 to 3, the plaintiff has intimated such illegal attempt before the Deputy Administrator, SHRI JAGANNATH TEMPLE. The cause of action to file this suit arose on 24.12.2010 on the day in which the defendant Nos. 1 to 3 tried to remove the entire boundary fence of the suit land with an aim to dispossess the plaintiff from it and further threatened to change the nature and character of the suit land by excavating huge quantities of late-rite stones from the suit land. Hence the plaintiff has prayed for passing of a decree of permanent injunction against the defendant Nos. 1 to 3 and thereby prohibiting them from entering upon the suit land and from creating any sort of disturbances or mischief in the possession of the plaintiff.

03. The defendants have appeared and have filed their written statement stating therein that the plaintiff has filed this suit without any cause of action. The plaintiff was never in peaceful possession over the suit land. In fact the villagers have planted trees over the suit land, which is a GOCHARA land and are thereby enjoying the usufructs, but not the plaintiff. The administrator of SHRI JAGANNATH TEMPLE, PURI is not collecting any RAJA BHOG. Even if such an allegation of plaintiff about payment of RAJA BHOG, is found to be true, then it can be said that the said transaction is illegal. The father of the plaintiff had never been looking after the suit land. The defendants are not rich or highly influential persons as alleged by the plaintiff. Although the plaintiff has included a proceeding U/s – 144 Cr.P.C. Against the defendants, but the said proceeding are all false. In order to create false possession over the suit land the plaintiff connivance with the temple administrator as attempted in various ways to prove his false possession over his such valuable laws. The Deputy Administrator, Puri, by misusing his chair under influence of the plaintiff has given some wrong writing to the plaintiff. The defendants have never threatened the plaintiff at any point of time. The suit land are GOCHARA and government land. The village cows are grazing over the suit land. Neither the plaintiff's father nor the plaintiff and his family members were ever in possession over the suit land. If any such receipts or documents are granted by the temple administrator, then those documents are forged documents. The plaintiff has very cunningly not made the temple administrator as the party. During December, 2010 the plaintiff for the first time attempted to take possession over the suit land, which are government GOCHARA land

and that these defendants with all villagers except the few persons, who are dragged by the plaintiff protested to such high handed action of the plaintiff and that the plaintiff could not take possession of the suit GOCHARA land. The identity of the suit land has not been corrected given. The suit land stands recorded in the name of Government of Orissa and are GOCHARA lands.

4. From the rival contention of both the parties, the following issues are drawn up for consideration.

ISSUES

- i. Is there any cause of action for filing of the suit
- ii. Is the suit maintainable according to law?
- iii. Whether the suit belongs to SHRI JAGANNATH TEMPLE, PURI ADMINISTRATOR and is in the possession of the plaintiff?
- iv. Whether the defendants is trying to encroach over the suit land.
- v. To what other reliefs is the plaintiff entitled?

5. In order to prove its case the plaintiff has examined six witnesses and has exhibited 16 documents, which includes the affidavit evidence of P.W. 1 is marked as Ext.1, affidavit evidence of P.W. 2 as Ext. 2, affidavit evidence of P.W. 3 as Ext. 3, affidavit evidence of P.W. 4 as Ext. 4, affidavit evidence of P.W. 5 as Ext. 5, Raja Bhaga rent receipts as Ext. 6 & 6/1, notice dt. 29.10.2006 issued by Administrator of Sri Jagannath Temple, Puri as Ext. 7, information received from P.I.O., Sri

Jagannath temple Officer, Puri under RTI regarding payment of Rajabhag rent as Ext. 8, receipt issued to P.W. 5 by P.I.O., Sri Jagannath Temple Officer, Puri as Ext. 9, Affidavit evidence of P.W. 6 as Ext. 10, Authorization letter issued by Administyrator, Sri Jagannath Temple, Branch Office, Jatani as Ext. 11, Letter addressed to the plaintiff by the P.I.O., Sri Jagannath Temple Puri as Ext. 12, Copy of FIR obtained as per RTI Act as Ext. 13, Copy of order dt. 07.08.2002 of Asst. Land Reform Commissioner obtained as per RTI Act as Ext. 14, Copy of Khata nos. 503 & 507 of Mouza Chhatipur obtained as per RTI Act as Ext. 15, Hal-sabik information sheet as Ext. 16. While to disprove the allegations leveled against them the defendants have examined three witnesses and have exhibited four documents. Which includes in Ext. A, C & D the evidence of D.W. 1, 2 & 3 respectively. Ext. B is the certified copy of 1998 settlement ROR of khata No. 511 of mouza Chhatipur.

FINDINGS

Issue Nos. iii & iv.

06. These issues are taken up together for consideration as they deal with the most important dispute in the suit and are further more inter linked. The main contention between the parties is that while the plaintiff states that the suit land belongs to Puri Temple Administrator and that he is in possession over the same by paying Raja Bhag, the defendant states that the suit land is recorded in the name of Government of Orissa.

P.W. 1 has in his evidence stated that their are trees

situated all over the suit land and that as per his knowledge the plaintiff has been in possession over the suit land for more than 15 to 20 years. In para – 11, he states that the suit land is actually recorded in favour of lord Jagannath. P.W. 2 has in his evidence at para – 11 states that he had seen the suit land and that although there is a foot ball club in their village, but no foot ball is played over the suit land. P.W. 3 has in his evidence with respect to the title of the suit land has stated that the plaintiff is in possession over the suit land and that the plaintiff must be taking the usufructs over the same. In para – 11 he has stated that the cattle of the villagers graze over the suit land. P.W. 4 has in his evidence stated that there was never any temple of goddess Tarini constructed over the suit land. The suit land has been bounded by stone wall and green fence. A portion of boundary on the eastern and western side are covered by green fence. He has not seen the records pertaining to the suit land. As the Amins of the temple office visit the suit land, hence he knows that the suit land belongs to lord jagannath. He has denied in para – 11 that the suit land belongs to Government of Orissa. P.W. 4, who is the plaintiff in this case has in his cross-examination stated that before paying rent to the jagannath temple administrator he had never verified any document to ascertain if the said bigger plot or the suit land stands recorded in the name of Lord Jagannath. The suit land in fact is a portion of a bigger plot. The defendants have got stone quarries. He could not say about the market value of the suit land. P.W. 6 in his evidence has also corroborated the evidence of plaintiff and has stated that the KISAMA of the suit land as per their temple record is “PATITA”. While, on the other hand D.W. 1 has in his evidence stated that the plaintiff is not paying any revenue to the temple

authority as a token of his possession. All the defendant witnesses, i.e. D.W. 2 & 3 have corroborated the evidence of the defendant. Coming into the documents filed by the plaintiff it is seen that the plaintiff in Ext. 6 series has filed the Raja Bhag receipts paid to Jagannath Temple Administrator, Puri. Ext. 7 is the notice from Jagannath Temple directing the plaintiff to pay RAJA BHAGA. Ext. 8 shows that the suit land of mouza Chhatipur of khata No. 511, plot No. 1533/1922 of about Ac. 0.243 decimals, plot No. 1533 of about Ac. 2.211 decimals in total Ac. 2.454 decimals being recorded in the name of Dibyasingh Patasani as a tenant and that he had to pay RAJA BHAG for the same. Interestingly Ext. 14 is the office order of dt. 07.08.2002 of Board of Revenue Orissa, Cuttack, which reads as follows “As per provisions contained Us/- 7 -A of the O.E.A. Act, 1951 read with Sec. 50 of the Act and in the pursuance of Revenue and Excise Department Notification No. 72484/EA-II-11/75-R, dt. 16.09.1995 to exercise the power and discharge the functions in this regard U/s- 7 – A of the O.E.A. Act, 1951, the Member, Board of Revenue, Orissa, Cuttack has been pleased to settle the lands as detailed in 15 number of O.E.A. Cases (32/92, 33/92, 34/92, 35/92, 56/92, 68/92, 177/92, 213/92, 215/92, 216/92, 221/92, 228/92, 240/92, 253/92 & 257/92) in the enclosed statement in different villagers of Khordha Tahasil under Khordha District in the name of Lord Jagannath, Bije Puri Marfat Srimandir Managing Committee, Puri subject to payment of fair and equitable rent as may be determined by the Collector under O.E.A. Act. The Tahasildar, Khordha and the Administrator, Shree Jagannath Temple, Puri should take immediate steps for preparation / correction of ROR accordingly. The compliance may be reported to board early”.

As per the said order it is crystal clear that in O.E.A. Case No. 228/92, his lands mentioned have been allotted in favour of Lord Jagannath Bije Puri Marfat Shree Mandir Managing Committee, Puri, Ext. 15 shows that khata No. 507 and plot No. 1238 is the land covered under OEA Case No. 228/92. Ext. 16 clearly shows that Hal khata No. 511 containing Hal plot No. 1533/1927, Hal plot No. 1533 corresponds to Sabik khata No. 507 and plot No. 1238. On the other hand the defendant has exhibited the ROR of the suit land of the year 24.04.1998, which shows that during the said period the suit land was recorded in the name of State of Orissa. On careful scrutiny of the above documents it is quite clear that during the period 1998 the suit land was recorded in the name of Government. But, however⁴ as per Ext. 14 and the direction passed by Assistant Land Reforms commissioner, Board of Revenue Orissa, Cuttack in OEA Case No. 228/1992, the suit land fell into the exclusive right of Lord Jagannath, Bije Puri Marfat Shree Mandir Managing Committee and similarly Ext. 6, 7 & 8 clearly shows that the plaintiff has been allotted the same as a tenant and he is paying RAJA BHAG over the same. Hence in view of the above scenario it is quite clear that at present Government of Orissa do not have any title over the suit land and that the suit land is now recorded in the name of Shree Mandir Temple. Coming into the next question with regard to the high handed action of the defendant and his threat to enter over the suit land it is seen vide Ext. 13 an FIR was filed by Satrughna Pattasani through Deputy Administrator, Shri Jagannath Temple, Puri alleging illegal cutting of trees and encroachment. It is clear from the above allegation that the defendant was trying to encroach over the suit land. It is also clear from the above

discussion that the defendants do not have any interest over the suit land and hence they needs to be abstained. In *2014 (1) CLR 830* “D. Deity – Legal status of – There can also be no dispute to the settled legal position that the deity is a juristic perpetual minor/ and disabled person and the property belonging to a minor/ or a person incapable to cultivate the holding by reason of physical disability or infirmity requires protection. The deity is covered under both the classes. The manager/ trustee/ Pujari and ultimately the state authorities are under obligation to protect the interest of such minor or physically disabled person”.

Similarly Sec. 7 -A of Orissa Estates Abolition Act states that :-

“Settlement of Land or building : - (i) if the State Government are the opinion that any land, whether used for the purposes of hat, bazar, orchard, mine, quarry or otherwise, tank or building (being part of a trust estate) vested in the State Government is needed for carrying out of purposes of the trust efficient, then, notwithstanding anything contained in any other law for the time being in force or in any other provision of this Act, the State Government may settle such land, tank or building with the person who immediately before such vesting was an Intermediary in respect of such land or tank or building, subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner and subject to such other terms and conditions as may be prescribed :

Provided that no such land, tank or building shall be settled under this section -

(i) After the expiry of a period of [five years] from the date

of commencement of the Orissa Estates Abolition (Amendment) Act, 1978.

- (ii) if such land, tank or building is held by a tenant; or
- (iii) if such land, tank or building has already been settled by government with any other person,

(2) The Intermediary with whom any property is settled under sub-section (1) , shall hold the property as a raiyat if property is settled for agricultural purposes and as a tenant in other cases.”

07. Hence in view of the above discussion, citation, case laws and analysis it is quite clear that the plaintiff at present is entitled to the exclusive possession over the suit land as he is paying rent over the same and the defendants, who do not have any title or right over the suit need to be injuncted from over the same.

Issue Nos. i & ii.

08. The plaintiff has clearly stated that the cause of action to file this suit arose on 24.12.2010. The day in which defendant No. 1 to 3 tried to remove the entire boundary fence over the suit land. The defendants have clearly denied to the cause of action and have stated that it is the plaintiff, who for the first time tried to forcibly acquired the suit land. Hence in view of the above scenario and there being rival contentions between both the parties, it can be said that the plaintiff has got cause of action to file this suit and that the present suit is maintainable according to law.

Issue No. v.

1.

09. As no specific prayer has been in this regard hence ordered.

ORDER.

The suit be and the same is decreed on contest against the defendants, but without cost. The defendant Nos. 1 to 3 be permanently injuncted and prohibited from entering upon the suit land and from creating any sort of disturbances over the same.

Advocates fee is on contested scale.

**(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.**

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 6th day of September, 2014.

**(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.**

List of witnesses examined on behalf of Plaintiff :-

P.W.1	Kailash Chandra Paikaray.
P.W. 2	Rajib Kumar Patasani.
P.W. 3	Satrughna Sundaray.
P.W. 4	Rabindranath Rautaray.
P.W. 5	Satrughan Pattasani.
P.W. 6	Jambeswar Sunadaray.

List of witnesses examined on behalf of Defendants :-

D.W. 1 Dharmananda Behera.
 D.W. 2 Tunia Pradhan.
 D.W. 3 Nimai Harichandan.

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence of P.W. 1.
 Ext. 1/1 & ½ Signature of P.W. 1 on Ext. 1.
 Ext. 2 Affidavit evidence of P.W. 2
 Ext. 2/1 to 2/2 Signature of P.W. 2 on Ext. 2.
 Ext. 3 Affidavit evidence of P.W. 3
 Ext. 3/1 to 3/2 Signature of P.W. 3 on Ext. 3.
 Ext. 4 Affidavit evidence of P.W. 4
 Ext. 4/1 to 4/2 Signature of P.W. 4 on Ext. 4.
 Ext. 5 Affidavit evidence of P.W. 5
 Ext. 5/1 to 5/5 Signature of P.W. 5 on Ext. 5.
 Ext. 6 & 6/1 Raja Bhaga rent receipts.
 Ext. 7 Notice dt. 29.10.2006 issued by Administrator of Sri Jagannath Temple, Puri.
 Ext. 8 Information received from P.I.O., Sri Jagannath temple Officer, Puri under RTI regarding payment of Rajabhag rent.
 Ext. 9 Receipt issued to P.W. 5 by P.I.O., Sri Jagannath Temple Officer, Puri.
 Ext. 10 Affidavit evidence of P.W. 6.
 Ext. 10/1 & 10/2 Signatures of P.W. 6 on Ext. 10.
 Ext. 11 Authorization letter issued by Administrator, Sri Jagannath Temple, Branch Office, Jatani.
 Ext. 12 Letter addressed to the plaintiff by the P.I.O.,

Sri Jagannath	Temple Puri.
Ext. 13	Copy of FIR obtained as per RTI Act.
Ext. 14	Copy of order dt. 07.08.2002 of Asst. Land
Reform	Commissioner obtained as per RTI Act.
Ext. 15	Copy of Khata nos. 503 & 507 of Mouza
Chhatipur obtained	as per RTI Act.
Ext. 16	Hal-sabik information sheet.
<u>List of documents proved on behalf of the Defendant :-</u>	
Ext. A	Affidavit evidence of D.W. 1.
Ext. A/1 to A/3	Signature of D.W. 1 on Ext. A.
Ext. B	Certified copy of 1998 settlement ROR of
khata No. 511	
	of mouza Chhatipur.
Ext. C	Affidavit evidence of D.W. 2.
Ext. C/1 & C/2	signature of D.W. 2 on Ext. C.
Ext. D	Affidavit evidence of D.W. 3.
Ext. D/1	Signature of D.W. 3 on Ext. D.

(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.