

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.

Dated this the 31th day of January, 2014

C.S. 160/ 2012

Nityamaya Mohapatra, aged about 30 years, S/o- Gauranga Mohapatra of vill.- Kharadapalli, P.O.-Krushnapalli- Patana, P.S.- Bolagarh, Dist- Khordha, at present Plot No. 219/1405, Sastri Nagar, Unit- 4, Bhubaneswar, Dist- Khordha. Plaintiff.

-Versus-

1. Gauranga Mohapatra, aged about 74 years, S/o- Late Padma Charan Mohapatra of Vill.- Kharadapalli, P.O.- Krushnapalli-patana, P.S.- Bolagarh, Dist- Khordha, at present Plot No. 219/1405, Sastri Nagar, Unit- 4, Bhubaneswar, Dist- Khordha.
2. Guruprasad Mohapatra, aged about 37 years, S/o- Gauranga Mohapatra, vill.- Kharadapalli, P.O.-Krushnapalli- Patana, P.S.- Bolagarh, Dist- Khordha.
3. Gitanjali Mohapatra, aged about 45 years, D/o- Gauranga Mohapatra, at present W/o- Basanta Kumar Mohapatra, Type- 2, Qr. No. 125, Postal Colony, Unit – 4, Bhubaneswar, Dist- Khordha.

.....Defendants

Counsel for Plaintiff ... Sri T. Baral and associates,
Advocates, Khordha

Counsel for defendants ... Sri M. P. Rajaguru and associates,
Advocates, Khordha

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Date of Argument – 29.01.2014

Date of Judgment – 31.01.2014
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JUDGMENT

Plaintiff has presented this suit for partition.

02. The plaintiff and defendant No-2 are the sons and defendant No-3 is the daughter of defendant No. 1. The plaintiff's case is that the landed properties recorded under khata No. 76 & 77 of mouza Kharadapalli and khata No. 81 & 82 of mouza Swapneswarpur (schedule A property) are the ancestral property of all the parties. Similarly the properties recorded under khata No. 27 of mouza Nayapalli (schedule B Property) even though purchased in the name of the defendant No-1, the same has been purchased from joint nucleus of the parties and as such schedule B property shall be deemed to be the joint family property. The plaintiff's specific case is that schedule A properties being the ancestral property of the parties all are entitled to get 1/4th share and likewise the plaintiff and other defendants are also entitled to get 1/4th share each from the schedule B property. The plaintiff again contended that due to misunderstanding among the parties it would not be possible for him to hold the suit property jointly and as such he requested the defendants for partition on 02.09.2012 by claiming his 1/4th share, but the defendants refused the same and as such he preferred the suit for partition by metes and bounds.

03. The defendants appeared and filed their joint written statement by disputing the whole claim of the plaintiff. It is averred by the defendants that the suit is not maintainable and there is no cause of action to bring the suit. It is specifically contended by the defendants that defendant No. 1 has contributed major portion of the consideration amount for purchase of schedule B property and as such the same cannot be divided equally. The defendants also stated that the suit properties are not in joint possession nor the plaintiff requested the defendants for partition at any point of time and as such the cause of action as mentioned by the plaintiff is baseless and false and the plaintiff is not entitled for any relief.

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

I S S U E S.

1. Whether the suit is maintainable?
2. Whether the suit is barred by non-joinder of necessary parties?
3. Whether there is any cause of action to bring the suit?
4. Whether the suit properties are partible in nature?
5. Whether the plaintiff is entitled for 1/4th share from the suit property?
6. To what relief the plaintiff is entitled for?

05. In order to prove its case the plaintiff only examined himself as P.W. 1 and closed evidence from his side by admitting four documents. P.W-1 admitted the ROR in khata No. 81 of mouza Swapneswarpur as Ext. 1, ROR under khata No. 82

of mouza Swapneswarpur as Ext. 2, ROR in khata No. 76 of mouza Kharadapalli as Ext. 3 & ROR in khata No. 77 of mouza Kharadapalli as Ext. 4.

Similarly, the defendant No. 1 is examined on behalf of the defendants as their solitary witness and only the sale deed bearing No. 6148 dated 07.09.1977 with regards to the purchase of schedule B property has been marked as Ext. A.

FINDINGS.

Issue Nos. 4 & 5.

06. This is a dispute over a property among the family members. One son is the plaintiff in this case and defendants are his father, brother and sister. The plaintiff has claimed that the properties are partible in nature and he has 1/4th interest over schedule A & B property. It is ascertained from his pleading as well as from the evidence, wherein the documents have been relied upon, that the nature and character of schedule A & B property are quite different. Therefore, it would be wise for the court to deal with the properties separately to ascertain whether the same is partible or not.

07. Lets now come to the schedule A property. The said property is claimed by the plaintiff to be the ancestral property of the parties. As per the pleading Schedule A property is recorded under khata No. 76 & 77 of mouza Kharadapalli and khata No. 81 & 82 of mouza Swapneswarpur. P.W. 1 , who is the plaintiff himself has relied upon the RORs relating to the properties enlisted under schedule A property. The properties under khata No. 81 & 82 of mouza Swapneswarpur are marked as Ext, 1 & 2 respectively and the RORs under khata

No. 76 & 77 of mouza Kharadapalli are marked as Ext. 3 & 4 respectively. This court has gone through the documents and found that the properties under khata No. 81 & 76 are recorded in the name of deity "Swapneswar Dev Bije", MARFATDAR Gauranga Mohapatra (D-1). Whereas, the properties under khata No. 82 of mouza Swapneswarpur and khata No. 77 of mouza Kharadapalli are recorded in the name of Gauranga Mohapatra, defendant No. 1 himself. So far as the properties recorded in the name of the Deity is concerned, it is true that defendant No. 1 is the MARFATDAR to the said property. This properties are transferable as well as inheritable and as such the right of the parties, who have inherited the property can effect partition to curve out their share for individual and separate enjoyment. But, those properties, which is in the custody of defendant No. 1 as a MARFATDAR cannot said to be his ancestral property. As because the same belongs to the deity as the owner, having his right, title and interest over the property. But, as far as the question of partition is concerned the same cannot be effected in absence of the deity, who is the rightful owner of the property. In this case the deity "Swapneswar Dev Bije" is the actual owner of the property. The deity, irrespective of its status as private of public, being perpetually minor, to be represented by the authorized person or office under management for the time being in force. Being a necessary party to the present suit, in its absence an effective order cannot be passed. Therefore, the suit in respect of the property recorded under khata No. 81 of mouza Swapneswarpur and the properties recorded under khata No. 76 of mouza Kharadapalli are not maintainable at all.

08. Coming to the other two properties recorded under khata NO. 82 of mouza Swapneswarpur and khata No. 77 of mouza Kharadapalli, it is claimed by the plaintiff that those properties are ancestral properties and the defendant No. 1, who is the recorded tenant to both the parties as noted above has also admitted that these are the ancestral property and he has no objection if the partition is effected by the parties by allotting their respective 1/4th share. Those properties are partible in nature and accordingly the plaintiff has 1/4th share and the defendants have 1/4th share each over the properties recorded under khata No. 82 of mouza Swapneswarpur and khata No. 77 of mouza Kharadapalli.

09. Coming to the schedule B property, the plaintiff has specifically mentioned that even though the said property has been purchased by defendant No. 1 in his name vide registered sale deed No. 6148 dated 07.09.1977 (Ext. A), the same was purchased out of joint family nucleus and as such all the parties having equal share over schedule B property. D.W. 1 in the cross-examination has admitted that schedule B has been purchased in his name which has been derived out of the income incurred from their ancestral property. He again admitted that at past days their ancestral property was yielding sufficient surplus return. This being the admitted position of this case, this court has no hesitation to accept that, even though schedule B property has been purchased in the name of defendant No. 1, the same has been purchased out of their joint family income and as such all the parties to the suit having equal interest over it. The same is partible in nature and

as such the plaintiff is entitled for 1/4th share and the defendants having 1/4th share each over the schedule B property.

Issue Nos. 1, 2, 3 & 6.

10. So far as the question regarding maintainability and cause of action is concern, the same has not been pressed by the parties and as such the same needs no further discussion. Regarding non-joinder of parties, the same has already been discussed in the forgoing paragraphs. Consequent upon the nature and character of the properties recorded under khata No. 81 of mouza Swapneswarpur and 76 of mouza Kharadapalli, those properties are not partible because of non-joinder of necessary parties. But, so far as the other properties are concerned the same are partible and all the parties to the suit having equal 1/4th share over the rest of the schedule A & B property. Hence it is order.

O R D E R.

The suit of the plaintiff be and the same is preliminarily decreed in part on contest against the defendants, but in the circumstances without any cost.

The plaintiff and all the defendants are entitled for a share of 1/4 each over the suit schedule properties except the properties recorded under khata No. 81 of mouza Swapneswarpur and khata No. 76 of mouza kharadapalli. The parties are directed to effect partition among themselves as per the observation of this court as

Ext. A/4

Signature of Ramakrushna Mohanty on Ext. A.

Sr. Civil Judge, Khurda.