

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

PRESENT :-

Sri Abhilash Senapati,LL.B  
Civil Judge (Jr. Divn.), Khurda.

*Dated the 10<sup>th</sup> day of July, 2014*

**C.S.175 /2012**

1. Rushi Lenka, aged about 65 years,

S/o: Nabaghana Lenka

Vill: Nalasingh, P.O: Achyutapur, P.S: Jankia,Dist: Khordha

..... Plaintiff.

-Versus-

1. State of Orissa, represented through it's Collector, Khordha

At- Colletreriarte Building , Khorhda, P.O: Pallahat

P.S/Dist: Khordha

2. The Tahasildar Khordha , At/P.O/P.S/Dist: Khordha

3. Dhusasan Jena, aged about 60 years

S/o: Late Kela Jena

4. Ashok Behera, aged about 22 years

S/o: Kumar Behera

5. Manas Biswal, aged about 20 years

S/o: Chakradhar Biswal

Sl. No. 3-5 are resident of Vill: Jagannathpur, Nalasingh

P.O: Achyutapur, P.S: Jankia, Dist: Khordha

..... Defendants.

Counsel for Plaintiffs ... Ajit Kumar Pattanaik, Advocate  
& Associates

Counsel for Defendants ... Jeeban Jyoti Mishra & Associates

.....  
Date of Argument – 25.06.2014

Date of Judgment – 10.07.2014  
.....

### **JUDGEMENT**

1. The plaintiff has filed this suit with a prayer for declaring the right, title, interest and possession over the suit land in his favour by way of adverse possession along with permanently injunction and restraining the defendants from entering upon the suit property.

2. The plaintiffs' case in a nut-shell is as follows;

He is the manager and Karta of his “Hindu Mitakhyara” family and that the defendant No.s 1&2 are impleaded as party in their official capacity while on the other hand the defendants NO.3 to 5 are impleaded as a party in their personal capacity. The plaintiff is possessing a piece of land situated in Mouza Atala under khata No. 79 , plot No.150 having an area Ac 0.500 decimal out of Ac8.562 decimal which is subject matter of the dispute. The father of the plaintiff had planted some trees like Mango, Jack fruits, Cashew, Eucalyptus etc over the same by encroaching over the suit property. The plaintiffs father i.e Nabaghana Lenka had surrounded the property with green fence for which an encroachment case bearing No.405/91 was initiated.

After the death of his father, the plaintiff continuously possessed the suit property . The plaintiff is in possession over the suit property peacefully and continuously since long though the land has been recorded as “ Rakhita”. The plaintiff possessed the suit property peacefully while the defendant No.2 started encroachment case vide No.223/09 against the plaintiff and also issued form “Ka” and “Kha” with the suit property. All of a sudden the defendant No.2 issued notices to the plaintiff in encroachment case No.223/2009 to appear before him and file show cause. The plaintiff filed the show cause to settle the land in his favour as he is a landless person considering the grievances of the plaintiff u/s.72'A” &'B' of Orissa Prevention of land encroachment Act. But without considering the same, the defendant No.2 had issued form 'Ka' with stipulation to leave the land as per provision U/s.8 'a' OPLE Act for settlement of land which is under encroachment of more than 30 years. In this present case the appellant is in possession since 50 years. Hence it is to be dealt U/s.8(a) of OPLE Act and to be settled in favour of the plaintiff. However the defendant without following the provision of OPLE Act issued notices for eviction to the plaintiff. On 13.08.2012 the official staffs of defendant NO.2 informed the plaintiff to leave the suit property within 15 days or else the defendant No.2 will vacate the plaintiff. After such instance i.e on 12.09.2012 the defendant Nos. 3 to 5 forcibly entered into the suit land by damaging the boundary fence and trying to damage the trees standing over the suit property, for which the plaintiff protested. Again on 15.12.2012 the defendant Nos. 3 to 5 tried to enter upon the property and tried to take forcible possession over the suit land. Due to such high handed action of defendant No.2 along with 3 to

5 the plaintiff informed the matter to Revenue authority and also sent notices U/s.80 C.P.C to defendant No.1. But due to mischievous activities of defendant Nos. 3 to 5 the plaintiff has filed this suit. The plaintiff has prayed for declaring the right, title , interest and possession over the suit property by way of adverse possession in his favour and to pass a decree for permanent injunction restraining the defendant creating any disturbance over the suit land.

3. While on the other hand to disprove the averments of the plaintiff the defendant has not filed any W.S, but has taken part in the suit.

4. From the rival claims of both the parties during 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 right, title , interest and possession over the suit land ?
- iv. Whether the plaintiff is entitled to the right by way of adverse possession.
- v. To what relief, is the plaintiff entitled ?

6. In order to prove its case the plaintiff has examined 3 witnesses in his behalf and has exhibited 10 documents which includes the affidavit evidence of P.Ws.1,2 &3 as Ext.1, Ext.9 and Ext.10. Ext.2 is

the encroachment notice i.e 'Ka' form. Ext.3 is the encroachment notice that 'Kha' form in encroachment case No.223/09. Ext.4 is the fine receipt . Ext.5 is the encroachment notice in encroachment case No.405/91. Ext.6 is the copy of notice U/s.80 C.P.C. Ext.7 & Ext.8 are the postal receipts and postal A.D. While on the other hand to disprove the averments of the plaintiff the defendant has neither adduced any evidence nor filed any document.

7. **Issue No.iii & iv**

These issues being most important, inter linked and dealing with crux of the suit needs to be discussed first for better analysis and just decision of the case . Let us now discuss the evidence at first.

P.W.1 who is plaintiff in this case has in his evidence corroborated his entire plaint and has in his cross examination stated that the suit land is a Government land and stands recorded in the name of Government. The present “ Kisama” of the suit land is “ Rakhita Anabadi” . The earlier “ Kissama” of suit land was “Chhota Jangala” . The entire suit land is a part and parcel and measures AC 8.562 decimal. The R.I had measured and given suit land to him. At the time of initiation of encroachment case the R.I had measured the same. He had not given anything in writing to him in this regard. During his child hood his father was in cultivable possession of the suit land and his father died around 5 years back. His father died after closure of the last settlement operation. He could not say if his father had purchased the settlement authorities for settlement of the suit land in his name , taking into account of his possession. Ext form in Ext.5 he has not filed any document relating to the encroachment case against his father. In

the encroachment case he had entered appearance and made an application for settlement of the suit land in his favour. Their family had been in possession over the suit land since the days of his father. During 2011-12 the Government had asked him to vacate the suit land and knowing this defendant Nos. 3 to 5 tried to disposes him from the suit land. He has filed all the relevant document in this case. On the east side of the suit land, there is cashew garden of Rise Pradhan, on the west side there is a cattle grazing ground, on north side there is a land under possession of Laxmidhara Bujabala and on the south there is a road.

8. P.W.2 has in his evidence stated that he knows the plaintiff and defendant of the suit. He had seen the suit land which is about 1 & 1/2 Manas of land in Mouza Atala . He has a piece of land on western side of the land. He has a cashew orchard in the said land. After death of his grand father the father of the plaintiff possesses the suit land and developed Cashew plantation there. Plaintiff's father Nabaghana Lenka died since 5 years and after his death the plaintiff Rusi Pradhan is possessing the same. Except Cashew tree there are some other trees like Akasia, potas and Mango trees in the suit land. The plaintiff is using the usufructs on the said trees. He had heard that there was a dispute between the defendant Nos. 3 to 5 regarding position over the suit land and that they had forcibly encroached upon the suit land . In his cross examination he has stated that he has not seen any document pertaining to the suit land. The suit land is a Government land . Many trees are available over the same. He has not seen the grand father of the plaintiff. His father died about 7 yrs ago. The plaintiff's father raised plantation over the suit land which was about 1 and 1/2 Manas.

He had never seen Tahasildar or R.I visiting the suit land. The Diameter of the trees available at the spot must be around 2'x3' . The suit land as well as his land are portion of a large Government plot.

9. P.W. 3 has in his evidence stated that he had seen the suit property having an area of AC 1 & ½ Manas land. He is the northern side land owner of the suit property. Since the time of his possession the plaintiff has possession the suit property peacefully till today as his fore fathers were possessing the same. At present there are old and big trees like Mango, Akasia etc situated over the suit property. In his cross examination he has stated that the suit land belongs to Government. On the east of the suit land there is a Government land under possession of Biswanath pradhan, on the West there is a cattle field, on the north the Government land and in the southern there is a road. The plaintiffs father died around 7 years ago . The plaintiff's father was in possession over the suit land. After him the plaintiff is possessing the same. The Mango trees over the suit land are about 40 years old. The plaintiff and his father also used to cultivate the suit land in rainy season. He had never seen the Tahasildar or R.I visiting the suit land.

10. Let us now come into the exhibits filed by the plaintiff. Ext.2 is the 'Ka'form notice issued to the plaintiff by Tahasildar, Khurda which shows that he had encroached the suit land from Khata No.79, plot No.150 of area of Ac0.500 decimals without any permission and for the same an encroachment case was initiated against him. Ext.3 is the eviction notice in 'Kha' form issued by Tahasildar, Khurda, wherein the plaintiff was directed to remove from the suit land within 30 days after receipt of the notice. Ext.4 is the fine receipt given by the plaintiff of about 160 Rs. . Ext.5 is the encroachment notice in case No.405/91

issued by Tahasildar, Khurda ( Only ½ of the notes available). The said notice shows that Nabaghana Lenka had encroached some receipt for which an encroachment case NO.405/91 was initiated against him. Ext.6,7 & 8 are the 80 C.P.C notice, postal receipts and postal A.D.

12. As per the limitation Act in order to get adverse possession in respect of a Government land the plaintiff needs to prove that he had been in forcible , exclusive, continuous , peaceful and adverse possession over the same against the owner. In this case the suit land is a government land as admitted by the plaintiff in his evidence and through the evidence of other witnesses. Hence true owner of the suit land is Government. The plaintiff has now to prove as to whether his such possession was continuous, exclusive, forcible and adverse to the true interest of the owner. The boundary given by the P.W.1 to the suit land is that on east side there is a Cashew-nut garden on, west a cattle grazing ground, on north land of Laxmidhara Bhujabala and on south a road. The boundary description given by P.W.2 of the suit land is that on east there is a land under his possession, on west there is a resting ground of cattle , on north there is a land of Laxmidhara Bhujabala and on south there is a road. P.W.3 has given the boundary description of the suit land as on east there is a Government land of Biswnatha Pradhan, on west cattle resting filed and on north the government land of his on south a road. It is quite clear that all the witnesses have corroborated to the identity of the suit land, coming into the aspect of the adverse position it is seen that the plaintiff has nowhere stated the specific day of his going into the possession over the suit land.

13. To get relief under adverse possession the plaintiff needs to come to this court with a clean hand. The plaintiff has not filed the date, the specific date of his father going into the possession of the suit land. In view of there being no specific day it cannot be said as to from where the plaintiff came into possession and from when the period of limitation for adverse possession started. Further more the document of Ext.5 i.e encroachment case No.405/91 is a torn one and does not show anything about the suit land, and it only shows that an encroachment case was initiated against the father of the plaintiff. Even if the said document is admitted and the document in Ext. 2 & 3 is admitted, It is quite clear that the possession of the plaintiff was not open or peaceful as there were two encroachment cases, for which as per his admission he had paid fine vide Ext.4. The plaintiff has nowhere been able to prove that he was in possession over the suit land since time of his father for more than 30 years, either through oral or documentary evidence.

14. At best the plaintiff has shown that since 1991 there were two encroachment cases against him and his father and out of the said two cases he had paid fine in the later case of 2009. This being the said evidence and the plaintiff being able to prove his adverse possession over the suit land as forcible, exclusive, continuous and peaceful it can be said that the plaintiff's prayer to adverse possession does not stand proved.

15. **Issue No.i**

The plaintiff has stated that the cause of action for the suit arose on 13.08.2012, 12.09.2012, 05.11.2012 and 15.12.2012. The

defendants have stated that this is a false suit filed by the plaintiff having no cause of action. The plaintiff has no title over the suit land and inform his possession been adverse. Cause of action is a bundle of right asserted by one party and denied by another. In this case the plaintiff and defendant have both deferred on the cause of action. Hence from the rival claims it can be said that the plaintiff has got cause of action to file this suit.

16. **Issue No. ii & v**

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

**ORDER**

The suit be and the same is dismissed on contest against the defendants, but without costs.

(ABHILASH SENAPATI)  
CIVIL JUDGE, KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 10<sup>th</sup> day of July , 2014.

(ABHILASH SENAPATI)  
CIVIL JUDGE, KHURDA.

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

- P.W.1: Rusi Lenka  
P.W.2: Biswanath Pradhan  
P.W.3: Laxmidhara Bhujabala

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

NIL

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

- Ext.1 Affidavit evidence of P.W.1  
Ext.1/1 &1/3 Signature of P.W.1 on Ext.1  
Ext.2 Encroachment notice(Ka – form)  
Ext.3 Eviction notice (Kha-form) in encroachment case  
No.223/09 issued by Tahasildar, Khurda  
Ext.4 Fine Receipt  
Ext.5 Encroachment notice (Ka-form) in encroachment case  
No.405/91 issued by Tahasildar, Khurda ( Only half of the  
notice available)  
Ext.6 copy of the notice U/s. 80 C.P.C  
Ext.7 Postal receipt  
Ext.8 Postal A.D  
Ext.9 Affidavit evidence of P.W.2  
Ext.9/1 &9/2 Signatures of P.W.2 on Ext.9  
Ext.10 Affidavit evidence of P.W.3  
Ext.10/1 Signatures of P.W.3 on Ext.10

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

NIL

(ABHILASH SENAPATI)  
CIVIL JUDGE, KHURDA.