

IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA

PRESENT :-

Sri Abhilash Senapati, B.A.LLB(Hons)
Civil Judge (Jr. Divn.), Khurda.

Dated the 17th day of May, 2014

Dated the day of Jastha ,1935 Sakabda

C.S.18 /2006

1. Sri Joginath Sahoo, aged about 49 (Forty nine) years
S/o: Late Lokanatha Sahoo
Vill: Kantamallim, P.O: Simore, P.S: Begunia, Dist: Khordha

..... Plaintiff.

-Versus-

1. Janardhan Panda, aged about 52 (Fifty two) years,
 2. Kanhu Charan Parida, aged about 55 (fifty five) years
- Both are Sons of Late Chakradhar Panda
At: Ganpur, P.O: Simore, P.S: Begunia , Dist: Khordha

..... Defendants.

Counsel for Plaintiffs	...	Sri Gauri ShyamPattanaik, Advocates & Associates
Counsel for Defendants	...	Sri Binayak Dalasingharay, Advocates & Associates

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Date of Argument – 15.05.14

Date of Judgment – 17.05.14
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JUDGEMENT

1. The plaintiff has filed the suit with a prayer for declaration of right, title and interest over the suit land along with temporarily injuncting the defendant Nos. 1&2, to remove their straw heaps and thereby permanently injuncting them from creating any nuisance or disturbance over the suit land. The plaintiff has also prayed for recovery of damages to the extent of Rs.2,600/- for the mischief committed by the defendants.

2. The plaintiffs' case as is apparent from their pleadings is as follows;

The suit property is a patch of land from the southern side of plot No. 854 measuring an area of Ac0.003.20 decimals, measuring 10 links on the east from north to south and 60 links on length from east to west on the western of the suit land. It has no breadth and futher at a distance of 25 links from the southern side and the breadth is 6 links in northen side. The land is situated almost in a trangular shape with projection of the structure of a roof straight into the suit land. The said projection is due to a construction of a near room larger in size than the from room. The plaintiff is the owner of two plots i.e plot No.853 measuring Ac0.020 decimals and plot No.854 measuring Ac0.040 decimals. Those two plots are homestead land recorded as Ghara badi in the current settlement operation published on 31.03.1999. The said land stood recorded under holding No.155 in favour of Jogi Sahoo. Jogi Sahoo is none but Joginath Sahoo . Both plot No.853 and 854 on

the western side measures 3 links, plot No.760 and 759 belongs to defendant Nos. 1 and defendant No.2 respectively. Plot No.854 is situated within Mouza Kantamallin adjacent to mouza Ganpur. Whereas the plot No.760 and 768 situates in Mouza Ganpur . Plot No. 853 is situated in the north of plot No.854 and to the north of the said plot situates plot No.733 belonging to Prafulla Kumar Sahoo. The plaintiff has constructed a Pucca building about 15 years back having a front side room to the east side nearby the road and the breadth of the building from north to south is 55 links and out of the 73 links entire breadth of plot No.853 and 854 the plaintiff has left a vacant space of 10 links in breadth to the south on the eastern side adjacent to the road and 8 links on the northern to leave passage to both sides for their convenience and to repair the walls along with other necessities . The defendants have their homestead land over plot No.760 and 759 to the south of the suit land which is left as a passage on the southern side of the plaintiffs building. The plaintiff has also dug the patch and placed electrical earthing light of his building inside the suit land i.e passage , since about 15 years from the date of electrification of his house.

3. The plaintiff has two windows on the southern side rooms through which she gets light and air. Defendant Nos. 1&2 have no concern over the southern side passage i.e the suit land and that they have their respective land to the southern of the said passage. There is o boundary wall on the southern boundary line of the plaintiff. But a fasi tree is existing on the southern east corner of the said passage. Taking advantage of it the defendants connived mischievously and thereby trespassed inside the said southern side passage. The said

activities of the defendants are deliberate nuisance committed as against the comfortable and peaceful living of the plaintiff within his residential building . When the defendants started committing such mischief the plaintiff seriously protested but they did not listen to such protest. The plaintiff then informed local police, the OIC of Begunia P.S and got the land demarcated . Accordingly the plaintiff has filed an application before Tahasildar , Begunia for demarcation of his land . The Tahasil Amin went to the spot after demarcating plaintiffs plot and boundary line which shows that the said land is described in the schedule of the plaint which comes within the plaintiff's plot. During the demarcation a police constable was deputed along with some other village gentlemen. In spite of that the defendants did not obey to such demarcation and had never removed the straw hips from over the suit land. The cause of action over the suit arose on May 2005 while the mischief was started and thereafter straw heaps were removed by defendants for construction of their house. Again on 10.01.2006 the defendants again started mischief over the suit land. Hence the plaintiff has prayed for declaration of right, title and interest over the suit land along with possession to be declared in his favour, mandatorily injuncting the defendant Nos. 1&2 to remove their straw heaps from the suit land, permanently injuncting the defendants from creating any mischief and recovery of damages of about 2,600 from the defendants.

4. The defendants have appeared and filed their W.S stating therein that the suit is liable to be dismissed as it is barred by limitation, no proper identification , and there being no cause of action. The plaintiff has in fact constructed a pucca building over the entire breadth of his

residential plot No.853 and 854 and has also constructed his boundary wall on the same line of the residential building on west. The description of such property in the schedule and the sketch map is wrong and as such is not admitted by the defendants. It is not known to the defendant that plot No.853 and 854 stands recorded in the name of plaintiff as Stitiban . Plot No.853 ,854 and 732 situates to the north of residential homestead of the defendants, but it is not correct to say that breadth of both the plots is 73 links but the eastern side and 68 links on the western side. The plaintiff has wrongly stated that he has left the passage after the southern side of his land for repairing the walls with other necessities. In fact the plaintiff has constructed his entire building over entire breadth of his plot No.853 and 854, living no steps of both the sides i.e north and south. The plaintiff has not left any passage on the southern side of his residential building, rather when the plaintiff constructed his pacca building he opened two windows of his house on the suit property of the ancillary defendants . The plaintiff has two windows on the southern side rooms of the building opening to the passage I.e the suit property . The said windows are opening to the land of the defendants are creates inconvenience for the family members of the ancestral defendants. There is no land between the residential building of the plaintiff. The defendant have continued to use the same as of right as there Badi. The defendant are also using the said land as patch of their respective homestead land. No nuisance has been committed by these defendants against peaceful and comfortable living of the plaintiff . In fact it is the intention of the plaintiff to create disturbance over the peaceful enjoyment of the defendants. The plaintiff has no right, title or possession over the suit property at any

point of time and only to grab the suit land the plaintiff has falsely filed the suit.

3. Taking into account the rival pleadings of both the sides, the following few issues have been framed in this case for adjudication of the real dispute between the parties;

- i. Whether the plaintiff has right, title and interest over the suit property ?
- ii. Whether the plaintiff is entitled for confirmation of possession over the suit land in alternative for recovery of possession ?
- iii. Whether the plaintiff is entitled for mandatory injunction against the defendants directing them to remove their respective straw heaps from the suit land ?
- iv. Whether the plaintiff is entitled for restraining the defendants permanently from committing any mischief over the suit property ?
- v. Whether the plaintiff is entitled for recovery of damages jointly and severally to the extent of Rs.2,000/- ?
- vi. Whether the suit is maintainable?
- vii. Whether the suit is barred by limitation ?
- viii. Whether the suit is defective for proper identification of the suit property ?
- ix. Whether there is any cause of action for the present suit ?
- x. To what relief, if any, the plaintiffs are entitled?

5. In order to prove its case the plaintiff has examined 3 witnesses

and his exhibited 6 documents which includes in Et.1 the affidavit filed by P.W.1, Ext.2 affidavit evidence of P.W.2, Ext.3 affidavit evidence of P.W.3, Ext.4, settlement R.O.R of Khata No.155, Ext.5 rent receipt and Ext.6 certified copy of Amin report and demarcation case No.13/05 while on the other hand to disprove the averments of the plaintiff the defendants has adduced three witnesses and has exhibited three documents marked as Ext.A,B &C which are the affidavit evidence of D.Ws.1,2&3.

FINDINGS

Issue Nos. 1,2,3,4 &8

6. These three issues are taken up together for discussion and analysis as these deal with same matters in controversy. Let us first discuss, the evidence adduced by the parties for better appreciation in this case. P.W.1 who is Rabindra Kumar stated in his evidence that he has seen the suit property measuring an area of about 3-4 decimals and the same is situated on the southern side of the homestead land of plaintiff. The plaintiff has left open the suit land for domestic purpose at the time of construction of his residential house. To further south of the suit land the homestead land of defendant exists. The defendants are grabbing haystacks over the suit land and creating hindrance in the peaceful possession of the plaintiff. The plaintiff also has electricity point over the suit land along with one fasi tree. P.W.1 in his cross examination stated that the plaintiff is a resident of Kantamalla and that his homestead land and house is situated on the said mouza. The boundary of that mouza ends after his house. The residential house of

the plaintiff faces to the east and its backside faces west . The village road is situated on both sides that is east and west. A wall covers southern side boundary of his land, this wall forms the wall of his house and the rest portion whereas the rest is his boundary wall. This wall in the southern side covers the entire land of plaintiff from east to west. On the other side of this wall i.e. to the southern of this wall the homestead land of the defendant exists. To the further southern of this aforesaid Badi land the residential house of the defendants exists. The fasi tree about which, is mentioned in Ext.1 situates on the boundary line of the Badi of Laxman Sahoo and defendant No.1. In between the said tree and the house of plaintiff no other fasi tree is in existence. P.W.2 in his evidence has corroborated the evidence of P.W.1 and has added in his cross examination that Banamali Sahoo is his father . Banamali has two sons namely Rabindra Kumar Sahoo and Bansidhara. Rabindra the other son of Banamali is his uncle. He knows Laxman Sahoo and he has also knows the defendants. The house of the plaintiff faces to the east and the village road situates on the east of the house and the said road lies from north to south and fasi tree situates on the southern side of the plaintiff's house. The deffendant use the same between this tree and the existing southern most wall of plaintiff house for ingress and egress to their Badi land .The defendant also use the said passage to enter into the land through bullocks. Apart from this passage there is no other way or road for approaching the Badi land of the defendant. The plaintiffs house is in existance for the last 20-25 years. The length of the plaintiff's house from east to west is about 35-36 cubits . The homestead land of the defendants situates at Mouza Gunpur.

P.W.3 who is the plaintiff in this case has stated in his evidence that the suit property is a patch of land from the southern side of plot No.854 measuring an area of Ac0.003.20 measuring 10 links in the east from north to south and 60 links in length from east to west. And on the western said of the suit land it has no breadth and further at a distance of 25 links from southern side the breadth is 6 links north to south. The land situates almost in a triangular shape with a projection of the structure of a room. The said projection is due to construction of a rear room which arises from north to south than the front room. The suit plot along with another plot i.e. Plot NO.853 stands recorded in the name of plaintiff under holding Khata No.155. Both the plots are homestead land recorded in favour of the plaintiff. The plaintiff has constructed the fasi building about 15 years back. The plaintiff has also dug a pit for earthing of his building over the suit land. The plaintiff has two windows. The defendants has a homestead land over plot No.760 and 759. The defendants have no concern over the southern side passage. But have connived and jointly trespassed into the suit land by placing two straw heaps which is adjacent to the said windows. Serious problem would be caused to the plaintiff for entering of light and air to his southern side rooms and that there is also apprehension of danger to the side rooms of the plaintiff adjoining the suit land. The said activities of the defendants are made deliberately to disturb the peaceful possession of the plaintiff. Although the land was measured by an Amin but plaintiff did not obey to such measurement. In his cross examination he has stated that his house situates in Kantamall but house of the defendants situates in Mouza Ganapur. However both the land over which these houses situates are adjacent to each other. His

front three rooms have got RCC roofs to west the backside have the asbestos roof. There is a boundary wall on the southern side of their house which runs from front to back. The boundary wall has got a blank space at one point. The wall of the RCC roofs and the asbestos house forms a part of the boundary wall. The boundary wall runs in a straight line with the walls of the house. The boundary details of their two plots has also been disclosed by him. The suit land situates to the adjacent south of the boundary wall of his house. There is no such gap between land of Laxman Sahoo and the southern side wall of his front side rooms. They use the land to the further southern of the wall as a passage to their Badi from the road. They also use it for maintenance of their house. Earthing of their house situates over this land. The roof of their windows (Taza) also situates over the suit land. The house and homestead land of the defendants is in existence since 1974. The defendants started to occupy the suit land since 2005 since, forcibly, for which he filed this case. He has constructed his house in 1999.

7. D.W.1 has stated in his evidence that he knows the plaintiff and defendant. The plaintiff lives in Patnasahi at village Gampur and both the defendants are living in Brahman Sahi. His houses situates in the same village to the north of the defendants. The house of the plaintiff Joginath Sahu is situates near the suit land. Joginath sahu's house faces to the East. He has two pucca rooms in the front to west and then he has his Badi. Joginath his boundary wall on south side from east toward west. He has no land beyond his southern stone wall of the Badi. The bari of Janardan Panda adjoins the southern stone wall of Joginath Sahu. The bari of Janardan Panda adjoins the southern stone

wall of Joginath Sahoo. In his cross examination he has stated that the suit land and his house is intervened by 10-11 other house. The suit land is a vacant place where defendants have stacked straw heaps . There is no specific shape of the suit land. The house of the plaintiff situates to the adjacent north of the suit land . The windows of the plaintiff's and his house opens to the suit land. The walls of the plaintiff's house is used as his boundary. The plaintiff uses the suit land for repairing , colouring etc of his southern side wall. No such electrical pole or earthing were present over the suit land. The wall of the plaintiffs house serves as his boundary. The land of Laxman does not adjoin the land of the plaintiff and the defendant. The defendant do not use any portion of there Badi land as approach road . D.W.2 has corroborated the averment s made in the W.S. He has added that the plaintiff has never possessed the suit land beyond southern wall of his house and Badi. The said land is being passed by Janardan Panda who is using the suit land as his Badi land. The suit land is not situated within the homestead land of the plaintiff. In his cross examination he has stated that about 7 years back he came to know about the dispute between the parties, for which a village meeting was arranged and the suit land was identified. And it was told that due to this land there was dispute between the parties. The length of the suit land is from north to south and it is about 25 feet. The land over which Joginath has got his residential house is his purchased property. He has entered the same around 55 years back. The length and breadth of the house of the plaintiff is 15 feet x 30 cubits . The suit land is being used by the defendants for storing of straw heaps and woods. Since long he has been witnesses to the defendants using the suit land in this fashion. He

is aware about the measurement of the suit land prior to institution of this case. During such measurement both the parties i.e the plaintiff and the defendants were present. He has not seen any such report prepared by the Amin. As per the measurement the suit land was found to be a part and parcel of the defendant's land. In para 9 in his cross examination he has stated that there has been no measurement of suit land by Government Amin as per the directions of the Tahasildar. There used to be no windows on the southern side wall of the plaintiff's house. After institution of this case the plaintiff has the said window opened inside his house. A fasi tree was present over the land of Laxman Sahoo. The said tree is no more in existence.

D.W.3 i.e the defendant has in his affidavit corroborated his entire claim and has in his cross examination stated that he looks after this case on behalf of all the defendants. Plot No.853 and 854 situate to the adjacent north of their homestead land. The plaintiff since 60 years is the owner in possession of these two plots. To his knowledge the aforesaid two plots have been measured in the year 2006 by a Government Amin in connection with a demarcation case instituted at the instance of the plaintiff. The measurement in that occasion was not done properly. He had also filed an objection before the Tahasildar opposing against such demarcation but no action was taken. Prior to such measurement another private Amin had been appointed and a meeting in village was also made, wherein it was resolved that the plaintiff had got no such land beyond his house. The minutes of the said village meeting was reduced into writing. But the plaintiff had not signed on. He has got no objection if suit plot are measured again. Prior to institution of this case he was in good terms with the plaintiff.

No such fasi tree is in existence over the suit land. The two windows on the southern side wall of the plaintiff's house are in existence since the days of construction of the house by the plaintiff. He is the owner of the suit land and that the plaintiff has filed this case falsely claiming to be the owner of the suit land.

8. Lets now come to the document filed by the plaintiff. Exts. 1,2 &3 are the affidavit evidence of P.Ws. 1,2 &3 respectively. Ext.4 is the settlement R.O.R to Khata No.155 of Mouza Kantamalla. The said Ext.4 clearly shows that the plaintiff is the owner of Khata No.155 and containing plot No.854. Ext.5 is the rent receipt which shows that the plaintiff has been paying rent over the land in Khata No.155. Ext.6 is the Amin report which shows that while demarcation case boundary over the suit land was measured in plot no. 853 and 854 in presence of Janardan Panda, Joginath Sahoo, Rama Chandra and others and the suit land was measured therein. The land was measured, demarcated and boundary stones were also laid, the defendants although was present but denied to sign on the said report. On the other hand the defendants have exhibited only their evidence.

9. The defendants have in their written notes of argument stated that there has been no allegation of encroachment or violation or mischief, and thereby there being no cause of action for encroachment. The demarcation and declaration of right, title or interest are only customary reliefs and the only prayer is for recovery of possession. The defendants has stated the suit land is not properly identifiable: as per order 7, Rule 3 C.P.C the suit land should be properly identified so

as to pass a proper acceptable decree can be passed. The description of the plaintiff is very confusing . On the schedule of the plaint the suit land is situated on the western side of the suit plot No.854, whereas on the sketch map the suit land is situated on the south of the plot. But accordingly to the evidence adduced by the plaintiff i.e P.W.1 , P.W.2, P.W.3 along with sketch map filed by the plaintiff it is doubtful whether the suit land is on the southern side of the boundary of the plaintiff. On perusal of the record it is seen that the plaintiff has clearly stated in his plaint and in his evidence that the suit land is on the southern side of his boundary . The plaintiff in his evidence along with Rough sketch map has shown boundary which clearly identifies the suit land. Hence the question regarding identification is accordingly answered.

The defendant has further stated that P.W.3 (Plaintiff) in Para 12 stated that his southern wall and that of his RCC house and asbestos house forms a part of his boundary wall. So beyond this boundary wall the plaintiff does not own any land. On scrutinizing the evidence of P.W.3 at Para 12 it is seen that apart from what has been argued by the defendant in his written notes of argument the plaintiff has further stated that the walls of the RCC roofs and the asbestos house forms a part of his boundary wall and that the boundary wall runs in a straight line that the walls of the house. However he has also in his evidence clearly stated that there is no fence in between the land of defendant and his house apart from his boundary . He has also stated that he uses the land for maintenance of their house and for earthing of their house. He has also stated that the windows and roofs are also over the suit

land . D.W.1 has stated in his cross examination at Para 5 that the plaintiff comes over the suit land for repairing and colouring his southern side wall. He has also in para-7 stated that the defendants have never use any portion of their Bari land as road. From carefully analyzing the ROR filed by the plaintiff it is quite clear that the plaintiff has right, title interest and possession over plot No.853 and 854 . The only dispute is found whether the demarcation made was proper and whether the suit land forms a part of plot No.853. It has been clearly stated by the plaintiff in his evidence and through Ext.6 that a Amin had measured the land. All the defendants witnesses have also admitted to such measurement. Defendant witness No.3 i.e the defendant himself has clearly stated that although there was a measurement done but the same was not done properly and he had objected against the same. But no such order regarding his objection has been filed. This shows that Ext.6 as filed by the plaintiff is a genuine document. Ext.6 also shows that the Amin had measured the land and had submitted his report stating there in that the land was measured and that after measurement the boundary stone demarcation was given over suit plot. The same aspect of demarcation has not been challenged by the defendant and these evidence of the plaintiff have stood strong during cross examination. In fact defendant witness No.3 at paragraph 10 & 16and defendant witness No.2 while in para 8 speaks about the measurement of the suit plot by Government Amin in presence of the witnesses. From the corroboration of evidence of plaintiff and the demarcation made by Amin along with Ext, filed by the plaintiff with respect to the R.O.R of the suit land , it can be said that the plaintiff has got right, title interest over the suit property. The

next question which now needs to be decided is whether the suit property was used as a passage by the defendant or plaintiff. The defendant have at paragraph 2 in their W.S admitted the existence of the passage. Though the defendants have admitted to the existence of the suit property but have claimed that the same is used by them for their convenience . The defendants have nowhere stated that the said plot belong to them. Neither the defendants have filed any R.O.R nor led any evidence in that regard to show that the suit land i.e the passage is recorded in their name or that they are the owners of the said passage nor have made any counter claim in that regard. Further more the evidence of the defendants and their witnesses clearly shows that the defendants has stacked straw heaps over the suit land and thereby causing inconvenience to the plaintiff. As the suit property has clearly been described, the report of the Amin has not been challenged and the evidence of the plaintiff standing strong during the cross examination and the plaintiff being able to show that plot No.853 is recorded in his name along with being able to show the existence of his right over the suit land, it can be clearly stated that the plaintiff is entitled to the possession over the same. The defendant have also admitted that they use the suit land as passage . From the above analysis it is clear that the plaintiff is entitled to possession and title over suit land which defendant sometimes uses as passage and hence needs to be enjoined. The above issues are answered accordingly.

Issue No.9

The plaintiff has clearly stated in his evidence and plaint that the cause of action to file this suit arose on May,2005 and again on

10.01.2006 when the defendants did not remove the straw heaps from over his land. The defendants have denied to such allegations. Cause of action is a bundle of right asserted by one party and denied by another party. In this case the plaintiff and defendant have both argued about the dispute . This shows that the plaintiff has got a cause of action to file this suit.

Issue No.5,6,7 & 9

As there has been no specific prayer mad by the parties, hence no order is made. Hence ordered.

ORDER

The suit be and the same is decreed on contest against the defendants but without costs. The right title , interest and possession over the suit land is hereby declared in favour of the plaintiff . The defendants are mandatorily injuncted to remove their straw heaps from the suit land and not to commit any mischief or nuisance over the suit land.

(ABHILASH SENAPATI)

CIVIL JUDGE(JR.DIV), KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 17th day of May, 2014.

(ABHILASH SENAPATI)

CIVIL JUDGE(JR.DIV), KHURDA.

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Rabindra Kumar Sahoo

P.W.2 Binod Sahoo
P.W3 Joginath Sahoo

List of witnesses examined on behalf of Defendants. :-

D.W.1 Kulamani Panda
D.W.2 Bidyadhar Panda
D.W.3 Janardan Panda

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence filed by P.W.1, Rabindra Kumara
Sahoo
Ext.1/1 Signatures of P.W.1 on Ext.1
Ext.1/2 Signatures of P.W.1 on Ext.1
Ext.1/3 Signatures of P.W.1 on Ext.1
Ext.2 Affidavit evidence of P.W2
Ext.2/1 signature of P.W2 on Ext.2
Ext.3 Affidavit evidence of P.W3
Ext.3/1 to 3/3 Signatures of P.W3 on Ext.3
Ext.4 Settlement ROR of Khata NO.155 of Mouza Kantamalina
Ext.5 Rent Receipt
Ext.6 Certified copy of Amin Report in demarcation case
No.13/05

List of documents proved on behalf of the Defendants :

Ext.A Affidavit evidence of D.W.1
Ext.A/1 to A/3 Signatures of D.W.1 on Ext.A
Ext.B Affidavit evidence of D.W.2

Ext.B/1 &B/2 Signatures of D.W.2 on Ext.B

Ext.C Affidavit evidence of D.W.3

Ext.C/1 &C/2 Signatures of D.W.3 on Ext.C

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