

**HEADING OF DECISION IN THE ORIGINAL SUIT.  
DIST: KHORDHA.**

**IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA  
PRESENT :-**

*Sri Raj Kishore Lenka  
Senior Civil Judge, Khordha.*

*Dated this the 12<sup>th</sup> day of November, 2014*

**C.S. 213/ 2012**

1. Purna Chandra Sundaray, aged about 56 years.
2. Premananda Sundaray, aged about 45 years.
3. Dharmananda Sundaray, aged about 38 years.

All are sons of Late Muralidhar Sundaray,  
resident of Vill.- Mundaamba, P.O./P.S.- Jankia, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Bhikari Charan Sundaray, aged about 65 years.
2. Jadumani Sundaray, aged about 62 years.
3. Padma Charan Sundaray, aged about 60 years.
4. Panchanan Sundaray, aged about 58 years,  
Sl. Nos. 1 to 4 are sons of Late Benudhar Sundaray.
5. Brajakishore Srichandan, aged about 68 years.
6. Dambarudhar Srichandan, aged about 64 years,  
Sl. Nos. 5 & 6 are sons of Late Bhramar Srichandan.
7. Sahabani Bewa, aged about 70 years, W/o- Late Sidheswar Srichandan.
8. Kelucharan Jagdev, aged about 48 years.
9. Pradyumna Jagdev, aged about 40 years,  
Sl. Nos. 8 & 9 are sons of Late Gauranga Jagdev.

All are resident of Vill.- Mundaamba, P.O./P.S.- Jankia, Dist- Khordha.

..... Defendants.

Counsel for Plaintiff	...	Sri A. K. Pattanaik & Associates Advocates, Khordha
Counsel for defendant No. 1	...	Sri S. K. Nanda & Associates Advocates, Khordha

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Date of conclusion of Argument	–	18.10.2014
Date of pronouncement of Judgment	–	12.11.2014

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### **JUDGMENT**

The plaintiffs have preferred the present suit for partition, declaration, permanent injunction and other consequential reliefs.

02. The relevant facts of the plaintiffs case is that the property recorded under khata No. 302/33, plot No. 845, measuring Ac. 1.780 decimals in mouza Jankia (hereinafter referred to be the suit property) is the ancestral property of both the parties. Their common ancestor Madhab Sundaray has two sons namely Jagannath Sundaray and Lokanath Sundaray. Jagannath Sundaray, Lokanath Sundaray and Madhab Sundaray are dead now. Jagannath Sundaray is succeeded by his two sons namely Jayakrushna Sundaray and Benudhar Sundaray. Jayakrushna Sundaray died issue less being unmarried, Benudhar Sundaray died leaving behind the defendant Nos. 1, 2, 3 & 4 as his surviving legal heirs. Murali Sundaray died leaving behind the plaintiffs as his successors. The further case of the plaintiffs is that Muralidhar Sundaray is the natural son of Jagannath Sundaray, but he was adopted by Lokanath Sundaray. The defendant Nos. 6 & 7 are the successors of Bhramara Srichandan and defendant Nos. 8 & 9 are the successors of Gouranga Jagadev, who are the successors

of recorded tenants namely Sidheswar Srichandan, Benudhar Sundaray and Gouranga Jagadev respectively. It is again contended by the plaintiffs that Jayakrushna Sundaray who is the eldest one, died issue less and as such his brother Benudhar Sundaray was treated as the eldest one and for that reason the property stands recorded in the name of Benudhar Sundaray after death of his father Jagannath Sundaray. But, the names of the successors of Lokanath have been left out in the said ROR even though they are in joint possession of the suit property. The specific case of the plaintiffs is that taking advantage of the non-mentioning of the name of the ancestor of the plaintiffs, the defendant Nos. 1 to 4 created disturbances with their peaceful possession over the suit property. On 12.9.2012, the plaintiffs asked the defendants for partition to which they refused and threatened them. Therefore, they filed the suit by claiming their respective share over the suit property. The plaintiffs have to say that Bhramara Srichandan has  $\frac{2}{5}$ <sup>th</sup> interest, Sahabasi Bewa, W/o- Sidheswar has  $\frac{1}{5}$ <sup>th</sup> interest, Benudhar Sundaray has  $\frac{1}{5}$ <sup>th</sup> interest and Gouranga Jagadev have  $\frac{1}{5}$ <sup>th</sup> interest as per the ROR of the suit property, but the plaintiffs have claimed that they have  $\frac{1}{8}$ <sup>th</sup> interest jointly, defendant Nos. 1 to 4 have rest  $\frac{1}{8}$ <sup>th</sup> share, defendant Nos. 5 to 7 have  $\frac{1}{2}$  interest jointly and defendant Nos. 8 & 9 have the rest  $\frac{1}{4}$ <sup>th</sup> interest. They have also sought for the relief of partition on the ground that the defendants are purposed to alienate the suit property and creating disturbances over the peaceful possession of the plaintiffs over the suit property. The plaintiffs have also sought for the relief of permanent injunction against the defendants from alienating the suit property or any part of it till the partition is effected.

03. The defendant Nos. 5 to 9 have only filed their joint written statement, whereas the suit against defendant Nos. 1 to 4 set ex-parte on 13.8.2014. Defendant Nos. 5 to 9 in their written statement have stated that the suit is unwanted against the defendants and there is no cause of action to file the suit. They further stated that the plaintiffs have their definite interest over the suit property along with defendant Nos. 1 to 4. The parties are in joint possession of their ancestral property without any partition. They have further stated that they have no objection if the suit property will be partitioned among the plaintiffs and defendants as per their interest.

04. Taking account of the factual disputes between the parties and in order to adjudicate the disputes lawfully and purposefully the following issues have been settled.

#### **I S S U E S.**

- i) Whether the suit is maintainable?
- ii) Whether there is any cause of action to bring the suit?
- iii) Whether the suit is partible in nature?
- iv) Whether the plaintiffs have an interest over the suit property?
- v) Whether the plaintiffs are jointly entitled to 1/8<sup>th</sup> interest over the suit property?
- vi) To what relief, the plaintiffs are entitled to?

05. In order to prove their case three witnesses have been examined on behalf of the plaintiffs including the plaintiff No. 1 as P.W. 1. The plaintiffs have also relied upon four documents such as the certified copy ROR under khata No. 302/33 of

mouza Jankia, which is marked as Ext. 1, certified copy ROR under khata No. 133 of mouza Jankia as Ext. 2, rent receipt as Ext. 3 & Hal-Sabik information sheet as Ext. 4.

On the other hand one witness has been examined on behalf of defendants, who is none else than the defendant No. 5 himself. No documents have been relied upon or exhibited from the side of the defendants.

**FINDINGS.**

**Issue No. iii, iv & v.**

06. The plaintiffs' specific case is that they are the successors of Muralidhar Sundaray, who is the natural born son of Jagannath Sundaray, but adopted by his brother Lokanath Sundaray. Therefore, they have a definite interest over the suit property. Since, the plaintiffs have stated that their father was the adopted son of Lokanath Sundaray, the said fact is supposed to be proved by the plaintiffs. But, in the present case the said fact has not been challenged in this case and for which this court has asserted that the question of adoption being not challenged by defendants in this case, there would be hesitation for the court to accept that the plaintiffs, who are the sons of Muralidhar Sundaray succeed the interest of their grandfather Lokanath Sundaray.

07. The plaintiffs have stated that the suit property is their ancestral property and for which the same is partible in nature. To prove the existence of the suit property the plaintiffs have admitted the ROR under khata No. 302/33 to be Ext. 1 and another certified copy of the ROR under khata No. 657/1236 of mouza Jankia as Ext. 2. Ext. 1 is the Hal ROR corresponding to Ext. 2. The plaintiffs have further

stated that the name of their father has not been mentioned in Ext. 1, even though the suit property is their ancestral property and they are in possession of the same. To prove the same the plaintiffs again relied upon the Hal-Sabik information sheet relating to Ext. 1 & 2, which reveals that Benudhar Sundaray was the recorded tenant in both the RORs. After all the claim of the plaintiffs has not been challenged in this case with regards to the nature of the suit and his interest involving therein.

08. P.W. 1 has been cross-examined by the counsel for defendant Nos. 5 & 9 as well as the other witnesses, but during cross-examination they have not challenged neither the pleading nor the evidence in chief of the witness, rather the defendants have suggested that the plaintiffs are entitled to 1/8<sup>th</sup> share over the suit property. Similarly, D.W. 1 in his evidence in chief has admitted the claim of the plaintiffs and during cross-examination he has stated that plaintiffs are grandson of Lokanath Sundaray and the defendants are the grandsons of Jagannath Sundaray. Lokanath and Jagannath are two brothers. The suit property is the ancestral property of Jagannath and Lokanath. Neither Lokanath nor his legal successors have alienated any part of the suit property at any point of time.

09. In view of the admitted position of the case, it is the considered opinion of this court that the suit property is partible in nature and the plaintiffs being the sons of Muralidhar Sundaray and the successors of Lokanath Sundaray and Muralidhar Sundaray, they have a definite interest over the suit property. But while deciding the interest of the parties over the suit property it would be highly desirable for the court to take account of the documents as well as the admitted position of the

case of both the parties. This court has gone through the ROR in respect of khata No. 302/33 vide Ext. 1 and it is learnt that the share of the recorded tenants have already been determined and mentioned in the said ROR. As per the ROR Bhramara Srichandan has  $2/5^{\text{th}}$  interest, Sahabani Bewa (D-7) has  $1/5^{\text{th}}$  interest, Benudhar Sundaray and Gouranga Jagadev having their  $1/5^{\text{th}}$  interest each. Therefore, the claim of the plaintiff over the suit property by claiming  $1/8^{\text{th}}$  interest appears to be quite unreasonable, rather as per the share determined by the revenue authority would be the parameter to determine the interest of the present parties and accordingly the share is hereby determined. The plaintiffs are entitled for  $1/10^{\text{th}}$  share jointly, defendant No. 1 to 4 have jointly  $1/10^{\text{th}}$  interest, defendant Nos. 4 & 6 jointly having  $4/10^{\text{th}}$  interest, defendant No. 7 having  $2/10^{\text{th}}$  interest and defendant Nos. 8 & 9 having jointly  $2/10^{\text{th}}$  interest over the entire suit property and the suit land is to be partitioned as per the interest of the parties as above.

**Issue Nos. i, ii & vi.**

10. So far as the question of maintainability is concerned in view of the forgoing discussion since the plaintiffs case has not been challenged, the suit is maintainable with regards to the nature and cause of action. So far as the legality of institution of the suit is concerned the suit is not also barred by law of limitation or non-joinder of necessary parties. After all, the institution of the suit and its legality has not also been challenged by the defendants. The suit is maintainable. So far as the relief is concerned the parties are entitled for the share as discussed above. But so far as the relief of permanent injunction is concerned, it is not under dispute that all the

parties having their respective interest over the suit property. Now the parties are to effect partition over the suit property as per the observation of the court within a time frame. While the parties are in joint possession of the suit property having their respect interest over it, this court do not find any justifiably reason to pass an order of injunction against the defendants. Hence it is order.

**ORDER.**

The suit of the plaintiffs be and the same is preliminarily decreed in part on contest against defendant Nos. 5 to 9 while ex-parte against defendant Nos. 1 to 4, but in the circumstances without any cost.

The plaintiffs are entitled for the decree of partition having their 1/10<sup>th</sup> share jointly, defendant No. 1 to 4 have jointly 1/10<sup>th</sup> interest, defendant Nos. 4 & 6 jointly having 4/10<sup>th</sup> interest, defendant No. 7 having 2/10<sup>th</sup> interest and defendant Nos. 8 & 9 having jointly 2/10<sup>th</sup> interest over the entire suit property. The parties are hereby directed to effect partition over the suit property among themselves as per the above observation of this court within three months hence. Failing of which, any of the party is at liberty to execute the order through the process of the court.

Advocates fees are at contested scale.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 12<sup>th</sup> day of November, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1           Purna Chandra Sundaray.

P.W. 2           Bhaskar Chandra Jagdev.

List of witnesses examined on behalf of Defendants :-

D.W. 1           Brajakishore Srichandan.

List of documents admitted in the evidence on behalf of the Plaintiff :-

Ext. 1           Certified copy ROR under khata No. 302/33 of mouza Jankia.

Ext. 2           Certified copy ROR under khata No. 133 of mouza Jankia.

Ext. 3           Rent receipt.

Ext. 4           Hal-Sabik information sheet. .

List of documents admitted in the evidence on behalf of Defendants :-

Nil.

Senior Civil Judge, Khordha.