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Date of Argument – 22.07.2014  
Date of Judgment – 05.08.2014  
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### **JUDGEMENT**

The plaintiff has filed this suit with a prayer for declaration of right, title and interest over the suit land in his favour along with confirming his possession over the suit land and permanently injunctioning the defendants from over the suit property.

02. The plaintiff's case in short is that :-

The suit land is under Sabik Khata No. 122, plot No. 267/1040 having an area of Ac. 0.052 ½ decimals, in Sabik khata No. 184, Sabik plot No. 267 and an area of Ac. 0.100 decimals. The suit land belongs to Netrananda Lenka and Debraj Lenka, who are the son of Late Digambar Lenka and Debraj Lenka and was allotted to their share, on family arrangement since 52 years back. Both Netrananda and Debraj due to their legal necessity and to repay back the loans decided to sell the suit property and for that approached the plaintiff through her husband. The plaintiff through her husband knew about the legal necessity of Netrananda Lenka and Debraj Lenka and consented to purchase the suit property. The total consideration money for the suit land was fixed to Rs. 2,500/-. On 01.08.1948 Netrananda and Debraj being accompanied by their co-villagers came to khordha Sub-Registrar Office, wherein Gangadhar Nishanka was contacted as a scribe and he scribed the registered deed after receipt

of consideration money. After completion of registration work Netrananda, Debraj and the witnesses along with the plaintiff and her husband returned to village and in presence of witnesses Raghunath Lenka and Purna Ojha, Netrananda and Debraj identified the suit land and delivery of the possession to the plaintiff and her husband was given. The plaintiff after obtaining delivery of possession used to possess the same by putting dry fence around the suit property. The plaintiff used to pay rent and cess to the Government of Orissa through its agent, in token of her possession over the suit property. The plaintiff obtained the rent receipts for the payment of rent and cess. The husband of the plaintiff was working at Rourkela and hence could not come regularly to their village. During the last settlement operation the plaintiff could not come to her husband's village and the settlement personnel did not serve any notice to the plaintiff about the settlement of her land. The suit property is the personal property of the plaintiff and she had never jointly held the suit property with the property of the defendants and as such the settlement authorities have no jurisdiction to record the suit property jointly with the defendants. The defendants have no right, title, interest and possession over the suit property. On 26.12.2011, the defendants stacked sand and late-rite stones with an intention to start construction work over the suit property and on 27.12.2011 the defendants with their hired laborers came over the suit property to start with the digging of the plinth. The plaintiff to get immediate relief took shelter in the court of Executive Magistrate and initiated a proceeding U/s- 144 Cr.P.C. The cause of action for the suit arose on 27.12.2011, when the defendants tried to dig plinth over the suit plot. Hence the plaintiff has prayed for

declaration of right, title and interest of the plaintiff over the suit property along with passing of a decree, confirming the possession of the plaintiff over the suit property and injuncting the defendants permanently to come over the suit property.

03. The defendants have appeared and have filed their written statement stating therein that the suit is defective for non-joinder of necessary parties as the recorded owners namely Santanu Lenka and Jhari Lenka are not made as parties. The suit properties have got no identity at present as the consolidation ROR of the year 1998 in respect of the suit land has been issued in favour of the plaintiff and other recorded tenants. The plaintiff by suppressing the truth has given the land description of the suit land as per Sabik ROR of year 1962 and not as per Hal consolidation ROR. The suit property never belonged to Netrananda Lenka and Debraj Lenka. Netrananda and, Debraj have never alienated the suit land in favour of the plaintiff. The suit property is not the personal property of the plaintiff as Brahmananda is residing over a portion of the suit land by constructing his house over it, hence the question of cause of action as alleged by the plaintiff is totally false. Further more the plaintiff has got no exclusive right, title and interest over the suit land, rather the plaintiff, the defendants and other recorded owners have got right, title and interest over the suit land and all of them are possessing the same jointly.

04. From the rival claims of the plaintiff and defendants, the

following issues have been drawn up for consideration.

**ISSUES :-**

- (i) Is the suit maintainable?
- (ii) Is there any cause of action for filing this case?
- (iii) Is the suit barred by law of limitation?
- (iv) Is the suit bad for non-joinder of necessary parties?
- (v) Whether the plaintiff has got lawful right, title, interest & possession over the suit property?
- (vi) Whether the defendant has got any right, title, interest & possession over the suit property?
- (vii) Whether any such valid and lawful sale transaction had been executed in favour of the plaintiff pertaining to the suit property?
- (viii) Whether the present ROR pertaining to the suit property has been wrongly recorded in the name of the defendants
- (ix) To what relief, if any, is the plaintiff entitled?

05. In order to prove its case the plaintiff has examined four witnesses and has exhibited six documents, which are as follows :-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, RSD NO. 26 dt. 01.08.1988 as Ext. 4, Rent receipt as Ext. 5, Affidavit evidence of P.W. 4 as Ext. 6. While on the other hand to disprove the averments of the plaintiff the defendants have adduced three witnesses. The defendants have exhibited five documents,

which are as follows :-Affidavit evidence of D.W. 1 is marked as Ext. A, Affidavit evidence of D.W. 2 as Ext. B, Hal-Sabik information sheet as Ext. C, Hal ROR of khata No. 329 as Ext. D, Hal ROR of khata No. 330 as Ext. E. .

### **FINDINGS**

#### **Issue Nos. v, vi, vii & viii.**

06. These issues are taken up together for consideration as they are inter linked and deal with common matter of interest. Let us now at first discuss the evidence adduced by both the parties to reach at a finding in the above issues.

P.W. 1 has in his evidence stated that he knows the parties to the suit and has seen the suit land. The suit land is bounded on the north and south by Government land, on the east and west by land of Kasinath Lenka and Budhi Swain. The plaintiff is in possession of the suit land since about 25 to 26 years. The plaintiff erected dry thorny fence around the suit property. Prior to the same Netrananda and Debraj were under possession of the suit land. In his cross-examination he has stated that he could not say as to what was written in Ext. 1. The defendants tried to dig plinth over the plaintiffs land for which this case was filed. He could not say the day, month and year of such digging. As he had seen seen the plaintiff possessing the suit land for the last 25 to 26 years he could say that the plaintiff is the owner thereof. The length and breadth of the suit land is around

100 to 150 feet and 30 to 40 feet respectively. The suit land is lying vacant and that his land situates at the adjacent end of the suit land. Prior to Minati, her father Rajib was possessing the suit land. He could not say about the khata number, plot number, area etc. of his land that situates to the adjacent west of the suit land. The defendant No. 1 constructed his house over a portion of the suit land and has been residing therein.

P.W. - 2 in his evidence has stated that he knows the plaintiff and defendants as they are his co-villagers. The suit land is bounded by dry thorny fence and was under the exclusive possession of the plaintiff since 25 to 26 years. Prior to 25 to 26 years the suit land was under the possession of the sons of Raghunath Lenka. The suit land is bounded in the north and south by Government land and in the east and west by the land of Kasinath Lenka and Budhi Swain respectively. There was a dispute between the parties since about 2 years back, when the defendants wanted to dig plinth over the suit land for which the plaintiff raised strong objections and the defendants were unable to dig the plinth. In his cross-examination he has stated that he has seen the documents pertaining to the suit land. The suit land as per the 1962 ROR stands recorded in the name of Rajib, Gobinda, Deba and Raghunath. The suit land situates in mouza Gadahaladia. In 1999, the consolidation ROR over the suit land has been published. He could not say the plot number of the suit land. Brahmananda Lenka has got a house over the suit land. The plaintiff is his co-villager .

P.W. 3 has in his evidence stated that she is the plaintiff in this suit. She has corroborated her entire plaint and has added that during the last settlement as she could not come to village Gadahaladia, she was not served with any notice by the settlement authorities nor any spot inquiry was made. The defendants have not got right, title or possession over the suit property. On 26.12.2011, the defendants stacked sands and late-rite stones to start construction work over the suit property and on 27.12.2011, the defendants with help of their hired laborers took attempt to dig plinth over the suit land. The sale deed dt. 01.08.1988 was written by Gangadhar Nishanka, who wrote the same in his presence and the witnesses also signed in the deed in his presence. In her cross-examination she has stated that at the time of execution of Ext. 4, the suit land stood recorded as per the ROR in the names of Netrananda and Debraj. The consolidation operation in the suit mouza took place in the year 1999. she has however not filed the ROR in court although he had received the consolidation ROR of 1999. She is not aware of any such family partition as per which the suit land was allotted in the share of Netrananda and Debraj. The suit land is not a deity property. Defendant No. 1 is an agnetic brother of her husband. She has not constructed any such house over the suit land. She has filed this case to show that her land remains with her and the defendants are restrained from interfering in her peaceful possession. The khata No. of the suit land is 122 & 198. whereas the relevant plot numbers are 267 and 267/1040. Out of plot No. 267/1040 she has purchased Ac. 0.052 ½ decimals. The entire plot out of which she purchased Ac. 0.052 ½ decimals was originally of 8.5 gunthas in area. She could not

say the original area of plot NO. 267/1040. By purchasing Ac. 0.052 ½ decimals she had purchased a compact plot. She could not say as to on which side of Ac. 0.105 decimals, she had purchased Ac. 0.052 1/2 decimals.

P.W. - 4, who is the husband of the plaintiff has corroborated the entire plaintiffs story and has in his cross-examination stated that he was present at the time of execution of the sale transaction between his wife and her vendors. Purna, Raghunath were witnesses to the said sale deed. Purna was also the identifier. Ac. 0.100 decimals out of plot No. 267 and khata No. 189 and Ac. 0.052 ½ decimals out of plot No. 267/1040 of khata No. 122 were purchased by the said deed. Plot NO. 267/1040 measures Ac. 0.052 ½ decimals in toto. His wife purchased the entire plot, but he had not verified the record of the land at the time of sale transaction. At the time of sale transaction, khata NO. 122 as per the record stood recorded in the name of shri Bhagabat Dev, Marfatdar Netrananda Lenka, Debraj Lenka, Raghunath Lenka, Rama Lenka and Chanuri Bewa. The consolidation operation in the suit mouza is already over. The consolidation ROR of the suit land stands recorded in the name of his wife and others. The defendant No. 2 is his nephew. Defendant No. 2 has not got any house over the suit land, in fact there is no house over his land.

D.W. 1 has in his evidence stated that he knows both the parties to the suit and that he had seen the suit land, which is situated in mouza Gadahaladia. The suit land belongs to Raghunath Lenka and

Gobinda Chandra Lenka, who are in possession over the same. Brahmananda Lenka has constructed asbestos house over the suit land, where he is residing with his family members since last 3 years. The plaintiff is not in possession over the suit land in any manner. His house is situated at a distance of 100 feet from the suit land on its eastern side. In his cross-examination he has stated that as per request of Sudarsan Lenka he has come to depose his evidence in this case. Minati has filed this case in respect of her land and accordingly had requested him to depose whatever he knew about the land. He does not however remember about the khata number, plot number and area of the land. He had seen the land on many occasions. The length of the suit land is about 100 feet from south to north and its breadth is 40 feet from east to west. His land situates on the eastern side of the suit land at a distance of around 100 feet. The road is present at the adjacent south of the suit land. He could not say that khata number and plot number of his land. However, his land measures Ac. 0.310 decimals. He could not produce any documents to show that he has got such a land near the suit land. The plaintiff frequently visits his village, but he could not remember if during the consolidation operation the plaintiff had visited their village. He knows one Raghunath Lenka, but he does not know any Digambar Lenka of their village. The suit land appertains to one plot. The land of one Kanduri Swain is on the adjacent west of the suit land. Kasinath Lenka has got his land to the adjacent east of the suit land. The suit land is owned and possessed by the defendants. Brahmananda and Sudarsan are the sons of Raghunath, who are now dead. The plaintiff is not possessing the suit land.

D.W. 2 has in his evidence corroborated the evidence of D.W. 1 and has in his cross-examination stated that the defendant No. 1 used to stay at Puri. He came to the suit village around 4 to 5 years back. After coming to their village he started residing in a rented house. There are 12 lands situated in between his house and the suit land. The plaintiff is the daughter in law of Netrananda Lenka. In 1958 Netrananda had initiated a criminal case against him and some others. He could not say the khata number, plot number and area of his land. The distance of Brahmanabareni and Gadahaladia is less than half kilometer. He could not say the khata number and plot number of the suit land. After residing for about one year in a rented house the defendant No. 1 shifted to the house constructed by them and was still residing therein. After coming from Puri they stayed for few days in his paternal house. As he could not manage therein, therefore they shifted to a rented house. The boundary details of the suit land are as follows. The suit land is bounded on the north east and west by land of Raghunath Lenka, Kasinath Lenka and Kanduri Swain. There is a government road on the south side. The suit land measures around 5 gunthas. He has not seen the record of the suit land. He could not say in whose name the suit land stands recorded. Defendant No. 1 has constructed his house spreading over 3 gunthas of land. The rest portion is being used as a BARI by him. He took 15 days to construct and soon after constructing he shifted into it. He could not say the exact day, month, date and year, when the defendant started construction. Therefore, he has not seen any such land of the plaintiff.

D.W. - 3 in his evidence has corroborated the written statement and has in his cross-examination stated that Minati Lenka is one of the recorded owner of the suit land and at the time of settlement he was not present. The disputed land does not fall under their village. The land in Brahmanabareni was recorded in the name of Raghunath Lenka. Raghunath is dead since 7 years. The legal heirs of Raghunath were residing in the said house. There has been wrong recording in the name of Minati Lenka. They have not filed any case to remove the name of Minati Lenka. There was a proceeding U/s-144 Cr.P.C over the suit land and the same was dropped due to afflux of time. Brahmananda returned to village after 10 years and prior to that he was working at Puri OSFC. Brahmananda took voluntary retirement and lived on rent. Brahmananda constructed a house in Puri and after selling it came back to their village. The suit is for 100 decimals in plot No. 330 in khata No. 329. Another suit land is of Ac. 105 decimals in plot No. 331 & khata No. 330. The Sabik khata No. 189, plot No. 267 is the suit land and another is of Sabik Khata No. 122, Sabik plot No. 267/2010. His father had also signed on Ext. 4, i.e. the sale deed. Mahadev Lenka, Brundaban Lenka and Digambar Lenka, are recorded owner as per Sabik ROR. Netrananda and Debraj were the sons of Digambar.

07. Lets now come into the documents filed by the plaintiff as filed in Ext. 4, the registered sale deed No. 26 dt. 12.09.1988, which shows that Netrananda Lenka & Debraj Lenka had sold to Smt. Minati Lenka for a consideration of Rs. 25,000/- of an area of about

Ac. 0.052 ½ decimals. The sale deed further shows that the said transaction was carried on from khata No. 122 and plot No. 287/1040 of an area of about Ac. 0.052 ½ decimals and in another khata No. 189, plot No. 273 of an area of Ac. 0.100 decimals. The plaintiff apart from this present registered sale deed has only filed the rent receipts, which shows that Minati Lenka has been paying rent of plot No. 329. Apart from this two documents the plaintiff has not filed any other document. The plaintiff has not filed any other document to show as to whether her vendors had correct title, which they passed upon her. While on the other hand defendants have exhibited five documents, which includes in Ext. C Hal Sabik co-relation which shows that Hal khata No. 330, plot No. 331 corresponds to Sabik khata No. 122 and Sabik plot No. 1040 of area of Ac. 0.105 decimals and Hal khata No. 329, Hal plot No. 330 corresponding to Sabik khata No. 189, Sabik plot No. 287 of an area of Ac. 0.100 decimals. Ext. C clearly shows that the present suit plot is in khata No. 122, 189 in plot No. 1040 & 267 respectively. Ext. D is the Khata No. 329 containing plot No. 330 recorded in the name of Minati Lenka (Plaintiff), Raghunath Lenka, Gobinda chandra Lenka, Bata Krushna Lenka, Guntha Lenka and Sesadeb Lenka. Ext. E is ROR of khata No. 330 under plot No. 331 recorded in the name of Bhagabat Dev, Minati Lenka, Santanu Lenka, Jhari Lenka, Raghunath Lenka, Rama Lenka and Chanduri Lenka.

The documents filed by the plaintiff, i.e. the sale deed clearly shows that some part of the suit land has been sold to the plaintiff. However, when all the other co-sharers have not signed on the sale deed, it is quite clear that the sale deed cannot be acted upon.

Further more the plaintiff has also not stated as to what was the share of the persons, who had acted upon the sale. It is quite clear from the sale deeds that the person, who had executed the sale, i.e. Netrananda Lenka and Debraj Lenka also have some share over the suit land, however it is quite clear that they have no absolute share. Further more in view of there being no partition made by the parties, it can be clearly said that they cannot be entitled to sell their share to the plaintiff. Lastly in view of there being no partition, separate share of the parties being not carved out, it can be clearly said that the sale deed which plaintiff is relying upon does not stand good. Furthermore it was also within the knowledge of the plaintiff that there were other recorded owners of the suit land. The plaintiff had not filed either the Sabik ROR or the Hal ROR. The same was done by the defendants and thereby making clear this picture. To get relief under any equitable law, a party claiming relief must come to court with clean hands. In this case the plaintiff by not filing the Sabik ROR or Hal ROR over the suit land had not come with clean hands to this court. Ld counsel for defendant has filed citations in *AIR 1977 SC 2230*, wherein it has been held that : -

*"a female member of a joint family cannot blend her separate property with joint family property and hence income from that property is not assessable in the hands of Hindu Undivided family on the basis that she has blended it with the joint family property".*

In the present case at hand the above citation doesnot hold much ground as Ext 2 which is the sale deed executed by Netrananda and Debraj in favour of Minati has not been properly proved by the

plaintiff. Moreover no document has been filed by the plaintiff to show that both Netranand and Debraj had exclusive right over the suit land. Infact Ext C which is the Hal Sabak co-relation along with Ext D & E clearly shows that their are other co-sharers to the suit property. In view of their being no partition i.e no separate carving of share between the parties through meets and bound or amicable partition, it can be said that the vendors of the alleged sale deed had no proper title to pass it to the plaintiff. Furthermore Ext D & E clearly shows that apart from the plaintiff their are also other co sharers in possession of suit land. Hence it can be said that the plaintiff along with other recorded owners are in joint possession and title over the suit land. The plaintiff at best can claim for partition but she is in no way entitled to the right, title, interest and possession of the entire suit land.

The defendant has also raised a ground that the suit property belongs to a deity and hence endowment act would apply. In my opinion when the consolidation ROR with respect to Ext D is silent in that regard hence the same can be brought into question. However as regards to Ext E, it is seen that the same is still recorded in the name of a deity and hence Orissa Hindu Religious Endowment Manual would take effect and thereby as per sec 19 there can be no alienation of trust property by way of sale. Furthermore Ext E also shows that all the recorded tenants including the plaintiff are "marfatdar". Hence the suit property in EXT E cannot be sold or partitioned. Furthermore as the recorded owners in the suit property in Sabak tallied with the recorded owner in Hal , thereby it can be said that their has been no

wrong recording of the suit property

Hence there being other co-sharers and the share of the defendants with respect to the plaintiff being not defined and the respective sold share as per the prayer of the plaintiff being furthermore not identifiable, the defendants not having the absolute interest over the sold land it can be said that the prayer of the plaintiff does not hold much ground. Hence the above issues are answered accordingly.

**Issue No. i, iii, iv & ix.**

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

**Issue No. ii.**

09. The plaintiff has clearly stated that the cause of action in this suit arose on 27.12.2011, the day, the defendants with an intention to dig the plinth over the suit land entered with some hired laborers into the suit land. The defendants have denied to the allegations and have stated that the sale as alleged by the plaintiff is a fraudulent one and the sale deed is void. Hence in this scenario the plaintiff has no cause of action. Cause of action is a bundle of rights asserted by one party and denied by another. In this case both the plaintiff and defendants have disputed with regarding to the issues and cause of action. Hence it can be said that the plaintiff has got cause of action to file this suit. Hence ordered.

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**ORDER.**

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

Advocate's fee at uncontested 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 5<sup>th</sup> day of August, 2014.

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

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

P.W.1	Kanduri Charan Swain.
P.W. 2	Charan Lenka.
P.W. 3	Minati Lenka @ Minati Kumari Lenka.
P.W. 4	Laxmidhar Lenka.

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

D.W. 1	Artabandhu Lenka.
D.W. 2	Bhramarabara Lenka.
D.W. 3	Sudarsan Lenka.

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

Ext.1	Affidavit evidence of P.W. 1.
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Ext. 1/1 & ½	Signatures of P.W. 1 on Ext. 1.
Ext. 2	Affidavit evidence of P.W. 2.
Ext. 2/1	Signatures of P.W. 2 on Ext. 2.
Ext. 3	Affidavit evidence of P.W. 3.
Ext. 3/1 & 3/2	Signatures of P.W. 3 on Ext. 3.
Ext. 4	RSD NO. 26 dt. 01.08.1988.
Ext. 4/1 to 4/5	Signature of Purna Chandra Ojha on Ext. 4.
Ext. 4/6 to 4/9	Signature of Raghunath Lenka on Ext. 4.
Ext. 4/10 to 4/19	Signatures of Netrananda Lenka on Ext. 4.
Ext. 4/20 to 4/25	Signatures of Debraj Lenka on Ext. 4.
Ext. 4/26 & 4/27	Signatures of Gangadhar Nisanka on Ext. 4.
Ext. 5	Rent receipt.
Ext. 6	Affidavit evidence of P.W. 4.
Ext. 6/1 to 6/3	Signatures of P.W. 4 on Ext. 6.

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

Ext. A	Affidavit evidence of D.W. 1.
Ext. A/1	Signatures of D.W. 1 on Ext. A.
Ext. B	Affidavit evidence of D.W. 2.
Ext. B/1	Signatures of D.W. 2 on Ext. B.
Ext. C	Hal-Sabik information sheet.
Ext. D	Hal ROR of khata No. 329.
Ext. E	Hal ROR of khata No. 330.

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