

**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 6<sup>th</sup> day of September, 2014**

**C.S. 25/ 2011**

1. Nilakantha Majhi, aged about 47 yrs.
2. Babula Majhi, aged about 31 yrs.

Both are sons of Naran Majhi of Vill- Khalikot, P.O.- Patabandha,  
P.S.- Bolagarh, Dist- Khordha.

..... Plaintiffs.

-Versus-

1. Jayakrushna Majhi, aged about 65 yrs, S/o- Late mahanta Majhi.
2. Mayadhar Majhi, aged about 55 yrs, S/o- Late Mahanta Majhi.

Both are of Vill- Khalikot, P.O.- Patabandha,  
P.S.- Bolagarh, Dist- Khordha.

..... Defendants.

Counsel for Plaintiffs .....Sri R.C. Jayasingh & Associates  
Advocates, Khordha

Counsel for defendants .....Sri P.K. Senapari & Associates  
Advocates, Khordha

.....  
Date of conclusion of Argument – 20.08.2014  
Date of pronouncement of Judgment – 06.09.2014  
.....

**JUDGMENT**

The plaintiffs have preferred this suit for declaration of right, title, interest and possession as well as permanent injunction.

02. The plaintiffs case as it reveals from their pleading is that both the parties to the suit are the successors of their common ancestor namely Sanatan Majhi. The said Sanatan Majhi has two sons namely Mahanta Majhi and Banka Majhi. Banka Majhi has three sons namely Narayan, Jayakrushna and Mayadhar. Both Jayakrushna and Mayadhar are the defendant Nos. 1 & 2 respectively. The plaintiffs are the successors of late Narayan Majhi. Similarly, Basudev Majhi is the successor of his deceased father Banka Majhi. The property in question along with other joint family ancestral properties stand recorded in the name of Basudev Majhi along with others as per the revenue record of right. The specific case of the plaintiffs is that as per the previous amicable partition, Narayan Majhi, Jayakrushna Majhi and Mayadhar Majhi inherited half share of late Mahanta Majhi and similarly Basudev Majhi has inherited rest half share of his father Banka Majhi. On 14.07.2010 the plaintiffs by virtue of a sale deed bearing No. 11161000447 dt. 14.07.2010 purchased the half share of Basudev Majhi and took possession over the same. Such property is recorded under khata No. 106, plot No. 325 measuring Ac. 0.027 ½ decimals out of total Ac. 0.055 decimals, under khata No. 258 plot No. 324 measuring Ac. 0.027 ½ decimals out of total Ac. 0.055 decimals from the west and under khata No. 105, plot No. 486 measuring Ac. 0.105 decimals, plot No. 497, measuring Ac. 0.043 decimals and plot No. 485 measuring Ac. 0.015 decimals out of total Ac. 0.055 decimals total measuring Ac. 0.218 decimals, of Mouza-Khalikote (hereinafter referred as suit property). Out of

which the property under khata No. 106 and 258 are homestead properties. It is again contended by the plaintiffs that the defendants have no manner of right, title, interest and possession over the suit property and they are unnecessarily creating disturbances over the peaceful possession of the plaintiffs over the suit property. On 18.01.2011, the defendants tried to enter upon the suit property, which was objected by the plaintiffs and in return the defendants threatened the plaintiffs with dire consequences and as such the plaintiffs have preferred the present suit.

03. The defendants also submitted their joint written statement by challenging the entire case of the plaintiffs except the relationship of the parties as depicted in the genealogy given in the suit. The defendants' case is that the joint family property including the suit property is still in joint possession, which has never been partitioned in any manner among the recorded tenants and as such alienation of an undivided interest over the joint family property is void ab-initio and ineffective one. The plaintiffs have manufactured the sale deed as Basudev Majhi has never sold the suit property to the plaintiffs and as such the allegation made and the claim of the plaintiffs over the suit property is completely baseless and false. Apart from that, the suit is not maintainable for non-joinder of necessary parties and for lacking of cause of action. Therefore, they have made a prayer for dismissal of the suit with cost.

04. After taking account of rival pleadings of both the parties, the following issues have been settled for a lawful adjudication of the disputes between the parties.

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

1. Is the suit maintainable?
2. Is there any cause of action to bring the suit?
3. Whether the suit is barred for non-joinder of necessary parties?
4. Whether the joint family/coparcenary property of the parties has been partitioned among the co-sharers prior to execution of the sale deed by Basudev Majhi in favour of the plaintiffs?
5. Whether the suit property was allotted to father of Basudev Majhi on partition and accordingly inherited by Basudev Majhi?
6. Whether the sale deed bearing No. 11161000447 dt. 14.07.2010, executed by Basudev Majhi in favour of the plaintiffs is valid and effective in the eye of law.
07. Whether the plaintiffs are entitled to the reliefs as sought for?
08. To what relief, if any, the plaintiffs are entitled for?
05. In order to prove the case, three witnesses have been examined on behalf of the plaintiffs including both the plaintiffs as P.W. 1 & 2 respectively. Similarly, five witnesses have been examined on behalf of the defendants including both the defendants and one Basudev Majhi who is the vender of the plaintiffs.

Five documents have been exhibited from the side the plaintiffs in this case, which are as follows :-

The sale deed vide document No. 11161000447 dt. 14.07.2010 is marked as Ext. 1, ROR in khata No. 105 of mouza Khalikot as Ext. 2, ROR in khata No. 258 of mouza Khalikot as Ext. 3, Certified copy of ROR in khata No. 106 of mouza Khalikot as Ext. 4 and a set of rent receipts as Ext. 5 to 5/e respectively.

On the other hand the defendants have exhibited three documents. The Certified copy of RSD No. 11161000447 dt. 14.07.2010 is marked as Ext. A, Deed of cancellation No. 11161100018 dt. 07.01.2011 as Ext. B and the Unregistered agreement dt. 10.04.2010 as Ext. C.

### **FINDINGS.**

#### **Issue Nos. 4, 5, 6 and 7.**

06. Before deciding the legality of execution of the sale deed in question as well as the right, title, interest and possession of the plaintiffs over their purchased land, it is quite necessary for the court to resolve the dispute, which has been raised by the defendants by challenging the whole case of the plaintiff on the ground that their ancestral property which includes the suit property as a part of it, has not been partitioned in any manner and as such the sale deed basing on which the plaintiffs have been claiming their right, title, interest and possession is completely baseless and false.

It is true that a coparcener cannot alienate his interest in any specific property. Therefore, before enforcing their right over the suit property it is quite obligatory on the part of the plaintiffs to substantiate their claim of partition of the ancestral joint family property in order to prove further that the suit property was allotted to the father of their vendor Basudev Majhi on partition and accordingly the suit property was devolved upon Basudev Majhi and he has lawfully executed the sale deed in favour of the plaintiffs by transferring the title of it to them. Since the plaintiffs have claimed earlier partition of their ancestral property, the onus heavily

lies on them to establish such a fact in order to enable this court to proceed with the subsequent disputes involving in the suit. Let's now come to the pleading as well as the evidence with regards to the question of partition.

07. The plaintiffs in their pleading have to say that they are governed by Hindu Mitakshara Law. As per the amicable partition, Narayan Majhi, Jayakrushna Majhi and Mayadhar Majhi have inherited the half share of their deceased father Mahanta Majhi and Similarly Basudev Majhi has inherited the half share of his deceased father Banka Majhi. Except such bare pleading, the plaintiffs have not provided the date, month or year of such amicable partition to the court. They have not also stated whether the partition was executed in presence of any of the party to the suit or any person of the locality. The plaintiffs are also silent whether the terms and conditions of such partition were reduced into writing or not and on which sources the plaintiffs came to know about the previous partition. The surprising fact is that the plaintiffs have not also impliedly taken any plea that the suit property or any other property including the suit property was dispensed to the share of Banka Majhi. Therefore, the pleadings of the plaintiffs are quite evasive on the question of partition. While, coming to the evidence, P.W. 1 in his evidence in chief has also deposed the exact fact as noted above without giving any specification to the date or year of partition. In the cross-examination he stated that the suit property was already partitioned by their fathers and forefathers. Whereas P.W. 2 in his cross-examination has deposed that around 50 years back the suit property was partitioned, but he is unable to show any document relating to such partition. He has again stated that the

land (ancestral property) was recorded in the name of the individual owners as per such partition. P.W. 2 is the plaintiff No. 2. He must have the ample knowledge about the pleading and the documents relied upon. It is the very admitted case that the entire coparcenary property of the parties including the suit property are still recorded in the name of all the co-sharers. Therefore, the evidence of P.W. 2 with regards to recording of interest of the individual coparcener separately in the revenue record is completely false and baseless. P.W. 3 has also stated that the suit land has been initially recorded in the name of Basudev Majhi, which is also appears to be untrue.

08. The above discussion makes it clear that the plaintiffs are not at all committed to their own case and ultimately failed to establish that their ancestral property was ever been partitioned in any manner. However, for the sake of discussion it is now accepted that the matter raised by the plaintiffs was nothing, but an ancient partition. The evidence of P.W. 1 reveals that the partition was taken place by their fathers and fore father around 50 years back. In the mean time two settlement operations have already been taken place. But, the suit land is still recorded jointly in the name of the father of the plaintiffs, defendants and other tenants, in different records of right. That aspect of the case is reserved for discussion at the subsequent stage, but at this stage while the plaintiffs have to say that there was an ancient partition, they have to explain as to which properties were allotted to each of the tenants or parties to such partition. The plaintiffs have to identify the properties allotted to their ancestors on precious partition, otherwise it is not at all possible for

the court to hold that the suit property was allotted to the father of Basudev Majhi and as such he was in exclusive possession of the said property.

09. At this stage, the plaintiffs have relied upon a judgment reported in AIR 1979 ORISSA 60, in a case between **Kastura Sahuani, Vrs Das Seth and another**. The said judgment appears to have been obtained from inter-net sources. Even though it was not attested by the concerned counsel, for the sake of discussion, this court has taken up the said judgment for consideration. In the said judgment the Hon'ble Court has observed that:-

“The sale of course will not affect in any way the interest or share of other heirs in the property. By the sale deed Ext. 1 defendant No. 1 has of course sold distinct parcels of land out of the said property though his portion out of the same has not yet been carved out by partition and the entire property is in the joint possession of defendant Nos. 1 & 2. There is also nothing on record to show that the suit property was or is somehow in the exclusive possession of defendant No. 1. But, merely because of that, the sale of only Ac. 2.16 decs. of the suit land by defendant No. 1 in favour of the plaintiff cannot be declared invalid, in view of the fact that defendant No. 1 has a major share in the said 50 to 60 acres of land and the suit land being only a small fraction of the same can easily be carved out of his portion. By purchasing the said property by a valid sale deed on payment of consideration the plaintiff has stepped into the shoe of defendant No. 1 in respect of the suit property. That being so, the plaintiff has acquired valid right, title and interest in the suit property, but he cannot obtain exclusive possession of the same at present as the entire property is till

in joint possession of defendant Nos. 1 & 2. The plaintiff can recover possession of the suit property when defendant No. 1's distinct share in the entire property is carved out by partition or otherwise.”

This court has gone through the fact of the case in the aforementioned judgment as well as the observation of the Hon'ble Court in the aforementioned case. In that case, the property was the coparcenary property of one Laxman. After his death, the suit property was devolved upon his son, who is the defendant No. 1 and his mother who is the defendant No-2. It is held by the Hon'ble Court that defendant No. 1 before any partition sold a portion of the property to the plaintiff. In that circumstances the Hon'ble Court has held that the plaintiff has acquired valid right, title and interest in the suit property, but he cannot obtain exclusive possession of the same at present as the entire property is still in joint possession of defendant Nos. 1 & 2. The plaintiff can recover possession of the suit property, when the defendant No. 1's distinct share in the entire property is carved out by partition or otherwise. Therefore, alienation of a specific property by one of the coparcener may be valid, but the party who has purchased the specific property has to carve out his share after execution of a valid partition, i.e. a partition by metes and bounds, but he cannot claim his exclusive right, title, interest and possession over the purchased property only by virtue of a sale deed and without severance of joint status over such property. However, in the present case this court finally came to the conclusion that the joint family property including the suit land has never been partitioned among the co-

sharers by metes and bounds and the suit property was never allotted to the father of Basudev Majhi.

10           It is further learnt from the documents as relied upon by the plaintiffs that Basudev Majhi has alienated the suit land, which has been recorded in three separate RORs such as ROR No. 105 vide Ext. 2, ROR No. 258 vide Ext. 3 and ROR No. 106 vide Ext. 4. Ext. 2 has been recorded in the name of Narayan Majhi, Jayakrushna Majhi, Mayadhar Majhi and Basudev Majhi. Similarly, the landed property recorded under khata No. 258 is recorded in the name of Hari Mohapatra, Jogi Behera, Narayan Majhi, Jayakrushna Majhi, Mayadhar Majhi, Basudev Majhi and Balunki Majhi. The plaintiffs are completely silent with regards to the ownership of Hari Mohapatra and Jogi Behera over the property recorded under ROR No-258 of Mouza khalikot. The plaintiffs are also silent with regards to the status of Hari Mohapatra and Jogi Behera over that property.

After all, keeping in mind the said aspect of this case, this court would like to invite the reference of the Hon'ble High Court of Orissa reported in '**104 (2007) CLT-575 a case between Sukadev Jena – versus- Kuna Rout and others**'. In the said judgment the Hon'ble Court have observed as follows;

“A coparcener may alienate his undivided interest in the joint family property but he cannot alienate his interest in any specific property belonging to coparcener for the simple reason that no coparcener can before partition claim any such property as his own and that any such alienation would remain valid only to the extent of the seller's interest in the alienated property. Any sale by one of the

coparcener of the undivided interest in the coparcener property without the consent of other coparceners would not be void ab-initio, but would be voidable at the option of others coparcener and therefore a bonafied purchaser has right to seek partition of the coparcenery property for carving out his share”

11. Since the ancestral properties of the parties have not been partitioned by metes and bounds, the alienation of a specific property out of an undivided interest by one of the coparcener is voidable in nature and as such the plaintiffs cannot claim their exclusive right, title, interest and possession over the property alienated by Basudev Majhi by virtue of the sale deed bearing No. 11161000447 dt. 14.07.2010. Since the right, title, interest and possession of the plaintiffs over the suit property is not absolute, they are not also entitled for the relief of permanent injunction as the entire property is still now in joint possession. Now the alternative recourse is available to the plaintiffs to carve out their share as well as the share of the vendor Basudev Majhi after effecting partition, which will enable them to obtain exclusive possession of their purchased land, if permissible in the eye of law depending upon the fact and circumstances of the case, but in the present circumstances the plaintiffs are not entitled for the relief of permanent injunction. The right, title, interest and possession of the plaintiffs over the suit property cannot be declared basing on the sale deed executed by Basudev Majhi, who is not entitled to alienate his interest in any specific property belonging to co- coparceners.

**Issue Nos. 1, 2, 3 and 8.**

12. So far as the question of maintainability is concerned the defendants have stated that the suit is barred because of non-joinder of necessary parties and the suit is not also maintainable for inadequate cause of action and limitation. So far as the question of non-joinder of necessary parties is concerned, this being a suit for declaration and permanent injunction, it is the outlook of the plaintiffs to institute the suit against the parties from whom they have been apprehending threat to their property and accordingly they have filed the suit against the defendants. So far as the question of declaration of right, title, interest and possession is concerned, in the light of the forgoing discussion, it has already been held that the suit is not maintainable to that effect as the plaintiffs have not acquired their exclusive right, title, interest and possession over the suit property, which is a part and parcel of a joint family coparcenary property and alienated by one of the coparcener out of an undivided interest which is not permissible in the eye of law. The plaintiffs basing on the sale deed have claimed their right, title, interest and possession, which is also not tenable in the eye of law in the present fact and circumstances of the case as discussed above and as such the suit is not also maintainable and the plaintiffs are not entitled for any relief.

**ORDER.**

The suit of the plaintiffs be and the same is dismissed on contest against the defendants, but in the circumstances without any cost.

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 6<sup>th</sup> day of September, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

- P.W. 1 Nilakantha Majhi.  
P.W. 2 Babula Majhi.  
P.W. 3 Prafulla Behera.

List of witnesses examined on behalf of Defendants :-

- D.W. 1 Arjun Lenka.  
D.W. 2 Prasanna Mandhata.  
D.W. 3 Mayadhar Majhi.  
D.W. 4 Jayakrushna Majhi.  
D.W. 5 Basu @ Basudev Majhi.

List of documents admitted on behalf of the Plaintiff :-

- Ext. 1 Sale deed vide document No. 11161000447 dt. 14.07.2010.  
Ext. 1/a Signature of P.W. 1 on Ext. 1.  
Ext. 1/b Signature of Babula Majhi on Ext. 1.  
Ext. 1/c Signature of Jagannath Pradhan on Ext. 1.  
Ext. 1/d Signature of Budhi Narayan Sethi on Ext. 1.  
Ext. 2 ROR in khata No. 105 of mouza Khalikot.  
Ext. 3 ROR in khata No. 258 of mouza Khalikot.  
Ext. 4 Certified copy of ROR in khata No. 106 of mouza Khalikot.  
Ext. 5 to 5/e Rent receipts.

List of documents admitted on behalf of Defendants :-

- Ext. A Certified copy of RSD No. 11161000447 dt. 14.07.2010.  
Ext. B Deed of cancellation No. 11161100018 dt. 07.01.2011.  
Ext. C Unregistered agreement dt. 10.04.2010.  
Ext. C/1 Signature of Jayakrushna Majhi on Ext. C.

Ext. C/2      Signature of Mayadhar Majhi on Ext. C.  
Ext. C/3      Signature of Madhaba Panda on Ext. C.  
Ext. C/4      Signature of scribe on Ext. C.

Senior Civil Judge, Khordha.