

**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 01<sup>st</sup> day of November, 2014*

**C.S. 282/ 2008**

Pravat Kumar Samanta, aged about 47 yrs, S/o- Late Nakula Samanta  
of Vill.- Phulagorada, P.O.- Kaluparaghat, P.S.- Tangi, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Sarbeswar Samanta, aged about 72 yrs.
2. Maheswar Samanta, aged about 68 yrs.
3. Dhaneswar Samanta, aged about 65 yrs.
4. Trinath Samanta, aged about 60 yrs.
5. Rankanath Samanta, aged about 58 yrs.
6. Raghunath Samanta, aged about 56 yrs.  
All are of Vill.- Phulagorada, P.O.- Kaluparaghat, P.S.- Tangi,  
Dist- Khordha.
7. Pradipta Singh, aged about 35 yrs, S/o- Late Aparti Baliarsingh  
of Vill.- Naragoda, P.O.- Siko, P.S.- Jankia, Dist- Khordha.
8. Premalata Dei, aged about 62 yrs, W/o- Radhashyam Dandapat,  
Vill.- Gajapatinaragar, Puri, Plot No. 108, P.O./P.S./Dist- Puri.
9. Kumudini Mohanty, aged about 52 yrs, W/o- Jagannath Mohanty,  
at- Laxminarayanpur, P.O.- Sagadabhanga, Via- Siko, P.S.- Jankia,  
Dist- Khordha.
10. Unmadini Mohanty, aged about 44 yrs, W/o- Sachidananda Mohanty,

Vill.- Anladiha, P.O.- Kaluparaghat, P.S.- Tangi, Dist- Khordha.

..... Defendants.

Counsel for Plaintiff ... Sri N. Das & Associates  
Advocates, Khordha

Counsel for defendant No. 1,2,4 and 5 . . . Sri B.K Samantaray & Associates  
Advocates, Khordha

Counsel for defendant No. 3,7 to 10 . . . Ex-Parte.

Date of conclusion of Argument – 15.10.2014

Date of pronouncement of Judgment – 01.11.2014

### **JUDGMENT**

This is a suit for declaration and partition.

02. The plaintiff's case is that himself and all the defendants are brothers and sisters. Their father died in the year 1971. The properties recorded under khata No. 51 of mouza Radhamohanpur, khata No. 72 of mouza Fulagorada, Khata No. 69 & 305 of mouza Anladiha, Khata No. 89 of mouza Daruga and khata No. 77 of mouza Nandapur (hereinafter referred to be as suit property) is their joint family property. The specific case of the plaintiff is that except defendant No. 4 namely Trinath Samanta other brothers were earning for the family. He himself and defendant Nos. 4, 5 & 6 were doing some work in the state of Nagaland and each of them earned around Rs. 5,000/- each and deposited the same before their brother Trinath. The plaintiff further averred that the suit property was purchased out of their joint family income, but the defendant Nos. 4, 5 & 6 and their brother Late Purna Chandra Samanta scrupulously purchased the suit property in their name with a malafied intention by

excluding the name of the plaintiff and as such the suit property was recorded in the name of the defendant Nos. 4, 5, 6 and their brother Purna. Some other properties such as two Tractors and other articles were also purchased out of their joint family income. It is contended by the plaintiff that the defendant Trinath was actually looking after the property matter as well as the income from their family sources and he with a malafied intention purchased the suit property in their name. Subsequently, the plaintiff requested the defendants to effect partition of the suit property, but the defendants refused to do so and as such the plaintiff filed the present suit for partition along with a relief of declaration of his right, title, interest and possession over the suit property.

The defendant Nos. 1, 4 & 5 have filed their joint written statement. The suit against the defendant No. 6 was abated on 04.09.2012 for the reason that after death of the above defendant, the plaintiff failed to substitute his legal heirs. The suit against defendant No. 3 set ex-parte on 31.10.2013. Initially, the defendant Nos. 3, 7, 8, 9 & 10 have filed their joint written statement, but due to their non-participation in the further proceeding of the suit, the case against defendant Nos. 7 to 10 set ex-parte on 06.01.2010. Defendant No. 2 has also filed his written statement by adopting all the facts as contended by the defendant Nos. 1, 4 & 6 in their written statement.

The defendant Nos. 1, 4 & 5 in their written statement have stated that the suit is not maintainable; the plaintiff has no locus- standi to file this suit. The same is also barred by the law of limitation as well as for non-joinder of necessary parties.

The defendants refuted all the allegations and facts made by the plaintiff in his pleading and they have specifically contended that the plaintiff was never in possession of the suit property at any point of time and the suit property was not purchased out of their joint family income. The suit property has been purchased by defendant Nos. 4, 5 & 6 out of their joint income. Their specific case is that defendant No. 5 had instituted a suit against defendant Nos. 4 & 6 before this court in C.S. No. 142/2007 over the present suit schedule property for partition and accordingly the case was decreed on compromise before the Lok Adalat, at Bolagarh. In that case the present plaintiff has also filed objection, which was rejected by this court and the plaintiff has not also challenged the same before any other forum. Therefore the former suit operates as *res judicata* to the present suit. It is again contended by the defendants that the other ancestral properties have not also been included in this case for partition and as such a partial partition is not maintainable at all. The defendants again contended that the plaintiff has no children and for which he has adopted one Siba Sankar Samanta, the younger son of Rankanath and they have been residing in their old house, which is jointly recorded in the name of the father of the parties. Therefore, with a malafied intention the plaintiff has sought for partition over the suit property, which is the exclusive property of the recorded tenants and they have been enjoying the same separately after effecting partition by virtue of a decree of this court. Therefore the suit is liable to be dismissed on cost.

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 bad for mis-joinders and non joinders of necessary parties?
- iv) Whether the suit is partible in nature?
- v) Whether the suit property has been purchased out of the joint family nucleus of the parties?
- vi) Whether the suit has been filed for partial partition excluding the other joint family property?
- vii) Whether the plaintiff is entitled for the relief of partition and declaration?
- viii) To what relief, the plaintiff is entitled to?

05. In order to prove its case, five witnesses have been examined on behalf of the plaintiff including the plaintiff himself as P.W. 1. Seven documents have been relied upon by the plaintiff in this case such as ROR under khata No. 72 of mouza Phulagorada as Ext. 1, ROR under khata No. 50 of mouza Radhamohanpur as Ext. 2, Certified copy of ROR under khata No. 69 of mouza Phuladihi as Ext. 3, Certified copy of ROR under khata No. 89 of mouza Daruga as Ext. 4, RSD No. 1161 dt.

10.05.1982 as Ext. 5, Rent receipts as Ext. 6 to 6/d respectively & Written deceleration of Purna Chandra Samanta as Ext. 7.

On the other hand only one witness has been examined on behalf of the defendant Nos. 1, 4 & 5, who is none else than the defendant No. 4 himself. The Judgment and decree of this court in Civil suit No. 142/2007 has been relied upon by the defendant and marked as Ext. A.

### **FINDINGS.**

#### **Issue No. iv, v, vi & vii.**

06. The above issues are pivotal issues and interrelated to each other and for which taken up first for consideration.

The plaintiff while seeking partition of the suit property has stated that the same has been recorded in the name of defendant Nos. 4, 5, 6 & his deceased brother Purna Chandra Samanta. The documents such as four RORs relating to the suit property has been produced before this court and admitted as Ext. 1, 2, 3 and 4 respectively. All the RORs have been recorded in the name of defendant Nos. 4, 5, 6 and their deceased brother namely Purna Chandra Samanta. While, the plaintiff has claimed that the suit property has been purchased out of their joint family nucleus, he has offered a specific remark in his pleading as well as in his evidence in chief that in the year 1982, he joined with his other brothers at "Nagaland" and each of them earned around Rs. 5,000/-, which was deposited before the defendant No. 4 namely Trinath Samanta and from the said amount the suit property was purchased.

Firstly, neither the pleading nor the evidence in chief of the plaintiff is sufficient to provide all the information regarding total amount paid to their brother Trinath (D-3) and the consideration amount paid to the vendors relating to purchase of the suit property. If the pleading as well as the evidence in chief is taken into consideration, a total Rs. 20,000/- may be paid to Trinath out of which the suit property was purchased. But, to that effect no evidence has been adduced as to when and which date the amount was paid as well as the total amount given to Trinath and the money invested for purchase of the suit property. The sale deeds have not also been produced nor has any witness to the sale deeds been examined in this case. On the other hand, if the cross-examination of the plaintiff, who is examined as P.W. 1 is taken into consideration, he has stated in his cross-examination in paragraph – 21 that in the year 1982 some of the properties have been purchased in his name along with his other brothers. After all, as per his admission, during the year 1982, he was a student. During his cross-examination he again stated that in the year 2008, he joined as a teacher in a school called “Arobinda Purnanga Sikshya Kendra, Nachuni”. Prior to that, he was also working as a teacher in a school called “Doctor Ambedkar Sevasrama, Nachuni”. Being a teacher his qualification must not be less than a graduate. By the time of deposing the evidence on 31<sup>st</sup> October, 2013, he was aged about 51 years. Therefore, it can be well asserted that during 1982, he might be aged about 19 to 20 years old. Secondly, no information has also been supplied to the court regarding his joining at Nagaland, his earning and the duration of his stay at Nagaland. All the above facts including the admission of the plaintiff is sufficient to

hold that the plea taken by himself that the suit property has been purchased out of their joint family income appears to be baseless and false.

07. Coming to the case of the defendants, they have to say that the suit property is the exclusive property of defendant Nos. 4, 5, 6 & their deceased brother Purna Chandra Samanta. The suit property has been partitioned by the decree of this court in C.S. No. 142 of 2007. The certified copy of the decree in C.S. No. 142 of 2007 passed by this court has already been produced and marked as Ext-A without any challenge. The said document vide Ext. A reveals that the suit property was the subject matter of the suit for partition before this court in C.S No-142 of 2007 and decreed accordingly. The plaintiff (P.W. 1), in his cross-examination also admitted that in the said case he has filed his objection. His present counsel was engaged by him to defend his case. He again admitted that he has not ascertained the result of his objection. Therefore, it is now clear that the suit property was the subject matter in the former suit for partition and it was very much within the knowledge of the present plaintiff and he has also participated in the said proceeding and the suit was disposed of on partition through compromise. The finding of this court in C.S. No. 142 of 2007 has not been challenged. Section 11 of CPC provides that no court shall try any suit or issue, in a former suit between the same parties (or between parties under whom they or any of them claim, litigation under the same title) in a competent court and has been heard and finally decided by such court. The suit property by nature is the exclusive property of the recorded tenants such as defendant Nos. 4, 5, 6 and one Purna Chandra Samanta, which has already been partitioned lawfully as per the order

of this court. The plaintiff has no interest over the suit property at all and as such the same is not also partible in nature.

**Issue Nos. i, ii, iii & viii.**

08. The question of maintainability has been seriously raised by the defendants. So far as the legality involving with the question of *res judicata* is concerned, the same has already been elaborately discussed. The suit in the present form is adversely hit the provision U/s- 11 of CPC. Therefore, the suit is not maintainable at all. Coming to the other facts, it is learnt that the plaintiff has sought for a partial partition. The plaintiff himself in his evidence in chief has specifically and categorically mentioned that in the year 2006 their properties were partitioned between themselves amicably and from that day the parties were separated by mess. In the year 1982 some properties have been purchased in the name of his brother and himself. He again stated that beside the suit schedule property they have other joint family properties, which have not been included in the present case for partition. Their joint family properties situated in five different *Mouzas* measuring around 10 acres in total. The same includes their homestead, agriculture and *Bogayat* land.

The admission of P.W. 1 implies that some properties have been partitioned between themselves amicably. But, the said fact has not been impleaded in the plaint and for which it can be well asserted that the partition what has been effected between the parties gave fuel to the present litigation. The further admission of the plaintiff implies that all their properties situated in different *mouzas* have not also been included in the present suit along with the property jointly purchased in the

name of other brothers including the plaintiff. Therefore, the plaintiff has sought for a partial partition which is also not maintainable at all.

09. Coming to the next aspect, the plaintiff again admitted that Lata, who is the daughter of Nakula Samanta has three sons, but he has only impleaded her son Pradipta (D-7) to be one of the defendant leaving the two other sons of Lata. He again admitted that legal heirs of defendant No. 6 having their subsisting interest over the suit property. On perusal of the record this court find out that during pendency of the suit defendant No. 6 died, but the plaintiff did not substitute the legal heirs of deceased defendant No. 6 and as such the case against him was abated. No doubt that the necessary parties have not been added in the suit by the plaintiff and as such the suit is completely defective and not maintainable for non-joinder of necessary parties.

10. The plaintiff again contended that he has never asked or requested the defendants for partition and he has come to the court directly with the present suit for partition. Such admission of the plaintiff again implies that the cause of action as mentioned by him in the plaint by saying that he requested the defendants for partition who refused him for the same on 02.10.2008 and 30.11.2008 appears to be completely baseless, false and misleading and only purported for the sake of the case. Therefore, there is absolutely no cause of action for institution of this suit. The suit is not maintainable at all and for which the plaintiff is not also entitled for any relief. Hence it is order.

**ORDER.**

The suit of the plaintiff be and the same is dismissed on contest against the defendants No-1, 2, 4 and 5 while ex-parte against defendants No-, 3 and 7 to 10, 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 1<sup>st</sup> day of November, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiff :-

- |        |                       |
|--------|-----------------------|
| P.W. 1 | Pravat Kumar Samanta. |
| P.W. 2 | Jayant Kumar Mohanty. |
| P.W. 3 | Dhaneswar Samanta.    |
| P.W. 4 | Premalata Dandapat.   |
| P.W. 5 | Radhashyam Dandapat.  |

List of witnesses examined on behalf of Defendants :-

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|--------|------------------|
| D.W. 1 | Trinath Samanta. |
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List of documents admitted in the evidence on behalf of the Plaintiff :-

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| Ext. 1        | ROR under khata No. 72 of mouza Phulagorada.                 |
| Ext. 2        | ROR under khata No. 50 of mouza Radhamohanpur.               |
| Ext. 3        | Certified copy of ROR under khata No. 69 of mouza Phuladihi. |
| Ext. 4        | Certified copy of ROR under khata No. 89 of mouza Daruga.    |
| Ext. 5        | RSD No. 1161 dt. 10.05.1982.                                 |
| Ext. 6 to 6/d | Rent receipts.   |
| Ext. 7        | Written document of Purna Chandra Samanta.                   |
| Ext. 7/a      | Signature of P.W. 3 on Ext. 7.                               |

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

Ext. A            Certified copy of decree in C.S. No. 142/2007.

Senior Civil Judge, Khordha.