

**HEADING OF A DECISION IN A CIVIL SUIT
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

*Sri Abhilash Senapati,LL.B
Civil Judge (Jr. Divn.), Khurda.*

Dated the 6th day of July, 2014

C.S. 30 /2006

1. Ramalila Committee of Vill.- Brahmapadapatna, P.O.- Haripur,
Via- Sionhipur, P.S.- Jankia, Dist- Khordha represented through
plaintiff Nos. 2 & 3.
 2. Bansidhar Das, aged about 65 yrs, S/o- Late Kunja Bihari Das,
Secretary-cum-Cashier of the Committee (Expired).
 - 2 (a) Gundicha Ranasingh, aged about 52 yrs, S/o- Late Jagu
Ranasingh of Vill.- Brahmapadapatna, P.O.- P.O.- Haripur,
Via- Sionhipur, P.S.- Jankia, Dist- Khordha.
 3. Sudarsan Bhujabal, aged about 50 yrs, S/o- late Daitary
Bhujabala, president of the Committee.
- Plaintiff Nos. 2 & 3 are of Vill.- Hrahmapadapatna,
P.O.- Haripur, Via- Singipur, P.S.- Jankia, Dist- Khordha.

..... Plaintiffs.

-Versus-

Ganeswar Sahu, aged about 41 yrs, S/o- Narayan Sahu, of Vill.-
Brahmapadapatna, P.O.- Haripur, P.s.- Jankia, Dist- Khordha.

Counsel for Plaintiffs	. . .	Sri K.N. Ray, Advocate & Associates
Counsel for Defendant	...	Sri S.C. Rath, Advocate & Associates

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Date of Argument – 22.07.2014

Date of Judgment – 06.08.2014
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JUDGEMENT

1. The plaintiff has filed this suit with a prayer for declaring the decree passed in T.S 31/207 of 03/02 as void and not binding against the plaintiffs and a decree for permanent injunction against the defendants restraining them from entering upon the suit property and from causing any disturbance in the peaceful possession of the plaintiffs.

2. The plaintiffs' case in short is as follows;

That the plaintiff No.1 is a committee representing entire villagers comprising of 8 members . The plaintiff No.3 is the president and the plaintiff No.2 is the secretary-cum-cashier of the said committee . The plaintiffs have filed the suit in such capacities and impleaded the defendants in his personal capacity. As villagers are numerous in number it is not possible for them to join as plaintiff. The property in Mouza Bhramapadapatana in plot NO.102 is the suit land. The suit property along with some other properties stands recorded in the name of Krushna Chandra ChauPattanaik , Shyma Sundar Chaupattanaik and in the ROR of the year 1962 with intermediary status. One Patitapabana Chaupattanaik was in possession of the suit property, which was a homestead land and while continuing his such

possession all those aforesaid persons permanently dedicated the suit property which is a middle portion of the suit plot to the committee for using the same and keeping articles of Ramalila. It is worthwhile to mention that Ramalila started in the village about 100 years back under the leadership of NimaiCharan Chaupattanaik. Since then Ramalila is being performed every year. In course of time and with increase of population the villagers of Bhramapadapatana felt it necessary to form a Ramalila committee to collect subscription from villagers and manage the account in order to avoid misunderstanding in the village. After demises of Nimaicharan Chaupattanaik one of his son and recorded tenants was managing affairs of the committee. After his expiry different village members were managing the affairs of the committee. Presently the plaintiff Nos. 2 &3 along with other members of the committee are performing the said duty since 1990. Consequent upon such transfer of the suit premises to the committee the plaintiff have possessed the suit property by keeping all articles of Ramalila in the suit property. Consequent upon coming into force of provision of Orissa Estate Abolition act, Intermediary interests vested with the state. As such whatever right the recorded tenants or any other persons had in the suit property, the same was vested with the state on 18.03.1974. On 19.03.2006 while the plaintiff Nos. 2 &3 and some other members were present in the suit premises, had a meeting of the committee. The defendants reached there and declared that he was the owner of the suit property by virtue of orders passed by the civil court. On enquiry by the committee they came to know that by virtue of illegal sale deed the defendants had filed the suit against the defendants in that and had managed to obtain a decree in the suit. In

fact the sale deed of the year 1988, so obtained by defendants from Gopal Charan Chaupattanaik was void , ab-initio in as much as the suit property by that time was vested within the state. The said Gopal Charan Chaupattanaik had no right whatsoever to deal with the suit property. The sale deed was devoid of specification of the property purported to have been sold under it. Furthermore there was also no delivery of possession of the alleged vendor. The defendants have never come into possession of the suit property at any point of time . The decree passed in favour of the plaintiff is not binding against the plaintiff as they were not party to the suit. Even though the defendants claimed the suit property passed on his sale deed of the year 1988, he has not attempted to take possession of the suit property till date. The plaintiff No.1 is in possession of the suit property continuously since the year 1962, peacefully and without any interruption to the knowledge of all concerned. The defendants are making arrangement to take forcible possession of the suit property and in such event the villagers are bound to resist the sale which needs to be averted .

3. The cause of action for this suit arose on 19.03.2006 when the defendants threatened to take forcible possession of the suit property. Hence the plaintiff has prayed for declaring that the decree passed In T.S NO.31/07 of 2003/2002 be void and not binding against them and that a decree for permanent injunction be passed against the defendants.

4. The defendant have appeared and have filed their W.S stating therein that the suit is hit under the provisions of res-judicata and is

bad for mis-joinder and non-joinder for necessary parties. There was never any regular committee in the village. The plaintiff Nos. 2 & 3 are the self styled secretary-cum-cashier and president of the so called committee. Although Ramalila is being performed in the village since long and villagers every year take decision in regard of the said Ramalila but strictly speaking there has been never any committee formed on that purpose. Hence the plaintiff Nos. 2 & 3 cannot be said as a representative of Ramalila. The defendants only claims Ac 0.067 decimals out of the suit plot No.102 under Khata No.73 from the plaintiff and the decree passed in T.A NO.31/07 but the plaintiff mischievously increased its extent to Ac 0.135 decimal, without impleading the successor of the defendants who is lawful owner of rest Ac 0.068 decimals. The same has been done with a view to mislead this court. Properties gathered under suit Khata No.73 stands recorded in the name of Krushna Charan Chaupattanaik and his co-sharers Patitabanana Pataanaik never possessed the suit homestead as claimed. Thus he had no occasion to dedicate the suit homestead to the village or any committee. The allegations in that regard are false and baseless. The defendants have never disputed about the OEA Act coming into operation. In fact in Execution case No.09/04 , delivery of possession in respect of AC 0.067 decimals along with two rooms standing thereon was given by the process server of this court in presence of local police, such defendants along with police are now staying in different house some distance away, taking advantage of their absence, the plaintiff Nos. 2 & 3 along with few other miscreants have taken law into their hands. Apart from that the court process server also removed such articles of Ramalila from inside both rooms

of the suit house and left them in Zima of Kalu Subudhi and Gokula Bhujabala . In the same way possession of the suit house was given to the defendants. The defendant is a peace loving and law abiding person and on the other hand plaintiff Nos. 2 & 3 at the behest of some village touts have been doing acts to the detriment of the defendants. In case the defendants have acquired no title by sale deed of 1988 and the property was vested in the state of Orissa, than why the plaintiff did not seek any relief from the state of Orissa. It is totally false to show that on 19.03.2006 the defendants went to the suit premises and asserted there ownership before the plaintiff Nos. 2 & 3, where after committee members inquired and knew about the sale deed of the defendants. In any case the plaintiff cannot be deemed to have acquired any right, title and interest in respect of Ac 0.067 decimal in the year 1997 . Infact the plaintiff needed the suit house for his own purpose and as the request to give the house was turned down he filed the suit. Later plaintiff Nos. 2 & 3 along with other miscreants have managed to forcibly snatch away the suit land from the possession of the defendants in order to defeat the process of law.

5. The defendants also filed the counter claim in this case stating therein that the plaintiff No.2 had appeared as D.W.2 in T.S NO.34/97. The present defendants have brought the T.S 34/97 in respect of only Ac 0.067 decimal of suit plot NO.102 and having lost the suit they preferred T.A NO.31/07 of 03/02 wherein decree was granted in their favour and through execution case NO.09/04 vacant possession of the suit house was delivered to the defendants. It is therefore more possible for the plaintiffs to bring this suit against the defendants in

their representative character. In order to make their claim more specific it is mentioned that the main intention of plaintiff Nos. 2 & 3 was to take the possession of the suit land but to their misfortune there was no cause of action. The overact of plaintiff Nos. 2 and his associates on 30.05.2006 and thereafter resulting the defendants disposition has rather given rise to the cause of action in his favour to make counter claim. As per mandate of law the plaintiff, has to file documents to show his possession, but no relevant document has yet been filed. Hence the defendants have prayed in their counter claim that they are entitled to recovery of possession of the suit house and premises as per the judgment and decree passed in T.A NO.31/07, the plaintiff and co-villagers be permanently restrained from coming over the suit house and the suit of the plaintiff be dismissed with costs.

6 The plaintiff have filed their written statement with regard to the counter claim of the defendants. Wherein they have stated that the defendants are not entitled to the reliefs as claimed in the absence of his title to the suit property. In the face of the fact that the plaintiff were not parties to the suit bearing NO. T.S 34/97 the judgment and decree of that suit was not binding on the plaintiffs. A description of the properties in the schedule of the counter claim was not specified that as to which was the specific prayer as to which was the plot of Ac 0.065 decimal. The boundary given in the schedule was not correct. The plaintiff No. 2 was not a party to the previous suit and that the previous suit has nothing to do with this case and the plaintiffs execution case was nothing but paper work. At no point of time the plaintiffs were dispossessed and never was their possession ever been

taken away by the defendants. The plaintiff Nos. 2 &3 have no personal interest in the suit . The plaintiff Nos. 2 &3 have filed the suit as representatives of the entire villagers. The villagers of Bhrmapadapatana through the plaintiff are in possession of the suit property since time immemorial i.e each prior to 18.03.1974 , without interruption from any quarters.

7. From the rival contention of the parties in their pleadings and hearing the following issues are drawn up for consideration.

ISSUES :-

1. Whether the decree passed in T.A. No. 31/2007 of 2003/2002 (arising out of T.S. No. 34 of 1997) is void and not binding against the plaintiffs?
2. Whether the plaintiffs are entitled for restraining the defendant permanently from entering upon the suit property?
3. Whether the sale deed of the year 1988 executed by Gopal Chandra Chau Pattanaik in favour of the defendant is void ab initio?
4. Whether the suit is maintainable?
5. Whether the suit is hit by principles of resjudicata and estoppel?
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties?
7. Whether there is any cause of action for the present suit?
8. Whether the plaintiff has got any right, title and interest over the suit land?

9. Whether the defendant is entitled for recovery of possession of the suit house and premises?
10. Whether the defendant is entitled for restraining the plaintiffs and their co-villagers permanently from coming upon the suit house and its premises?
11. Whether the plaintiffs are entitled for any relief?
12. Whether the defendant is entitled for any relief?

6. In order to prove its case the plaintiff has examined 2 witnesses and has exhibited 5 documents in his behalf. Exts. 1 & 2 are the affidavit evidence of P.W.1 & P.W.2. Ext.3 is certified copy of R.O.R in Khata No.73. Ext.4 is the certified copy of judgment and decree in T.A 31/07 and Ext.5 is the resolution book of Ramalila Committee. While on the other hand to disprove the averments of the plaintiff, the defendants have examined 4 witnesses in their behalf and have got marked 18 documents.

7. **Issue NO. 1, 2 & 8.**

These issues are taken up together at first as they deal with the most important matters in dispute and are interlinked with each other. Let us now discuss the evidence for better appreciation.

P.W.1 has in his evidence stated that he is an inhabitant of village Bhramanandapatna and has been witnessing the Ramalila each year. He, his sons Nimaincharan along with other co-villagers, had started Ramalila. He had allowed the villagers to use the suit property

for keeping Ramalila articles. After expiry of Nimai Charan Chaupattanaik his son had dedicated the suit house to the villagers permanently for using the same for the purpose of Ramalila. After construction of the temple of Deity Shri Shri Raghunath jew Dev , lord Hanuman was worshiped daily in the temples for 2 -3 years. Each other year rehearsal of Ramalila was being conducted in the suit property continuously. Sudarshan is the president of the committee and Bhabha is the present secretary, prior to him Gundhicha Bhujabala was the secretary of the committee. The suit property comprises of a big room with an open verandah backward on its south. The suit property was intermediary property of Krushna Charana Chau pattanaik and his co-sharers . The suit plot vested upon the state on dtd.18.03.1974. Therafter state of Orissa become absolute owner of it . For the last 100 years Ramalila, was being observed every year in their village. He could not say as to in which year it was started for the first time. He is not a member of the managing committee. Sudarshan, Bhagudh, Gundhi are the members of the said committee. In 1997 Sudarshan Bhujabala, was the president of the managing committee, whereas Bansidhara Das was the secretary. However in 2006 Gundicha Ransingh was the secretary of the committee. For the last 10 years the defendants Nos. 3 is a practising advocate. Bhagabat Kothi (Tungi) is at present in Nuasahi. The resident of his colony and upparasahi take part in the Ramalila. There exists no byelaw of the committee. The disputed property in the present suit is house and homestead . The total disputed land measures Ac 0.235 decimal. He could not say the entire area or extent of the land over which the house stands. The Khata No and plot No. of the

disputed plot are 37 and 102 respectively. The boundary details of the suit land can be described as in the east the said suit land is joined by a house and homestead of Jagabandhu Sahu, of west by house and homestead of Binod Pradhan, on north by village Danda , on south by a concrete road. The total area of plot No.102 is Ac 0.235 decimal. The said land originally belongs to one Nimain Charan Chau pattanaik and after him the said land stands recorded in the names of his son. The villagers have taken over the suit land basing upon the dedication made by Nimai Charan . Nimai Charan was the founder member of Ramalila. The house which stands over the suit land is a thatched house. Gokula Bhujabala , Jagu Jena, Bansidhara and Babula are his covillagers. None of them is a member of the managing committee, yet except Babula others are members of one committee of Ramalila. Some of the villagers do not co-operate in the work of Ramalila. Manmohan Chau Pattanaik and two son of Patitapabana namely Santanu are alive. He could not say whether the other son of Patitabana who were staying in Tata is alive or not. He is not aware about any such suit or appeal filed by the defendants in respect of a portion of the suit land. He is not aware of any such execution filed by the defendants. His son is the Sarapanch of village at present.

P.W.2 has in his evidence stated that he is the plaintiff no.2(a) as well as secretary -cum-cashier of Ramalila committee . The plaintiff No.3 is the president of the said committee. The suit property in Mouza Bhramapadapatana previously belongs to Nimai charan Chau pattnaik. He had conducted the suit land measuring Ac 0.135 decimal to the plaintiff No.1 and initiated staging of Ramalila in the village

about 100 years back. After expiry he was succeeded by his sons, Krushna Gopal Charan Chaupattanaik ,Shyma Charan Chaupattanaik and Guru Charan Chau Pattanaik. They had intermediary status in respect of the suit plot. The suit property produced by the plaintiff No.1 since the time of Nimai Charan Chaupattanaik . The successors of Nimai along with sikkim tenant adjudicated the suit property to Ramalila committee permanently . The Ramalila committee was formed by the villagers of Bhramanandapatana, the villagers of Bhramapadapatana represented by the plaintiff No.1 having been using the suit land permanently by staging Ramalila each year. The suit property is not in exclusive possession of the plaintiff No. 1 for about 100 years and it comprises of thatched room front verendah and backyard. The defendants have no right title, interest and possession whatsoever in the suit property. On 19.03.2006 when villagers including the committee members were discussing about staging of Ramalila , the defendants rushed their claim over ownership of the suit land by virtue of a decree and demanded to take possession of the said land. Upon enquiry they came to know about a decree in T.A No.31/07 . The said decree was passed against four individuals of the village . There has been no delivery of possession of suit land to the defendants. He has filed the certified copy of judgment and decree in T.A 31/07 . In his cross examination he has stated that there are three colony in their village. A total of 107 houses are present in their village. He could not however say about the total extent of population of their village. The suit land measures Ac 0.135 decimals and the defendants states his claim in respect of the entire land . During 2006 they came to know that the defendants had obtained a decree in

respect of the suit land from a civil court. T.S 34/97 was filed by the defendant against the villager of Bhramananda Patana and four villagers namely Bhubaananda, Bhaba Pradhan, Binod and Pada Pradhan. None of this four persons were looking after the affairs of Ramalila. They however were members of the committee . He could not say as to why the defendants had filed the above case against the said four accused persons . The defendants had filed the case on the strength of a registered sale deed executed by one Gopal Charan Chaupattanaik. They have filed this case on the strength of their long standing possession , they however do not have any document in support of their claims. Around 100 years back Shayama Charan chuapattanaik had denoted the suit land in favour of the diety Raghunath for whom the Ramalila committee is in existence. They do not have any document in support of such denotation. They have advanced their claim on the strength of their possession since 1996 . They do not have any document in support of such devotion. They have advanced their claim on the strength of their possession since 1996. the committee is in existence as per the available document. However even prior to that the committee also existed. In 1990 one Sudharshan Bhujabala was the president of the said committee , Bansidhara Sahoo was the secretary -cum- treasurer . Since 2008 he has been functioning as the secretary-cum-treasurer of the said committee. Sudarshan Bhujabal still continues to be the president of the said committee. Every year during Ramalila more than lakhs of money are spent by the committee although he could not bring the loan ledger which would show the affairs of the committee , details and expenditure by the villagers. The temple of Raghunath situated in

Bhramapadapatna and that the said disputed house is used for the storage of crops of deity. All the villagers of their village are members of Ramalila committee. He does not know as to what is a sikkim tenant. The boundary of the suit property is as follows; on east of the suit land is the land of Bhabananada , on west the land of Bhaba and Binod, on north there is a village Danda and on the south a road. No land out of the suit plot is in possession of Gopal Chaupattanaik. The defendants also co-operate in the Ramalila. As Ext.5 was not required the same was not produced till date. There is no such resolution in Ext.5 authorising them to file this case but they had been authorized in the meeting. Generally a meeting is convened every year . At times two meetings are convened in a year.

8. D.W.1 has in his evidence stated that he knows the plaintiff No.2., 2(a) and 3. There is no Ramalila committee in their village, although Ramlila is being held in their village for the last 30 years . Some selected persons are chosen for smooth management of the Ramalila with the co-operation of the villagers. Selected persons convey meeting, and look after the affairs and continue only till replaced by others. He has seen the suit house standing on plot No.102 under Khata No.73 over an area of Ac 0.067 decimal which is bounded on north by road, on south by a road, on east by land of Bhubanananda Sahoo and west of his own house. The defendants having purchased the suit house over an area of Ac 0.067 decimal in the year 1988 possessed the same till 1994, when he had allowed the said house to be temporarily used by the villagers for keeping Ramalila articles on the request of Bhubanananda, Bhaba Pradhan,

Binod Pradhan and Padan having indeed the house the defendats requested the above said persons to take back the house and the defendants filed the cases and after winning he took possession of the house through the process of law. After about 2 to ½ months the villagers had filed another case against the defendants and then the defendants was deprived of his possession. In his cross-examination he has stated that the suit land measures Ac 0.235 decimals . The defendants have purchased the same during 1988. The eastern side of the suit plot have been purchased by Bhubanananda Sahoo. He had purchased about Ac 0.068 decimals of the suit plot from its western side . The defendants is aware to the fact that he as well as Bhubanananda have purchased portions of the suit plot. He could produce the deed by virtue of which he had obtained the possession of the land in 1998. The defendants have pruchased his land prior to him. He could not say exactly as to when he had purchased the same . This case was instituted in respect of the land measuring Ac 0.135 decimals. The members of the village committee to look after the Ramalila are in possession of this Ac 0.135 decimals of land. The said Ac 0.135 decimal of land is in possession of the villagers since 1997. Prior to 1997 the articles relating to Ramalila including Garments , weapons, were kept in the house of lord Raghunath Dev. The said house is situated in their present colony i.e Nuashai house of one Hadu Sethi situated by the side of house of deity. Those who manage the affairs of Ramalila remained in-charge of the denotation. He was not physically present at the exact spot when the Ramalila people took possession of the suit land. He does not remember as to when Gopal Chaupattanaik died. The said Gopal Chau pattanaik was alive when he

had purchased Ac 0.068 decimals out of the suit plot .

9. Defendant No.2 is the defendant in this case and is the sole defendant and has in his examination- in-chief corroborated his entire W.S and has in his cross-examination stated that, he had not mentioned in his W.S that the function of lord Rama is organized from the income made out of his landed properties. Ext.3 is the certified copy of the R.O.R in the suit land i.e the land in respect of which the said case has been filed. He is a practicing advocate at Bhubaneswar since 2006. the recorded tenants had got Stitiban interest over the suit land. “ Stitiban Satwa” is permanent right whereas “ Madhya Styā Adhikar “ denotes to intermediary right vested with the state. From Ext.G he came to know that the Satwa of the recorded tenants was Stitiban. No settlement or consolidation operation has been conveyed in the suit Mouza after 1962. He had not seen the 1962 settlement R.O.R . He had inquired and ascertained about the truthfulness and sanctity of the contents of Ext.G. The said Ext.G was with him since 1988 whereas Ext.H came to his possession in 1995. Ext.K was refused by police and as such was never registered as a case. The entire suit plot measures Ac 0.235 decimal and he had purchased about Ac 0.067 decimal from the purchased land from the eastern side of the plot. Prior to him AC 0.100 decimal from each side had been sold and accordingly he had purchased from the eastern side of existing plot. T.S 34/97 was filed by him and that he was examined as P.W.4. He had never deposed in the said case that he had purchased a double storey building constituting of two rooms as mentioned in the sale deed. For more than 30 years Ramalila was being organised in

their village Bhramapadapatna .The income and expenditure etc are entered in a register maintained by a villager being entrusted by other villagers. Bhubanananda was maintaining this register from 1994 to 1997. he would not produce the said account register. The population of their village is around 300. He had not filed his earlier case against all the 300 people. The ramalila of the village was organized in the village Danda.

10. D.W.3 has in his evidence stated that on 17.03.2006 he was working as a process server in the Civil Courts, Khordha and on that date a writ was given to him by the Nazir for execution. On the date of execution he had gone to the spot with the police in connection with Execution case NO.09/04. They delivered possession of the suit plot and that the case land along with house standing from over was given to the petitioner of that case namely Ganeswar Sahoo. The suit plot in that case was identified by Ganeswar . Swastika Rout and Bijay as the witnesses. One Duruja Naik was the person beating the drums. Articles regarding to Ramalila , Kalu and Gokula of Bhramapadapatna vide executing zimanama. After delivering the possession he had returned back and submitted his report marked as Ext.P. In his Cross-examination he has stated that he was inducted in service during 1997. He has not undergone any survey and measurement training. No such Amin was accompanying him on the date of delivery of possession. No such measurement of the land in question was undergone before delivery of possession. He delivered the possession of Ac 0.235 decimals of land. A house comprising of only one room was present near the land. The same was a thatched

roof house. The said house did not cover the entire Ac 0.235 decimal and only covered a portion of it. The house was present at the northern side of the disputed land . The length of the house from east to west was around 20 to 22 feet. He also could not say about the plot Nos. of the adjoining plots on the eastern and western sides of the disputed plots. Kalu Subudhi and Gokula Bhujabala had told to him that the articles kept in the suit house belonged to the Ramalila committee. Those articles were not brought out and given in Zima of the above named persons. He has not mentioned in his report that articles had been brought out of the house before being left in zima of two villagers. Before delivery of possession of the land he had called the villagers , who had informed him . The above named two persons were members of the Ramalila committee. Ramalila committee was not a party in the writ issued to him. The land and house identified by Ganeswar Sahu was delivered by him. He could not remember the names of the pooling personnel who had accompanied him on the said committee. The OIC of Jankia had gone along with him on the said date.

11. D.W.4 has in his evidence stated that he is a practicing advocate and that in execution case No.09/04 he had issued writ of delivery of possession in favour of Shri Ganeswar Sahu , north of Ac 0.062 decimal. One Ajay Kumar Rout i.e process server of Civil Courts, Khordha along with some other police personnel had been to the spot on 17.03.2006 to execute the writ of delivery of possession . Some articles of Ramalila were kept in the front room which were brought out. He had also signed at the bottom of the report of the process

server. In his cross examination he has stated that he is the nephew of S.C Rath . He had gone to the spot on the date of delivery of possession . He had no prior acquaintance with A.S.I Bijay. He saw him for the first time on 17.03.2006 and by that time he reached the spot, the drummer process server and the police were also present there. 5-6 co villagers and the defendant were also present at the spot. He could not say the length , breadth of the land of which possession was delivered in terms of “link” . He had seen the R.O.R of the said land when possession was delivered. He does not remember as to how many plots in toto were present in the said R.O.R . In his further cross examination he has stated that he was acquainted with the proceedings of execution case No.09/04. The said Ramalila committee was not a party in the said execution case. He could say in respect of which land the writ of delivery of possession had been issued in the execution case . The said writ had been issued in respect of Ac 0.067 decimal. The said Ac 0.067 decimal was from the center of plot No.102. The length and breadth of this Ac 0.067 decimal was not mentioned in the writ. He could not say in whose name the suit plot was recorded . He also could not say as to whether the suit plot stood recorded in the names of at least four persons. He had gone to the spot on the date of delivery of possession as per the request of the defendants. He does not remember as to how many days prior to the date of delivery of possession, he had received such articles. Around 7 to 8 days prior to the delivery of possession, he was intimated about the date of delivery of possession. No local villagers were shown as a witness to the report of delivery of possession. In total there were about 3 houses present over plot No.102. The delivery of possession was made on sole

identification by the defendants in this case. There had been delivery of possession of the suit land by the process server in favour of the defendant in ts 34/97 and the document of delivery of possession and Zimanama have not been manufactured by present defendants.

12. The plaintiff has filed five documents to prove its case which includes Ext.1 and Ext.2 as the affidavit evidence of P.Ws. 1&2. Ext.3 is the certified copy of R.O.R bearing Khata no.73 shows that Krushna Charan Chaupattanaik , Gopal Charan Chau pattanaik, Shayma Charan Chau pattanaik and Guru Charan Chaupattanaik were the recorded owners of Khata No.73 containing plot NO.102 of an area of about Ac 0.0235 decimal. Ext.4 is the certified copy of judmnet and decrea, Ext.A 31/07 wheren Ganeswar who was the appellat and his appeal was allowed. And the order passed in the lower court was set aside. The defendants were directed to be vacted from the suit land. Ext.5 is the resolution book of Ramalila committee.

While on the other hand the defendnat have exhibited Ext.A to Ext.T . Ext.A, Ext.Band Ext.R are the affidavit evidence of D.Ws. 1,2 &4. Ext.C is the certified copy of the judgment and decree in T.A 31/07 , Ext.D is the registered sale deed No.1780 /dtd.11.10.1988 which shows that Gopal Charan Chau Pattanaik had sole to Ganeswar for consideration of Rs. 8,000/- from an area of about Ac 0.235 decimal to an area of about Ac 0.135 decimal. Ext.E is the copy of order sheet in execution case No.09/04 which shows that the writ was executed . Ext.F is the certified copy report of writ of delivery of

possession given by the process server . Ext.G &H are registered sale deed No.3782 and 23110, which shows that Gopal Charan Chau Pattasnaik had in first deed received some of land from one Satya for a consideration of Rs.1,000/- and in the second deed had sold to Patitapabana Pattanaik certain land. Ext.J is the certified copy of T.S 34/97 . Ext.K is the office copy of FIR . Similarly Ext.M is the certified copy of final order of Sub-Collector, Khurda in mutation appeal No.04/97 . Ext.N is the certified copy of application filed in the court of Munsiff, Puri. Ext.P is the delivery of possession of writ . Ext.Q is the Zimanama . Ext.S is the petition in execution case No.09.04 and Ext.T is the certified copy of order dtd.04.04.2009.

13. The plaintiff has raised his argument basing on the following points. Firstly, the plaintiff has stated that the suit land has already been dedicated to the villagers. In para – 3 of his plaint the plaintiff has stated that all recorded tenants have permanently dedicated the suit property to the villagers however, nothing as such has been refuted in the written statement. Going through the analysis of evidence it is found that although all the witnesses including P.W. 1 & 2 have stated about the property belonging to the RAMALILA committee, but no such document has been filed in that aspect. The plaintiff has only in Ext. 5 filed the resolution book of the RAMALILA committee. The said resolution book has no heading showing that it belongs to RAMALILA committee. Although the said resolution book has shown that there has been certain meetings held in the village with respect to RAMALILA committee. The said resolution also shows that there has been renovation done to the

RAMALILA KOTHAGHARA. However, there is no authentication of this document as neither the same has any heading nor the witnesses have corroborated to the same. Even if this document is admitted into evidence, no other document showing the existence of the committee for example the accounts documents or document relating to number of members has been filed. In view of non-filing of these documents certainly the question of using of the said house as RAMALILA committee is in doubt. Although the defendants have also admitted about their being a RAMALILA committee, but the said committee has been using the suit land and are its true owners have been seriously refuted by the defendants. P.W. 2 has in his evidence at para – 18 stated that around 100 years back Shyama Charan Chau Pattanaik had dedicated the suit land in favour of the deity RAGHUNATH JEW for whom the RAMALILA committee was in existence. They however do not have any document in respect of such donation. The entire claim of the plaintiff is with respect to the possession. Hence in view of the non-filing of any documents with respect to their possession or existence of RAMALILA committee at the suit land creates a big doubt regarding the plaintiffs rightful ownership over the suit land or his possessory title.

The next contention raised by the plaintiff is that neither the plaintiff nor the entire villagers of village – Brahmanapada were parties to the earlier suit. The few individuals who were parties to the suit were not impleaded as representators of the village or of the committee in the said suit, even though defendant had conscious knowledge about possession of the suit property by the plaintiffs. On

going through the record it is seen that the present defendant had filed a suit in T.S. No. 37/1997, which was dismissed, for which he had preferred an appeal vide T.S. No. 31/2007, wherein the Hon'ble Appellate court had allowed the appeal and had declared the right, title of the plaintiff over the suit land, which was of about Ac. 0.067 decimals, which was sold by Gopal Charan Chau Pattanaik to the present defendant. The said suit was filed for declaration of right, title and permanent injunction. The said suit was filed against the declaration of ownership and hence the villagers need not have been made as parties. The sole contention in the said suit was about the genuineness of the sale deed and the same was allowed by the Appellate court. In my opinion there was no need for addition of all villagers in the said suit. Further more in their written statement the defendants in T.S. No. 34/1997 had also admitted about there being a RAMALILA house and that the same aspect was also decided thereon. The evidence of P.W. 5 in that regard was mentioned in T.A. 31/2007 also shows that there has been admission by the plaintiff that defendants have forcibly kept the RAMALILA articles in the suit house. D.W. 2 in his cross-examination has also stated that the entire suit plot was measured at Ac. 0.235 decimals and he had purchased Ac. 0.067 decimals. He has in para – 29 stated that for more than 30 years RAMALILA is being organized in their village. The said RAMALILA was being performed in front of the temple of Lord Jagannath. But, has denied stating that RAMALILA was never performed since last 100 years in their village and he has also denied that since the date of organization of RAMALILA all articles, instruments etc. were being kept in the said house. D.W. 1 has also

denied about constitution of the RAMALILA committee .D.W. 1 has in his cross-examination at para – 8 stated that the RAMALILA committee articles had never been kept over the suit land since 60 years. D.W. 4 has in his evidence stated that he had seen the ROR of the suit land on which possession was delivered. Further more a rule had been issued in respect of Ac. 0.067 decimals. He could not say in whose name the suit plot, i.e. plot No. 102 stands recorded. He had gone to the plot on the date of delivery of possession. These evidences adduced by the defendants clearly shows that as the earlier suit in T.S. No. 34/1997 was a suit of declaration of right, title, interest against its true owner, hence the entire villagers need not have been added. Further more the evidence adduced by the defendants on the above light also does not show the reason for addition of the RAMALILA committee, if any in T.S. No. 34/1997 . Coming into the next allegation of the plaintiff, i.e. defendants have admitted about the existence of the RAMALILA committee in para – 1 & 9 of D.W. 1. He has stated that although there is no RAMALILA committee, but the same is being performed since 30 years. In para – 7 of Cross-examination of D.W. 1 he has stated that the members of their village, who look after the affairs of RAMALILA are in possession of the entire Ac. 0.135 decimals. In my opinion in view of there being no documents filed by the plaintiff with regard to the existence of the RAMALILA committee, for example any account document or any book with heading of RAMALILA committee and its members or any RAMALILA resolution meeting book with proper hearing it cannot be ascertained as to whether such committee is genuinely functioning or not.

As far as issue No. 8 is concerned as to whether the plaintiff has got any right, title and interest over the suit land, it is seen that the plaintiff has not filed any document with respect to his ownership or right or title over the suit land. His only claims is with respect to his long standing possession over the suit land. His such prayer of long standing possession is also in serious doubt as in execution Case No. 09/04 possession over a part of the suit land of Ac. 0.067 was delivered to the defendant i.e the land claimed by plaintiffs. The plaintiffs have also not stated as to how they are in possession over Ac. 0.135 decimals without any valid transfer of ownership. In fact P.W. 2 in his evidence at para – 18 has clearly stated that the land was donated by Shyam Charan Chau Pattanaik, but with regard to such donation no such documents have been filed. Hence in my opinion in absence of any document filed by the plaintiff with respect to the ownership of the suit land and the plaintiffs witness following the said exact date of their coming over ownership over the suit land by way of adverse possession, it can be said that the plaintiff has failed to assert his right, title, interest over the suit land. Coming into issue Nos. 1 & 2 it is seen that as the plaintiffs have got no right, title, interest over the suit land and their possession if any has been forcible. Hence in my opinion they are not entitled for restraining the defendants permanently from entering upon the suit property.

The plaintiff has relied upon the citation in *64 (1987) CLT 509*, wherein it has been held that “In essence with effect from 18th of March, 1974 pursuant to the aforesaid notification the intermediary

interests in the whole of the state of Orissa stood abolished.

While the latest Revenue Department notification No. 13699-EA-1ND published in Orissa Extraordinary gazette No. 371 it has been held that in exercise of power conferred by sub Sec. 1 of 3 (1) of the Orissa Estate Abolition Act 1951 the State Government have declared that (1) the intermediary interests of all intermediaries. (2) Those in respect of which claims and references have been made (3) the intermediary interests of all intermediary in all estates other than those which have already vested in the state have passed to and become vested in the state free from all encumbrances. The plaintiff in this present case has not filed any document to show that the suit land was an intermediary land or its actual owner was an intermediary. Further more it has been ascertained that the sale was made by Gopal Charan Chau Pattanaik to the present defendant of Ac. 0.067 decimals in 1988 and that the said Gopal Charan Chau Pattanaik had received the property in an auction vide registered sale deed No. 09.08.1977. In view of there being no documents adduced by the plaintiff to show that the suit land belongs to intermediary hence his prayer lacks merit. Even if it is admitted that the suit land belonged to an intermediary than the plaintiff has not cited any decision as to why the state government has not been made as a party in this suit. The plaintiff cannot be allowed to blow hot and cold at the same time.

The plaintiff has filed another citation in *2006 (II) OLR 80*, wherein it has been stated that “discussing the facts and provisions of law as in order 7 R- 3 CPC held decree is not executable and the suit is incompetent for want of proper description and sufficient

identification. In my opinion the defendant has clearly identified the suit land as he has in his counter claim specifically provided about the suit land and its boundaries. Further more as is revealed from execution 09/2004 it is seen that the order of Ac. 0.067 decimals which the defendant was claiming had already been executed earlier. As per the evidence of D.W. 3, hence in my opinion the suit land is clearly identifiable”.

Ld. Counsel for the plaintiff has filed a citation in *1997 (II) OLR 325*, wherein it was held that in a suit for permanent injunction the person can defend his possession against all world except the true owner having a better title than the plaintiff, so much so, a trespasser can defend his possession against a subsequent trespasser, unless the later shows a better title to the property in question. In this present case at hand the defendant has been clearly able to show his right, title, interest over his part of the suit land and the validity of the sale deed through which he entered into his valid title and possession. Hence in my opinion the present case at hand does not apply to this present suit.

Ld. Counsel for the defendant had filed a citation in *1986 (II) OLR 258*, wherein it has been held that if title fails and it is found that the plaintiff is in possession, the suit can be decreed on possessory title only against all others excepting the true owner. In the present case at hand as discussed above the plaintiff has not been able to prove his title. In this scenario the plaintiff has not been able to prove his long standing possession over the suit land or his valid possession

over the suit land. Hence in this scenario even if the plaintiff is in possession over the part of the suit land of the defendant then the same is not valid and the plaintiff possessary title cannot be guaranteed.

As regards to issue No. 1 as to whether the decree passed in T.A. No. 31/2007 is not binding against the plaintiff. It is seen that the said decree was passed basing on the sale deed. The said sale deed was executed by Gopal Charan Chau Pattanaik with respect to the suit land therein. In view of their being no defect in the sale deed and none of the descendants of Gopal Charan chau Pattanaik having any objection to the sale deed and the plaintiff failing to prove his long standing possession over his share of the suit land, it can be clearly said that the judgment in T.A. No. 31/2007 is not void and is binding against the plaintiff.

Issue Nos. 3, 5, 9 & 10.

14. In view of the above discussion it is quite clear that the sale deed issued by Gopal Charan Chau Pattanaik in favour of the defendants is valid one. Apart from establishing the same document in T.A. No. 31/2007 in the Appellate Court, wherein it was held that the present defendant was entitled to his share of Ac. 0.067 decimals. The defendant has also filed the said document in Ext. D and has also proved the document, which has gone unchallenged, which shows that the defendant has his right, title, interest over Ac. 0.067 decimals from an area of Ac. 0.135 decimals from plot No. 102 in khata No. 73.

Hence in my opinion the sale deed of 1988 is a genuine document and is not void. Coming into the point as to whether the suit is hit by the provisions of *resjudicata*. It is seen that Sec. 11 of CPC states about *resjudicata*.

Sec. - 11 :- 11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

The most essential ingredients in which resjudicata would apply is that there would be same parties, issues would be same, matters in controversy would be same between the parties and the said matters would have been raised and fully disposed. In this suit the parties in the present case was RAMALILA committee, whereas in T.S. No. 34/1997 RAMALILA committee was not a party. Hence the suit is not hit by resjudicata. However, the declaration of sale deed was a declaration of *rem* and not in *personam*. The plaintiff has also filed citation in *1989 (II) OLR 420 & 66 (1988) CLT 675* with regard to resjudicata and points of law therein.

As per the judgment in T.A. No. 31/2007 the present defendant was found to be the true owner of his portion of Ac. 0.067 decimals and thereafter writ was issued in execution case No. 09/2004 and again as per the process server report the vacant position over the suit land was in presence of police officials and witness given to the present defendant. Further more D.W. 3, who is the process server of Bhubaneswar Civil Courts has in his evidence

stated that he has not undergone any survey and measurement training and that he had delivered the possession over the land in T.S. No. 34/1997 to the present defendant. He had called the villagers, who had mentioned to him that the two persons were member of RAMALILA committee and then had given the articles kept in the said room in their possession. The land and house identified by Ganeswar Sahoo was delivered by him. A big land, portion of which was lying vacant and a house standing thereon were given in possession of Ganeswar as per the counter claim of the defendant the plaintiff has again disposes him on 03.05.2006 and has given arose to cause of action over his land. Hence in my opinion defendant is entitled to his share of the land, i.e. Ac. 0.067 decimals as described in the schedule of property along with its boundary. AS regards to issue No. 10 it is seen that as the defendant is entitled to the schedule of property given in the counter claim and has already establish its right, title, interest over the said land hence he is entitled for restraining the plaintiff and their co-villagers permanently from coming upon the suit house and its premises.

Issue Nos. 4, 6, 11 & 12.

15. No specific prayers have been made in this regard, hence no orders needs to be passed.

Issue No. 7

16. Cause of action is a bundle of rights assaulted by one

party and refuted by other. In this suit the plaintiff has stated that the cause of action for filing the same arose on 09.03.2006 when the defendant threatened to take forcible possession over the suit property. The defendant has in his written statement clearly denied to such allegation and on the other hand based his claims on the counter claim stating therein that in fact on 03.05.2006 the plaintiff had disposedd him giving rise to cause of action in his favour. The plaintiff had in his further written statement to the counter claim denied to the cause of action arising in the counter claim. In view of the rival claims of the parties it can be said that the plaintiff has got of cause of action to file this suit and the defendant has also got a cause of action in this suit. Hence order.

ORDER.

The suit be and the same is dismissed on contest against the defendants, but without cost. The counter claim of the defendants is however allowed on contest against the plaintiffs, but without cost. The plaintiffs and other co-villagers are permanently restrained from coming upon the suit land of the defendants and its premises permanently. The plaintiffs and others are directed to give vacant possession over the suit land of the defendant to the defendant within three months, failing of which the defendant is at liberty to take help of process of court for execution of its order.

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

Transcribed to my dictation, corrected and signed by me and

pronounced in the open court this the 6th day of August, 2014.

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

List of witnesses examined on behalf of Plaintiff :-

P.W.1: Bhubaneswar Moharana.
P.W.2: Gundicha Ranasingh.

List of witnesses examined on behalf of Defendants. :-

D.W.1 Babula Pradhan.
D.W. 2 Ganeswar Sahoo.
D.W. 3 Ajay Kumar Routray.
D.W. 4 Swastik Rath.

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence of P.W.1
Ext.1/1 to 1/3 Signatures of P.W.1 on Ext.1
Ext.2 Affidavit evidence of P.W.2.
Ext.2/1 to 2/3 Signatures of P.W.2 on Ext.2.
Ext.3 C.C. Of ROR bearing khata No. 73.
Ext.4 C.C. Of judgment and decree in T.A. 31/07
 of 2003/02.
Ext. 5 Resolution Book of Ramaleela Committee.

List of documents proved on behalf of the Defendants :

Ext. A Affidavit evidence of D.W. 1.
Ext. A/1 Signature of D.W. 1 on Ext. 1.

Ext. B	Affidavit evidence of D.W. 2.
Ext. B/1	Signature of D.W. 2 on Ext. 2.
Ext. C	C.C. Of Judgement and decree in T.A. 31/07 of 2003/02.
Ext. D	RSD No. 1786 dt. 11.10.1988.
Ext. E	Copy of order sheets in Exn. 09/04.
Ext. F	C.C. Of report of writ of delivery of possession, report of process serve and zimanama prepared by process server.
Ext. G	RSD No. 3782 dt. 09.08.1977.
Ext. H	RSD No. 2310 dt. 23.10.1982.
Ext. J	C.C. Of W.S. In T.S. 34/97.
Ext. K	Office copy of FIR dt. 31.05.2006.
Ext. L	Postal Receipt.
Ext. M	C.C. Of final order of Sub-Collector, Khordha in mutation appeal No. 04/97.
Ext. N	C.c. Of application in Exn. 168/1953.
Ext. P	Delivery of possession writ.
Ext. P/1 & P/3	signatures of D.W. 3 on Ext. P.
Ext. P/4	Signature of Bijay Kumar Pradhan on Ext. P.
Ext. P/5	Signature of Jhaja Naik on Ext. P.
Ext. Q	Zimanama.
Ext. Q/1	Signature of D.W. 3 on Ext. Q.
Ext. Q/2	Signature of Kalu Subudhi on Ext. Q.
Ext. R	Affidavit evidence of D.W. 4.
Ext. R/1	Signature of P.W. 4 on Ext. 4.
Ext. S	Petition in Exn. Case No. 09/04.

Ext. T C.C. Of order dt. 04.04.09 passed by this court in
Exn. Case No. 09/04.

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