



02. The plaintiff's case is that he is the absolute owner in possession of a piece of land measuring Ac. 0.410 decimals recorded under khata No. 195, plot No. 1404 of mouza Keranga (hereinafter called to be the suit land). The suit land has also been recorded in his name in the Revenue ROR. The defendants are the southern side adjacent land owners to the suit land, who have no manner of right, title, interest and possession over the suit land. But they have been trying to encroach the southern side of the suit land by removing its southern side stone wall and green fence over it. On 19.01.2009 the defendants have gathered stone, sands etc. near the suit land and threatened to put a pucca construction over it forcibly. The defendants are also threatening the plaintiff to dispossess him from the suit land. Therefore, the plaintiff preferred the present suit in order to restrain the defendants from the suit land.

03. The defendants have effected their appearance in this case and filed their joint written statement by impleading that the suit is not maintainable, undervalued and there is no cause of action for the plaintiff to file the suit. It is only admitted that the plaintiff is the owner in possession of the suit land. The specific case of the defendants is that they are the southern side land owner pertaining to Hal plot No. 1405, Hal khata No. 226 measuring Ac. 0.415 decimals of mouza Keranga. The plaintiff by taking advantage of the absence of the defendant in the suit village has constructed his residential house towards the southern side of the suit land by encroaching an area of 40 links X 40 links from the northern side of the defendants land since last five years. After intervention of the village gentries the said dispute was settled with a conclusion that the plaintiff will pay the cost of the land encroached by

him and the defendants will execute a registered sale deed in his favour in respect of the land of the defendant encroached by the plaintiff. In spite of such settlement the plaintiff on 26.12.2008 again forcibly entered upon the defendants land and tried to dig foundation by encroaching further some area from the northern side of the encroached land of the defendants. Therefore, the defendants jointly moved an application U/s- 144 Cr.P.C. before the Executive magistrate, Khordha against the plaintiff on 27.12.2008 vide Misc. Case No. 712/2008. It is again contended by the defendants that during the pendency of the Misc. Case a talk of settlement was going on between the parties on the intervention of the village gentries. In the mean time the plaintiff arranged the marriage of his nephew for which he requested the defendants to allow him to use the aforesaid land. The plaintiff taking advantage of such temporary occupation of a portion of the defendants land covered it with cloth wall. On 14.01.2009 he constructed a compound wall of late-rite stone by encroaching a further area measuring 60 links X 40 links of the plot of the defendants bearing No. 1405. Therefore, the defendants again complained the facts before the Village Committee (Zamit). Accordingly notice was issued to both the parties, but the plaintiff refused to attend the meeting. The defendants have further to say that they have not encroached any land of the plaintiff rather the plaintiff has encroached their land and as such the suit of the plaintiff being colluded with misconceived facts is liable to be dismissed.

04. The rival pleadings of both the parties give rise of the following issues for an useful adjudication.

**I S S U E S.**

1. Whether the suit is maintainable?
  2. Whether there is cause of action to file the suit?
  3. Whether the plaintiff is the owner in possession of the suit land?
  4. Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendants from entering upon the suit land and from creating any disturbances in the peaceful possession of the plaintiff over it?
  5. What relief, if any, the plaintiff is entitled to?
05. In order to substantiate his case four witnesses have been examined on behalf of the plaintiff including the plaintiff himself as P.W. 4. Similar numbers of witnesses have also been adduced from the side of the defendants including the defendant No. 1 to be D.W- 4.

The plaintiff has relied upon two documents, which have also been exhibited in this case. The settlement ROR of 2001 in khata No. 105 of mouza Keranga (suit land) is marked as Ext. 1 and one rent receipt as Ext. 2. The defendants have also relied upon the ROR in respect of their own land recorded under khata No. 226 of Mouza Keranga as Ext. A.

**FINDINGS.****Issue Nos. 3 and 4.**

06. The above two interrelated issues being pivotal to the basic questions involving with the present suit are taken up first for consideration.

It is not under dispute that the plaintiff is the owner in possession of the suit plot No. 1404. Similarly, the defendants are the southern side plot owners bearing

No. 1405 of mouza Keranga. Both are neighbors. The plaintiff has to say that the defendants have been trying to encroach his land under plot No. 1404 illegally and as such they must be restrained from exercising their illegal attempts.

Before entering into the discussion on the said aspect of the case it is quite obligatory on the part of the court to visit the rival claim of the defendants. They have to say that the plaintiff has encroached their land in plot No. 1405 measuring 60 links X 40 links. The defendants while denying the whole allegation of the plaintiff, have in their written statement seriously concentrated upon making allegations against the plaintiff by saying that he has encroached their land. The written statement is a lengthy description of the said fact. Even though the defendants have forcefully and repeatedly averred that the plaintiff has been in illegal occupation of their (defendants) land for more than four to five years, the surprising fact is that the defendants have not made any counter claim nor instituted a separate suit against the plaintiff yet. However, keeping in mind the said allegation of the defendants, which is a related subject to the suit matter, this court has perused the evidence of both the parties. Moreover the witnesses from the side of the plaintiff have denied the allegation of the defendants. Their cross-examination is not at all effective to form a judicial and decisive opinion to the extent that the plaintiff has encroached any portion of the land of the defendants. While coming to the evidence adduced from the side of the defendants, D.W. 1 in his evidence in chief has also repeated the said claim, but in the cross-examination has stated that the plaintiff has encroached two to three GUNTHAS of land of the defendants for last four years. D.W. 2 in his cross-examination has stated

that the area of land of the defendant encroached by the plaintiff is 100 links X 40 links. One room and boundary has already been constructed by the plaintiff over the encroached land. D.W. 3 in the cross-examination has stated that the case has been instituted over the landed property of Jogi Ahemad measuring 2.5 GUNTHAS. There is an one roomed house and a boundary wall over the disputed land, which has been constructed by the plaintiff Jabarul Khan. D.W. 4 is the most vital witness. He in his evidence in chief has clearly stated that the plaintiff initially encroached 40 links X 40 links from northern side of his plot bearing No. 1405 and subsequently after marriage of his nephew he encroached 60 links X 40 links from the said plot and still in possession. In the cross-examination he has stated that the plaintiff has acquired the land measuring 100 links X 80 links recorded under plot No. 1405. He further admitted that he has not filed any independent suit for recovery of possession of the acquired land of the plaintiff out of plot No. 1405.

If the written statement, evidence in chief of the defendants witnesses and their cross-examination are read together, one will find disastrous contradictory facts in opposition to the claim of the defendants. First of all the defendants witnesses are not sure from which date the plaintiff encroached the land of the defendants and the extend of the land. The defendant No. 1 himself is highly confused about the extend of land encroached by the plaintiff. It is further pertinent to mention that the defendants came to know about such encroachment around 4 to 5 years back. The matter was put before the Village Committee (Zamat) and the plaintiff did not carry the direction of the village committee (Zamat) and as such it would be more desirable

for the defendant to approach the court of law. If the defendants are fair in their pleadings, they must have to adduce evidence basing on fact and not over assumptions or assertions. The land of the defendants, which has been recorded in their name vide Ext. A have not been measured by a survey knowing commissioner. Even though they had a lot of time to approach the revenue authority for the same and if not possible the same can be executed by the help of a private Amin. But, the defendants have not taken any endeavor to ascertain the real truth and without any basis have claimed that the plaintiff has encroached their land. The reason behind such a pleading could only be known to the defendants.

07. Lets now come to the evidence with regards to the allegation of the plaintiff against the defendants, which is the subject matter of the present issue. In the pleading, the plaintiff has stated that the defendants have been attempting to encroach southern portion of the suit land, which is adjoining to the plot of the defendants. On 18.01.2009, the defendants tried to encroach a portion of the suit land by removing the southern side stone wall and green fence over the suit land of the plaintiff, but due to protest the defendants could not be succeeded in their attempt and on 19.01.2009 the defendants have gathered sands, stones etc. near the suit land and threatened the plaintiff to put pucca construction over the suit land. Four witnesses in support of the said claim have been examined from the side of the plaintiff. Out of whom P.W. 1 & P.W. 4 in their evidence in chief have stated that the defendants are creating disturbances in the possession of the plaintiff over the suit land. In the cross-examination P.W. 1 has stated that he has never gone through the record pertinent to

the suit land and as per the statement of the plaintiff he came to know about the area of the suit land. He admitted that he has no personal knowledge and only came to know about the fact from the plaintiff. He has again stated that one common wall has been existing since long over the suit land separating the property of both the parties. P.W. 2 & 3 have not stated a single word regarding the aforesaid illegal attempt of the defendants over the suit land. But they have only adduced evidence regarding the possession of the plaintiff over the suit plot. P.W. 2 in the cross-examination stated that the plaintiff has filed this suit as the defendant Jogi Ahemad is not allowing him to construct the boundary wall. P.W. 3 in the cross-examination has also stated that since the suit land exclusively belongs to the plaintiff he became sure that the defendants have no manner of right, title, interest and possession over it. P.W. 4 is the plaintiff himself, who has admitted the record of right in respect of the suit land as Ext. 1 and the rent receipt to that effect as Ext. 2. In the cross-examination he has again stated that he has filed the present case against the defendants as they are forcibly attempting to encroach their land and they have already broken his southern side boundary wall on 18.01.2009. He again admitted that the defendants have instituted one case U/s- 144 Cr.P.C against him vide Misc. Case No. 712/2008. After going through the evidence adduced from the side of the plaintiff it can only be asserted that there is boundary dispute in between both the parties, who are the adjoining land owners and prior to institution of the suit the defendants have also approached the Executive Magistrate U/s- 144 Cr.P.C against the plaintiff. But, still the boundary dispute has not been subsided, which is resulted in filing of the present suit by the plaintiff. It may further

be noted that the cross-examination by the counsel for the defendants to the above witnesses is no more useful to completely negative the allegation of the plaintiff. Therefore, it would be good enough to visit the evidence adduced from the side of the defendants. D.W. 1 in his evidence in chief has stated that the defendants have never tried to encroach any portion of the suit plot by removing the stone wall or green fence. D.W. 2 has also stated the said fact corroborating the version of other, which implies that there is a boundary wall in between both the plots, which has been disputed by the defendants to be not the boundary line of the plaintiff's land. But D.W. 2 in his cross-examination has stated that the plaintiff is in possession of his own land having his residential house over it. Whereas D.W. 3 in his cross-examination stated that there is one roofed house and boundary wall over the disputed land, which has been encroached by the plaintiff Jabarul Khan. The more surprising fact is that the D.W. 4 (D-1) in his cross-examination has stated that the plaintiff got his house over plot No. 1404 and he is the owner of the plot No. 1405. D.W-4 (defendant No. 1) again claimed that even though the plot No. 1404 has been recorded in the name of the plaintiff, he has a interest over the suit plot No. 1404. He has again admitted that there is a house over plot No. 1405, but the disputed area is lying vacant.

08. After due scrutinize of the evidence from the side of the defendant, it is became crystal clear that the defendants have not come with a clean hand to the court and the allegation against the plaintiff appears to be not supported by concrete, cogent and reliable evidence, rather the plaintiff, who is the absolute owner in possession of the suit plot No. 1404 has been residing there over the suit land and in face of the

admission by the witnesses from the side of the defendants as well as defendant No. 1 in his cross-examination, it is well asserted by the court that they are creating disturbances over the peaceful possession of the plaintiff and the defendant No.1 (D.W-4) himself has admitted in his cross-examination that even though he is the owner of the plot No. 1405, he has a claim over the suit plot No. 1404. The whole evidence implies that a acute boundary dispute has been continuing between the plaintiff and defendants. Therefore, the defendant has also filed one Misc. Case before the Executive Magistrate. The evidence adduced from the side of the plaintiff on that score is corroborative and nothing has been retracted from the mouth of the plaintiff's witnesses to disbelieve their story. The whole circumstances clearly establish that the defendants are creating disturbances with the peaceful possession of the plaintiff over the suit land and in this manner the plaintiff has expressly established apprehended breach of obligation existing in his favour and as such the defendants are desired to be perpetually enjoined from the suit plot No. 1404 to prevent recurrence of its violation.

**Issue Nos. 1, 2 & 5.**

09. The above issued being not pressed by the defendants during hearing of the suit needs no further discussion. However, the plaintiff in view of the forgoing discussing is entitled for the relief of permanent injunction against the defendants. Hence it is order.

**ORDER**

The suit of the plaintiff be and the same is hereby decreed on contest against the defendants but in the circumstances without any cost. The defendants are

hereby permanently enjoined not to interfere with the peaceful possession of the plaintiff over the suit plot No. 1404 in any manner. Violation of this order entails the plaintiff to adopt the proper recourse to law against the defendants.

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 11<sup>th</sup> day of August, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

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|--------|---------------|
| P.W. 1 | Md. Sarif.    |
| P.W. 2 | Karim Khan.   |
| P.W. 3 | Sk. Ibrahim.  |
| P.W. 4 | Jabarul Khan. |

List of witnesses examined on behalf of Defendants :-

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|--------|-------------------------|
| D.W. 1 | Sk. Mamtaj.             |
| D.W. 2 | Rahimtulla Khan         |
| D.W. 3 | Mohammad Zahirul Haque. |
| D.W. 4 | Sk. Zogi Ahmed.         |

List of documents admitted on behalf of the Plaintiff :-

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|--------|---|
| Ext. 1 | Settlement ROR of 2001 in khata No. 105 of mouza Keranga. |
| Ext. 2 | Rent receipt.   |

List of documents admitted on behalf of Defendants :-

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| Ext. A | ROR under khata No. 226 of mouza Keranga. |
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Senior Civil Judge, Khordha.