

**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 16th day of September, 2014

C.S. 33/2003

1. Sardar Masid Alli Khan, aged about 50(fifty)years,

S/o: Late Tatar Khan

Vill: Kauripatna, P.O: Rajasunakhala,

P.S: Bolagarh, Dist: Khordha

..... Plaintiff.

-Versus-

1. Sri Sri Rameswar Dev bije Kapasia, P.O: Dabardhuanpatna,

P.S; Bolagarh, Dist: khorhda a perpetual minor,

represented through marfatdars.

2. Anjan Kumar Mohapatra, aged about 37 years,

3. Nakul Kumar Mohapatra, aged about 33 years,

4. Manasi Mohapatra, aged abot 23 years,

5. Sabita Mohapatra, aged about 18 years,

All are Sons and daughter of Late Bhikari Mohapatra

6. Suma Mohapatra, aged about 57 years,

W/o: Late Bhikari Mohapatra

7. Jhula Mohapatra, aged about 64 years,

8. Ketuka Mohapatra, aged about 60 years,

9. Gunduri Mohapatra, aged about 56 years,

10. Kali Mohapatra, aged about 52 years,

Sl. No. 7 to 10 are S/o: Late Banchanidhi Mohapatra

All are of Vill: Kapasia, P.O: Dabardhuanpatna,

P.S: Bolagarh, Dist : Khordha

..... Defendants.

Counsel for Plaintiffs ... Sri K. Ray ,Advocate
& Associates

Counsel for Defendants ... None

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Date of Argument – 04.09.2014

Date of Judgment – 16.09.2014
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JUDGEMENT

1. The plaintiff has filed this suit with a prayer for declaration of title and mandatory injunction against the defendants and directed them not to create any disturbances over the possession of the plaintiff.

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

That the defendant No.1 is the purpetual minor represented by its Marfatdars i.e defendant Nos. 2 to 10. The suit property appertaining to Sabik plot No.792 corresponds to pre sabik Plot no.584 which was previously owned by Lazman Moharana. For legal necessity he sold and transferred the same to Banchanidhi Mohapatra , S/o: Lingaraj Mohapatra for consideration in registered sale deed NO.5826. The possession was thereafter delivered on 03.06.21998 . After purchase the said Banchanidhi Mohapatra possessed the same with his own

right, title and interest , although it stands recorded in the Sabik settlement record of rights in the name of said Lazmana Moharana. The suit property in Sabik plot No.786 was owned by the aforesaid Banchanidhi Moharapatra whose name stood recorded in the sabik settlement record of the year 1961. the said Banchanidhi died and was succeeded by defendant Nos. 7 to 10. Bhikari Mohapatra who was the son of Banchanidhi has also expired. Bhikari is succeeded by defendant Nos. 2 to 6. the defendant Nos. 2 to 10 were owners of the entire suit property and they were in possession of the same with their exclusive right, title and interest. While enjoying the suit property as exclusive owners . Defendant Nos. 2 to 6 sold and transferred the suit property to the plaintiff by registered sale deed No.94 for consideration. At the time of purchase the settlement operation was almost complete and R.O.R of the suit land was published in the year 1996. So the plaintiff could not get his name recorded in the said R.O.R. After the plaintiff applied to the Tahasildar, Bolagarh to mutate his name in the R.O.R in Mutation case No.177/1999, the R.O.R of the suit land was published in the year 1996. the plaintiff would not get his name recorded in respect of the suit land. Thereafter the plaintiff applied to the Tahasildar, Bolagarh to mutate his name in the R.O.R . during the said time the plaintiff got to know that the suit property along with some other properties have been recorded in the name of defendant No.1. The defendants have no right, title, interest or possession over the suit land. Even though the suit property has been recorded in the name of defendant No.1, the same is not binding against the plaintiff and the R.O.R of the current settlement cannot create any right, title or interest of the defendants. At the same time the present R.O.R has casted a

shadow in the title of the plaintiff.

3. The cause of action for this suit arose on 11.02.2003 when the defendants did not respond to take steps for change of name in the R.O.R of the suit property. Hence the plaintiff has prayed for passing a decree declaring right, title, interest of the plaintiff over the suit land along with any other relief. turned a deaf year to execute the deed of relinquishment in favour of the plaintiff. Hence the plaintiff has prayed for passing of a declaration of right, title, interest over the suit land in his favour.

4. The defendants have neither appeared nor have filed their W.S in this case and hence were set exparte.

5. In order to prove its case the plaintiff has examined only one witness and has exhibited 12 documents. While to disprove the averments of the plaintiff the defendants has neither adduced any evidence nor exhibited any document.

6. P.W.1 who is the plaintiff in this suit has corroborated his entire plaint.

7. Coming into the documents filed by the plaintiff it is seen that Ext.1 is the registered sale deed No.94/ dtd.30.05.1995 whereby Anjan Kumar Mohapatra, Nakula Kumar Mohapatra, Manasi Mohapatra, Sabita Mohapatra Jhula Mohapatra and others have sold to Sardar Masid Alli Khan the suit land. Ext.2 series is the rent receipts, Ext.3 is

the certified copy of R.O.R of Mouza Kapasia under Khata No.19 which shows that Khata No.19, plot No.786 is recorded in the name of Banchanidhi Mohapatra. Ext.4 certified copy of R.O.R of Mouza Kapasia under Khata No.31, plot NO.792 recorded in the name of Lazmana Moharana. Ext.5 is the certified copy of R.O.R of Mouza Kapasia under kHata No.6 which is recorded in the name of Rameswar Deve Bije Nijagaon , Marfat Anjan Kumar Mohapatra, Nakula Mohapatra, Manasi Mohapatra, Sabita Mohapatra , Suma Mohapatra, Jhula Mohapatra , Ketuka Mohapatra and Gunduri Mohapatra . The said Khata contained the plot No.1147 and 1148 recorded in the names of the above persons. Ext.6 is the registered sale deed No.5826. Dtd.30.06.1958 which shows that Lazmana Moharana had appeared pre-settlement. Sold to Banchanidhi from Khata No.05 plot No.584 , the suit land. Ext.7 is the Hal Sabik co-relation which shows that Sabik Khata No.19, plot No.786 of an area of Ac 0.255 corresponds to Khata NO.06 plot No.1143 of an area of Ac 0.252 decimals . Ext.8 is Khata No.19 of pre sabik settlement of plot No.786 which corresponds to Sabik Khata No.389, plot NO.983 . Ext.9 is Sabik 389, plot No.983 having an area of Ac 0.210 decimal corresponding to Hal Khata No. 536 and Hal Plot No.1469 of area of Ac 0.192 decimal. Ext.10 is the pre sabik settlement information which shows that plot No.584 containing Ac 0.542 decimal is divided into three Khatas i.e Sabik Khata No.03 of plot No.788 , sabik Khata No.19 of plot No.786, and sabik Khata No.31 of plot No.792. Ext.12 also shows that Sabik Khata NO.31 plot No.792 correspnding to Hal Khata No.342 of plot No.1143 and 1148 as per the above documents it is quite clear that Laxmana Moharana had sold to Banchanidhi Mohapatra some part of the suit

land and the rest part which was with Banchhanidhi among with the purchased part were sold by heirs of Banchanidhi to the present plaintiff. The above documents clearly shows that the plaintiff has got a genuine title over the suit land and although the defendants have who are also the recorded owners have been given a chance to take part in the suit have choosen not to contest hence were rightly made exparte. In view of the above discussion it is quite clear that the plaintiff is entitled to right, title interest and possession over the suit land and the defendants do not have any interest over the same. Hence ordered.

ORDER

The suit be and the same is decreed on exparte against the defendants but without costs. The plaintiffs right , title , interest over the suit property is hereby decreed in his favour.

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

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 15th day of September , 2014.

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

List of witnesses examined on behalf of Plaintiff :-

P.W.1: Sri Sardar Masid Alli Khan

P.W.2: Sakina Biwi

List of witnesses examined on behalf of Defendants. :-

NIL

List of documents proved on behalf of the Plaintiff :-

- Ext.1 Registered sale deed bearing NO.94/ dtd.30.05.1995
- Ext.1/a Signature of Anjan Kumar Mohapatra on Ext.1
- Ext.1/b Signature of Nakula Kumar Mohapatra on Ext.1
- Ext.1/c Signature of Suma Mohapatra on Ext.1
- Ext.1/d Signature of Jhula Mohapatra on Ext.1
- Ext.1/e Signature of Ahamad Khan on Ext.1
- Ext.1/f Signature of Nilakantha Moharana on Ext.1
- Ext.1/g Signature of Kanhu Charan Pattanaik on Ext.1
- Ext.1/h Signature of Ahemad Khan on Ext.1
- Ext.2,2/a to 2/e Rent receipts
- Ext.3 Certified copy of R.O.R of Mouza Kapasia under Khata No.19
- Ext.4 Certified copy of R.O.R of Mouza Kapasia under Khata No.31
- Ext.5 Certified copy of R.O.R of Mouza Kapasia under khata No.6
- Ext.6 Registered sale deed bearing NO.5826/ dtd.30.06.1958
- Ext.7 Hal Sabik pre sabik information of Khata No.19
- Ext.8 Hal sabik, Presabik Information of Khata No.09
- Ext.9 Hal sabik information of Khata No.399
- Ext.10 Pre sabik information of Khata No.399
- Ext.11 Office copy of 80 CPC notice
- Ext.11/ a Postal receipt

Ext.11/b Postal acknowledgment

Ext.12 Hal Sabik Information.

List of documents proved on behalf of the Defendants :

NIL

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