

**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 28th day of June, 2014

C.S.37 /2010

1. Baikuntha Parida, aged about 60 years,
2. Jaykrushna Parida, aged about 55 years,
3. Chaitanya Parida, aged about 48 years
 - (a) Basanti Parida, aged about 38 years
W/o: Late Chaitanya Parida
 - (i) Chandini Parida, aged about 15 years,
 - (ii) Minati Parida,
 - (iii) Kalpana Parida, aged about 12 years
 - (iv) Laxmidhara Parida, aged about 10 yearsSl. No. (i) to (iii) are D/o: Late Chaitanya Parida,
Sl. No. (iv) S/o: Late Chaitanya Parida represented
through their mother guardian Basanti Parida
 - (b) Swarnalata Swain, aged about 26 years,
W/o: Campani Parida, D/o: Late Chaitanya parida
At/P.O: Aranga, P.S/Dist: Khordha
 - (c) Ani Swain, aged about 24 years
W/o: Arun Swain, D/o: Late Chaitanya Parida
At/P.O: Arang, P.S/ Dist: Khordha
4. Daitari Parida, aged about 44 years,
S/o: Late Narayan Parida
Vill: Aranga, P.O/ Dist: Khurda
5. Taapoi Biswal, aged about 45 years,
D/o: Late Narayan Biswal
W/o: Laxman Biswal
At/P.O: Gurujang, P.S/Dist: Khurda
6. Tara Patra, aged about 42 years
W/o: Sudarsan Patra
Vill/P.O: Mukunda Prasad, P.S/DIst: Khurda

7. Ramakanta Swain, aged about 40 years
S/o: Late Mahendra Swain, At/P.O: Mendhasala
P.S: Chandaka, Dist: Khurda

..... Plaintiffs.

-Versus-

1. Sauri Parida, aged about 75 years
S/o: Late Binod Parida
Vill: Aranga, P.S/Dist: Khurda
2. Rasa Sundaray, aged about 77 years,
W/o: Narayan Sundaray,
Vill: Bacchera, P.S: Jatni, Dist: Khurda
3. Saibani Jena, aged about 60 years
W/o: Krushna Jena
Vill: Belapada, P.S: Badatota, P.S: Jatni, Dist: Khurda
4. Gauri Sundaray, aged about 65 years,
W/o: Nabina Sundaray of vill: Bachhera, P.S: Jatni,
Dist: Khurda
5. Dulla Jena, aged about 78 years,
W/o: Kanei Jena,
At: Pubusahi, P.S/ Dist: Khurda
6. Suma Swain, aged about 75 years
W/o: Late Raghu Swain
Vill: Pubusahi, P.S/Dist: Khurda
7. Mohadei Biswal, aged about 45 years
W/o: Bula Biswal
Vill: Badatota, P.S: Jatni, Dist: Khurda
8. Baidehi Bhujabala, aged about 42 years

W/o: Mahendra Bhujabala

Vill: Owapada, P.O: Ghoradia, P.S: Delang , Dist: Puri

9. Jema Jena, aged about 40 years,

W/o: Sindhua Jena

Vill: Damapada, Bhandari Sahi, P.S: Banki, Dist: Cuttack

10. Rama Swain, aged about 35 years,

W/o: Dhania Swain

Vill: Majena, P.O: Angarapada, P.S: Chandaka, Dist:
Khurda

..... Defendants.

Counsel for Plaintiffs ... B.K Patra, Advocate

Counsel for Defendant 1,7 &10... B.C Mohanty ,Advocate

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Date of Argument – 20.06.2014

Date of Judgment – 28.06.2014
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JUDGEMENT

1. The plaintiff has filed the suit with a prayer for passing of temporary decree in his favour directing the defendants for partition of the suit property by meets and bounds and to allow definite share in favour of each of the plaintiff, failing which a survey knowing commissioner is to be deputed for partition.

2. The plaintiffs' case as is apparent from their pleadings is as follows;

Both the plaintiff and defendant belong to a joint “ Hindu Mitakhyara” family . The suit property is situated in Mouza Aranga under Khata No.25 and stands recorded in the name of Iswar Parida, Binod Parida, Maheswar Parida and Narayan Parida. Maheswar Parida died issueless and hence his share devolved to the share of Iswar Parida and Binod Parida. Iswar Parida and Binod Parida have 50% share and Narayan Parida has got 50% share out of the suit property. The plaintiff is the legal heir of late Narayan parida and the defendants are the legal heirs of Late Iswar Parida and late Binod Parida thereby having 50% share out of the suit property. Both the parties are bound possessing the suit land and are paying land revenue to the Government.

3. The plaintiff and defendants are joint owners of the suit property and have never partitioned by meets and bounds among themselves. The defendant No.1 has been creating disturbance in the peaceful possession of the plaintiff's over the suit property and have threatened the plaintiff not to alienate any share from the suit land. One Buli Bewa who is the deceased mother of the plaintiff, in her lifetime for her legal necessity sold AC0.118 decimals out of AC 0.0375 decimals from plot No.662, AC 0.133 decimal out of AC 0.680 decimal from plot No.680 towards her 50% share and both Buli Bewa and Souri Parida jointly sold the entire plot No.665. Hence the plaintiff are entitled to get AC0.691/2 decimal from plot No.62 and ac 0.292 decimal from plot No.680 and Ac0.0751/2 decimal from plot No.545. Each plaintiff has 1/14 share out of the suit property . Looking into the mischievous activities of the defendants all the plaintiffs requested the

defendant on 28.02.2010 for partition of the suit property by meets and bounds to alienate definite share to the plaintiff over the suit property. But the defendants did not pay any heed to the same. Hence the plaintiff has filed the suit. The cause of action for this suit arose on 28.02.2010 when the plaintiff requested the defendants for partition of the suit property by meets and bounds, but the defendant refused the same. Hence the plaintiff has prayed for passing of preliminary decree in favour of the plaintiff and directing the defendant for partition of the suit property by meets and bounds.

4. Defendant Nos. 1,7 &10 have appeared and filed their W.S stating therein that the suit is bad for wrong description given in the genealogy and wrong description of the suit land. The suit land is the ancestral property of one late Bidya Parida. Late Bidya Parida had four children namely late Iswar, late Binod, Late Maheswar, Late Sananda. Late Sananda is survived by Baikuntha , Jaykrushna , Chaitanya , Daitarai, Tapoei and Tanu i.e. Plaintiff.1 to Plaintiff.6. Late Maheswar had died issueless. Late Binod is survived by D.1, D.2,D.3,D.4. Late iswar is survived by D.5 to D.10. Iswar Parida and Binod parida do not have 50% share and Nararyan does not have exclusive 50% share out of the suit property. The suit property originally belonged to Bidya Parida. During lifetime of Iswar , Binod and Narayan they have amicably partitioned their share i.e. the suit property in 1/3 share each. Late Maheswar had died issueless. During life of Naran he had sold some of his share and the rest was sold by his widow Buli Dei.

5. Buli Dei is the mother of the plaintiff and had sold 8 Gunthas of

land i.e Ac0.114 decimals from the suit No.662 and 18 Gunthas of land i.e AC0.180 decimals from plot No.680 to one Parsuram Parida and Subala Pradhan. The said two persons are in peaceful possession of the same since the date of purchase. In fact the plaintiff have no share in the suit properties as the share of Sananda has already been sold by the heirs of Sasnanda. It is false to show that both plaintiff and defendant are at present joint owner of the suit property. Though there is no document to show the partition between the parties but the parties by amicable partition, while possessing their respective shares have sold their shares to different persons. The plaintiffs claim of 50% share is based on false facts. In fact the plaintiff have no right, title, interest and possession over the suit properties . The plaintiff are residing in separate houses in separate plots and in separate mess and properties. The properties have already been sold since long and that there is no existence of any area as claimed by the plaintiff. In order to claim more area or more share by looking into the settlement ROR and by suppressing the truth this false case has been filed.

6. From the rival contentions of both the parties the following issues are drawn up for consideration :-

ISSUES :-

- (i) Whether the plaintiff has any cause of action to file the suit ?
- (ii) Whether the suit is maintainable according to law ?
- (iii) Whether the suit land is partible and whether the plaintiffs have any share in it ?

(iv) To what relief are the plaintiffs are entitled ?

7. In order to prove its case the plaintiff has examined two witnesses and has exhibited 6 documents which includes Ext.1: Affidavit evidence of P.W1, Ext.1/1 &1/2: Signature of P.W.1 on Ext.1, Ext.2: Affidavit evidence of P.W.2, Ext.2/1 &2/2: Signature of P.W.2 on Ext.2, Ext.3: Certified copy of Hal settlement ROR of Khata No.25 of Mouza Aranga, Ext.4: Encumbrance certificate issued by Sub-registrar, Puri, Ext.5: Encumbrance certificate issued by Sub-registrar, Khurda, & Ext.6: Rent receipts. while on the other hand to disprove the averment of the plaintiff defendant has adduced only one witness and has exhibited 2 documents.

8. Issue No 2& 3

These issue being most important are taken up together for consideration. Let us now first discuss the evidence adduced by both the parties for better appreciation.

P.W.1 has in his evidence stated that he knows both the parties in the suit. The plaintiff have filed the suit for partition in respect of the suit land against the defendants claiming 50% share . The plaintiff and defendant belong to one joint “ Hindu Mitakhyara” undivided family. The suit property situates in Mouza Aranga under Khata No.25 for an area of AC1.611 decimal of only 4 plots which has not been partitioned. The suit land stands recorded in the name of Iswara Parida, Binod Parida , Maheswar Parida and Narayan Parida. Maheswar Parida died issueless, his share devolved between Iswara Parida and Binod

Parida. Iswar and Binod Parida have 50% share and Naran has 50% share out of the suit property. The plaintiff are the legal heirs of late Narayan haing 50% share and both parties possess the suit land jointly. Looking into the joint possession, the defendants started creating disturbance with the plaintiff. Hence the plaintiff demanded for partition of the suit property but the defendants turned a deaf ear to it. Each plaintiff has claimed 1/14 share out of the suit property. In his cross examination he has stated that he was in jail for around 30 days in connection with case regarding fraud in land allocation. Per Guntha valuation of the land for which this case has been filed is around 15 thousand but it was about 10 thousands prior to 4 years back. The suit land measures around 1 & 1/2 Acres. The suit land stands recorded in the name of Iswar, Maheswar, Binod and Narayan. He would not say as to who was the prior recorded owner than the above 4 persons. Although he can say as to who are the family members “ Ansidar” of Narayan , but he would not say anything about such family members of Iswar, Maheswar, and Binod. He had witnessed an altercation between Hazari and Shanti as regards the partition of the suit land.

9. P.W.2 stated in his evidence that both the plaintiff and defendants belong to one joint “Hindu Mitakhyara” undivided family. The suit property situates in Mouza Aranga under Khata No.25 an area of Ac1.611 decimals having four plots. The suit land stands recorded in the name of Iswara Parida, Binod Parida, Maheswar Parida and Narayan Parida. Maheswar Parida died issueless. His share devolved to Iswar Parida and Binod Parida. Hence Iswar Parida and Binod Parida have 50% share and Naran had 50% share. The plaintiff are the legal heirs of Narayana Parida having 50% share out of the suit property.

Looking into the joint possession, the defendants created disturbance with the plaintiff, for which the plaintiff demanded a partition of the suit property by meets and bound, but the defendants did not pay any heed to it. In his cross examination he has stated that he has filed this case in respect of 4 plots three out of those 4 plots are of Kisama “Sarada2”. The other plot is of Kisama “Gharabari”. In his further cross examination he has stated that the original owner of the suit property, in respect of which this case has been filed is Bidya Parida. Bidya Parida had got four sons namely Iswar, Binod, Maheswar and Sananda. Buli Dei is his mother. His father Naran is the son of Sananda. Buli Dei had sold Ac0.144 decimals out of suit plot No.662 and AC0.180 decimals out of the suit plot No.680 to one Parsuram Pradhan. His father Narayan had never sold any land out of those 2 plots to Subala. Plaintiff No.1 is 3-4 years elder than him. His father and other share holders were possessing different portion of the suit property as per mutual arrangement. Their had however never been any formal partition between the parties. Ext.4&5 i.e the encumbrance certificate was issued on the application of his younger brother. It is also evident from Ext.4&5 that the defendants have sold portion of their shares which they had got from mutual arrangement. Save and except the rent receipts filed today he does not have any other receipts to show his possession.

D.W.1 who is one of the son of the defendant in this case has in his evidence stated that, his father is bed ridden and is unable to stand or sit since long. And that he has been looking after to this case on his behalf. The suit is not maintainable and that there is no cause of action to file this suit. The other co-sharers of the parties have not been

made parties in the suit by suppressing the truth . The plaintiff has filed the suit falsely claiming 50% share and describing the genealogy wrongly. In fact the plaintiff's father Narayan Parida is the son of Sananda Parida, who is son of Bidyadhar Parida. Bidyadhar Parida had four sons namely Iswar Parida, Binod, Maheswar and Sananda Parida . Narayan is the son of Sananda Parida. Maheswar died issueless and due to amicable partition and arrangement the sons of Bidya were possessing their share separately since long, and accordingly the legal heirs of the aforesaid three brothers were possessing the ancestral properties separately. During life time of Narayan he had sold away some suit properties out of his 1/3 share and rest land was sold by his wife Buli Dei. Hence the plaintiff has no share in the suit property at all. The plaintiff are not in possession of any of the suit plots and it is false to show that they are in joint possession over the suit properties. In his cross examination he has stated that his father is the defendant in this case and that he has not given any written statement in this case. Though he is looking after this case on behalf of his father yet he has not filed any such power of attorney executed by his father in this case. Maheswar died issueless and after his death Iswar and Binod are entitled to their share in the suit property. The suit property has duly been partitioned and the parties are in possession of their respective shares. No documents as regards to such partition is however in existence. Buli i.e wife of Naran had sold Ac0.118 decimal to one Parsuram out of the suit property.

10. The plaintiff to prove his case has exhibited six documents. Ext.1 and Ext.2 are affidavit evidence of P.Ws.1 &2. Ext.3 is the

certified copy of Hal settlement ROR of Khata No.25 of Mouza Aranga which stands recorded in the name of Iswar Parida, Binod Parida , Maheswar Parida and Naran Jena. The above khata No.25 contains the suit land in plot NO.662 and plot No.680 of about Ac0.375 decimals and Ac0.850 decimals respectively. Ext.4 is the certificate issued by sub-registrar, Puri which shows that for an consideration of Rs.450 from Khata No.25, plot No.680 an area of about AC0.116 decimal out of AC0.850 decimals has been sold by Adhikari Parida to pramila Barik. Ext.4 further shows that another area of about Ac0.108 decimals was sold to another Balunki Barik by registered sale deed No.7404. Ext.5 which is an encumbrance certificate in property shows that a total of four transaction took place over plot NO.665 from 1st January, 1973 to 29th December 2010. The first transactions shows that from Khata No.25 plot No.662 an area of about AC0.375, from plot No.665 an area of about Ac0.235, from plot No.545 an area of about Ac0.205 and from plot No.80 an area of Ac0.840 in total Ac1.655 decimal has been transferred vide document 3003/1973. the second transaction shows that from Khata No.25 plot No. 662 AC0.118 decimal out of Ac0.375 decimal and from plot No.1680 of about Ac0.133 decimal was sold by Bidi Bewa to one Sundari Dei. The 3rd transaction shows that the Khata NO.25 plot No.665 an area of Ac0.235 decimal was sold for a consideration of Rs.600 by Madha Bhoi , Bidi Bewa and Sauri Pradhan to one Rangabati Dei. The last transaction shows that from Khata No.25, plot No.545 an area of AC 100 out of AC0.8151 decimal was sold by Sauri Parida and Hazari Parida. Ext.6 is the rent receipts it shows that Khata No.25 is recorded in the name of Iswara Pradhan and that rent was

being paid by Jaykrushna Parida. On the other hand the defendant has exhibited two documents. Ext.A is the affidavit evidence of D.W.1 and Ext.B i.e Ext.B to B7 are the rent receipts which shows that from Khata No.25 rent receipts has been paid by various persons.

On careful scrutiny of Ext.3 it is quite clear that Iswar Parida, Binod Parida, Maheswar and Naran Jena are the recorded owners of the suit land. The Plaintiffs state that the share of Naran Parida is 50% and the legal heirs of Bidya Parida ie Iswar Parida, Binod Parida, Maheswar parida have in total the rest 50 % share . While going through the evidence of plaintiff Jayakrushna i.e plaintiff No.2 who has in his evidence at Paragraph No.11 clearly stated that the original owner of the suit property for which this case has been filed is Bidya Parida and that Bidya Parida had 4 sons namely Iswar , Binod, Maheswar and Sananda. His father Narayan is the son of Sananda and Buli Dei is his mother. This being the state of evidence of P.W.1 it is quite clear that as per his admission his father was also the son of Bidya Parida and as Bidya Parida was original owner of the suit land, hence each son obviously has 1/4th share. The plaintiff has failed to prove that they have 50% of the share over the suit land. The plaintiff has neither by oral evidence nor by any documentary evidence of partition or sale stated anything which would suggest that the branch of Naran as 50 % . From the above analysis it is quite clear that Iswar , Binod , Makar and Narayan each have 1/4th share and as as per the clear admission of both the plaintiff and defendants Maheswar had died issueless . Hence now the branch of Iswar, Binod and Narayan each have 1/3 share.

11. The plaintiff has in his plaint stated that from plot No.662 an area of about Ac0.118 decimal has been sold away by Buli Dei who is their mother, furthermore from plot No.680 an area of about Ac0.133 decimal has been sold and lastly her mother Buli bewa and Sauri Parida had jointly sold the entire plot No.65. The plaintiff has filed the encumbrance certificate which shows that some portions of the suit land has already been sold hence it can be said that although the plaintiffs branch is entitled to 1/3 share but the same would further decrease after calculation of the suit plots. As per admission of the plaintiffs their mother Buli Bewa had sold Ac0.375 decimal and Ac0.151 decimal for her legal necessity. And to add to it she along with Sauri Parida had also sold the entire plot 665 which comprises of 850 decimals. In total Buli Bewa had sold Ac 1.376 decimal combined with Sauri Parida (AC0.850 decimal).

12. Hence on the above analysis of evidence it is quite clear that the plaintiffs branch i.e Narayan Parida branch is entitled to 1/3 share and each of the plaintiffs that P.W/1 to P.W.7 are all entitled to individually get 1/21th share i.e after exclusion of sold away properties.

13. Partition is the matter of rightful succession of property, the same is guided under the Hindu law and the division of property, ought to have been decided as per the concept of Hindu succession Act. The suit properties under Khata No.25 which includes plot No.662 of about Ac0.375 decimal plot No.665 of about AC0.235 decimal , plot No.545 of about Ac0.151 decimal and plot No.680 of about Ac0.850 decimal and in total Ac1.611 decimal to be needs to be partitioned among the

branch of Late Iswar, Late Binod and late Narayan Parida and three equal shares. The branch of Narayan Parida the plaintiff are entitled to get 1/21th of the suit land i.e after exclusion of the sold away properteis as discussed above.

14. Issue No.1

The plaintiff has clearly stated that the cause of action for the suit arose on 28.02.2010 when the plaintiff requested the defendants for partition and the defendants refused. Hence the plaintiff was compelled to file the suit . the defendants had denied to the cause of action. Cause of action is a bundle of right asserted by one party and denied by another. As both the parties have dispute regarding cause of action it can be said that the plaintiff has got cause of action to file this suit.

15. Issue No.4

As no specific prayer has been made in this regard hence ordered.

ORDER

The suit be and the same is priliminary decreed on contest against the defendant No. 1 to 10 and exparte against defendant No. 2 &6 and 8&9 but in the circumstances without costs. The plaintiffs branch is entitled for 1/3rd share and each of the seven plaintiffs is entitled for 1/21th share from the suit property. The plaintiffs and defendants are hereby directed to carry out the partition among themselves amicably as per the observation of this court stated about

- Ext.4 Encumbrance certificate issued by Sub- registrar,
Puri
- Ext.5 Encumbrance certificate issued by Sub-Registrar,
Khurda
- Ext.6 Rent receipts

List of documents proved on behalf of the Defendants :

- Ext.A Affidavit evidence of D.W.1
- Ext.A/1 to A/2 Signatures of D.W.1 on Ext.A
- Ext.B to B/7 Rent receipts.

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