

**HEADING OF DECISION IN THE ORIGINAL SUIT.
DIST: KHORDHA.**

**IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA
PRESENT :-**

*Sri Raj Kishore Lenka
Senior Civil Judge, Khordha.*

Dated this the 18th day of October, 2014

C.S. 373/ 2010

Pandab Behera, aged about 48 yrs, S/o- Late Sanatan Behera, of Vill.- Soran
(Mansinghpur), P.O.- Soran, P.S.- Tangi, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Bhikari Behera, aged about 55 yrs, S/o- Late Kasia Behera.
2. Madhab Behera, aged about 60 yrs, S/o- Late Hata Behera.
3. Bansidhar Behera, aged about 65 yrs, S/o- Late Jaga Behera.
4. Jaiga Behera, aged about 42 yrs, S/o- Late Benu Behera.
5. Ashok Behera, aged about 45 yrs, S/o- Late Agadhu Behera.

All are of Vill.- Soran (Mansinghpur), P.O.- Soran, P.S.- Tangi,
Dist- Khordha.

..... Defendants.

Counsel for Plaintiff

...

Sri N. Das & Associates
Advocates, Khordha

Counsel for defendant No. 1

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Sri B. D. Mohapatra & Associates
Advocates, Khordha

.....
Date of conclusion of Argument – 29.09.2014

Date of pronouncement of Judgment – 18.10.2014

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JUDGMENT

The plaintiff has instituted the suit for declaration, confirmation of possession, permanent injunction along with other consequential reliefs to which he is entitled for.

02. The plaintiff's case is that, himself, his father Sanatan Behera and his brother Indramani Behera are the absolute owners in possession of landed properties recorded under khata No. 107, total measuring Ac. 2.421 decimals, Khata No-740 measuring Ac-1701 decimal of mouza Soran. Khata No. 515 , measuring Ac. 0.090 decimal and Hal khata No. 851 measuring Ac. 0.092 (hereinafter called to be the suit property). The suit property has been purchased by his father and one Dama Behera on 14.09.1979 through two sale deeds bearing No. 2155/79 and 2154/79 respectively from one Hari Baral and others. His father Sanatan Behera died around 20 years back and as such the plaintiff and his brother became the absolute owners in possession of the suit land. The plaintiff again claimed that one amicable partition was effected between Dama Behera and Sanatan Behera. The plaintiff has constructed one house over it and staying there permanently. But since himself and his father Sanatan Behera are illiterate persons, the suit land could not be mutated in their name. The specific case of the plaintiff is that the defendants have no manner of right, title, interest and possession over the suit property, but they are creating disturbances over it. On 20.09.2010 the defendants gathered materials for illegal construction over the foundation led by the plaintiff and on 05.10.2010 the defendants forcefully entered

over the suit land and unlawfully attempted to raise wall to which the plaintiff opposed and for a permanent settlement of the property matter he came to the court with the present suit.

03. The defendant Nos. 1, 2, 3 & 5 have filed their joint written statement by disputing the whole claim of the plaintiff. It has been specifically stated by the above defendants that the suit is not maintainable both in fact and law and the same is defective for non-joinder of necessary parties. The plaint is a reflection of false, misleading and misconceived facts. The specific case of the defendants is that defendant No. 1 happens to be the secretary of the School called "*Chilika Bidya Niketan, Mansinghpur*" and defendant No. 2 is the head master of the said school. The school has a play ground under khata Nos. 1098 and 1095. The students use the said play ground for last 16 years. In the mean time the Tahasildar 'Chilika' had field one encroachment case bearing No. 08 of 2010 against the Secretary Soran, 'Chilika Bidya Niketan, Mansinghpur' and the Secretary deposited the necessary fees to the government and they have applied for grant of lease of the said patch of land, which is used as the play ground for the school. Thereafter the plaintiff in order to grab the said patch of land has field the present suit, but as a matter of fact the plaintiff has no manner of right, title, interest or possession over the suit property. The defendants in their written statement have opted for dismissal of the suit. The suit against defendant No. 4 set ex-parte on 10.01.2012.

04. Taking account of the factual disputes between the parties and in order to adjudicate the disputes lawfully and purposefully the following issues have been settled.

I S S U E S.

- i) Is the suit maintainable?
- ii) Is there any cause of action to bring the suit?
- iii) Is the suit defective for mis-joinder and non-joinder of necessary parties?
- iv) Whether the plaintiff is entitled for a relief of declaration of his right, title, interest and possession over the suit property?
- v) Whether the plaintiff is entitled for the relief of permanent injunction against the defendants over the suit property?
- vi) To what relief, the plaintiff is entitled to?

05. In order to prove its case five witnesses have been examined on behalf of the plaintiff including the plaintiff himself as P.W. 1. Six documents have been relied upon by the plaintiff, which have been marked as Ext. 1 to Ext. 6 respectively.

Similarly, two witnesses have been examined on behalf of the defendants including the defendant No. 1 as D.W. 1, without citing any document.

F I N D I N G S.

Issue No. iv & v.

06. The above two issues being pivotal issues and co-related to each other are taken up first for adjudication.

The plaintiff's case on the above two issues is that the suit property has been purchased by his father and one Bhima Behera and there was a partition between the father of the plaintiff and Bhima Behera and thereafter the plaintiff and his father Sanatan Behera became the absolute owners in possession of the same.

Lets now come to the real status of the suit property and the right of the plaintiff thereto. The ROR under khata No. 107, is marked as Ext. 2 and Krushna Chandra Das is the recorded tenant total measuring Ac. 2.511 decimals and Lingaraj Pradhan is the tenant under khata No. 515 measuring Ac. 0.090 decimals vide Ext-3. It is also quite needful to mention that the plaintiff has stated that the suit property has been purchased by virtue of two sale deeds bearing No. 2155 dt. 14.09.1979 & 2154 dt. 14.09.1979. But the surprising fact is that the original sale deeds have neither been produced before the court nor called for from any of the parties if in possession of it. Only the certified copy of the sale deed bearing No-2511/79 has been produced and marked as Ext-1 with objection from the side of the defendants. The plaintiff has not taken any endeavor for production of the concerned sale deeds as per the provision of law to accept the certified copy of the sale deed to be the secondary evidence. The certified copy of the sale deed, which has been relied upon by the plaintiff and marked as Ext. 1 by nature is not admissible for taking any judicial notice of the fact. But, for the sake of discussion if the certified copy of such sale deed vides Ext-1 be taken into consideration, Dasa Behera and others have alienated the property measuring Ac. 1.300.1/2 decimals to Dama Behera and Sanatan Behera. The peculiarity in this case is that another sale deed vide document No. 2154 has not been relied upon in this

case. Even if it is accepted that the sale deed No. 2155/79 vide Ext. 1 is a genuine document then the father of the plaintiff and one Dama Behera have purchased jointly Ac. 1.300.1/2 decimals of land. But here the plaintiff in his plaint has mentioned the suit property to be total measuring Ac. 4,304 decimals without giving any explanation or by producing any relevant document to prove that on which basis himself and his brother have acquired Ac. 4,304 decimals of land. His pleading towards the partition and exclusive possession over the suit land is silent. He claimed that there was an amicable partition between his father and Dama Behera, but to that effect no evidence has been adduced. Whereas he ought to have prove the property purchased by his father and Dama Behera as well as the manner of partition and the specification of the property allotted to the co-sharers. Every such facts are missing in the case of the plaintiff and the suit land is also not identifiable as per the plaint and pleadings nor the relevant documents have been proved in this case.

07. The plaintiff has sought for the relief of declaration of his right, title and interest over the entire suit property, but in the cross-examination he himself has stated that the extent of the suit property is Ac. 1.302 decimals. He has admitted that his father has 8 sons and three daughters and all are alive. His statement is that, since the whole property has been partitioned amicably between themselves, his other brothers and sisters have no interest over the suit property. But the surprising fact is that not a single scrap of paper nor pleading to that effect has been advanced in his case, rather he has stated that the partition was effected between his father and Dama Behera. Even if it is accepted that there is a partition between the brother and sisters of

the plaintiff, the same cannot be treated to be a partition by metes and bounds in absence of all those parties in the suit. Therefore, it is the considered opinion of this court that neither the suit property is identifiable nor the plaintiff has come with a fair case nor he established his claim over the suit property. Therefore, his right, title, interest and possession over the suit property cannot be declared because of the reason that he has failed to prove all the relevant facts involving in the suit matter for declaration.

08. So far as the question of permanent injunction is concerned it is obvious that the plaintiff has failed to establish his right, title, interest or exclusive possession over the suit property as described above. It is true that any of the co-sharer or a joint tenant can sought for the relief of permanent injunction as he owes a bonafied right to preserve and protect his unidentified interest over a property, which has been existing jointly with others. But, in the present fact and circumstances, the entire suit property has not been brought to the court nor the necessary parties. There is no pinch of evidence to establish that the plaintiff is the owner or in possession over the suit property exclusively or in joint. Even the suit property has not been identified by the plaintiff in his case. He again in his cross-examination has clearly admitted that he cannot say the extent of his share over the suit property/ suit land, which has been partition amicably. Apart from that neither the suit property nor the exclusive property of the plaintiff has been properly identified by the plaintiff in his suit. He has come to the court with misconceived and wrong facts. Therefore, the plaintiff is not also entitled for the relief of perpetual injunction.

Issue Nos. i, ii, iii & vi.

09. Coming to the question of maintainability, it is well established that the other sons and daughters and the legal heirs of Dama Behera are the necessary parties in the suit for deceleration. Similarly, original sale deeds such as RSD No. 2155 & 2154 basing on which the entire suit has been filed have not been produced before the court and no step has been taken for acceptance of the certified copy of the sale deed No. 2155/79 vide Ext. 1 as secondary evidence. The suit is also not maintainable for non-joinder of necessary parties. As it is discussed earlier, the suit property is not also identifiable nor the plaintiff has succeeded to establish his right, title, interest or possession over the suit property in any manner and for which the suit is not maintainable at all and the plaintiff is not entitled for any relief as sought for. Hence it is order.

ORDER.

The suit of the plaintiff be and the same is dismissed on contest against the defendant Nos. 1, 2, 3 & 5, while ex-parte against defendant No. 4, but in the circumstances without any cost.

Advocates fees are at contested scale.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 18th day of October, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiff :-

- P.W. 1 Pandab Behera.
P.W. 2 Indramani Behera.
P.W. 3 Rama Behera.
P.W. 4 Rajkishore Behera.
P.W. 5 Udayanath Sahoo.

List of witnesses examined on behalf of Defendants :-

- D.W. 1 Bhikari Behera.
D.W. 2 Ajay Behera.

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

- Ext. 1 Certified copy of sale deed No. 2155/1989.
Ext. 2 Certified copy of ROR under khata No. 107 of mouza Soran.
Ext. 3 Certified copy of ROR under khata No. 515 of mouza Mansinghpur.
Ext. 4 ROR under kyhata No. 740 of mouza Soran.
Ext. 5 Rent Receipt dt. 09.09.2010.
Ext. 6 Income certificate of D.W. 1.

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

Nil.

Senior Civil Judge, Khordha.