

**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 28<sup>th</sup> day of June, 2014

**C.S.45 /2013**

1. Dharmananda Biswal, aged about 55(fifty five)years,  
S/o: Bhikari Biswal,  
Vill: Chhima, P.S:Jankia, P.O: Sagadabhanga,Dist: Khordha

..... Plaintiff.

-Versus-

1. State of Orissa, represented through it's District Collector,  
Khordha  
At/P.O/P.S/Dist: Khordha
2. The Tahasildar Begunia, At/P.O/Dist: Begunia, Dist: Khordha

..... Defendants.

Counsel for Plaintiffs	...	Sanat Kumar Pattanaik,Advocate & Associates
Counsel for Defendants	...	None

Date of Argument – 17.06.2014

Date of Judgment – 28.06.2014

## **JUDGEMENT**

1. The plaintiff has filed this suit with a prayer for declaring the right, title and interest of the plaintiff over the suit property along with confirmation of possession of the plaintiff over the suit land and passing the decree of permanent injunction against the defendants prohibiting them to enter upon the suit property and not to create any mischief in the peaceful possession of the plaintiff.

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

That an area of AC0.040 decimals of homestead property out of Ac0.560 decimals from middle of plot No.640 under Khata No.320 under Begunia police station corresponds to mutation plot No.633/1014 under Khata No.286/23. The suit property corresponds to part of previous settlement plot No.633 under Khata No.505 described in schedule 'A' of the plaint. The suit property along with other properties were recorded in the name of Government in previous settlement plot No.633 under Khata No.305 of the year 1962.

The plaintiff is a landless person and encroached the suit property about Ac0.040 decimals on the day of "Dola Purnima" of 1975. The plaintiff developed the suit land for the purpose of his residential house and homestead with much money and labour and subsequently constructed his residential house over there and resided therein, with knowledge of everybody. Even though the plaintiff is in possession of the suit property as his residential house and homestead. The concerned Revenue inspector initiated an encroachment case

against the plaintiff bearing No.329/1998 . The said encroachment case was disposed of by the order of Tahasildar, Khurda and was settled in favour of the plaintiff as “ Dakhala Satwa sunya” with Kisam “ Ghara Bari” . Accordingly the suit property was recorded in the name of the plaintiff as plot No.633/1014 under Khata No.286/23. In the mean time the Hal settlement operation was carried in the disputed Mouza. In the said settlement operation the settlement authority without proper enquiry and spot verification included the suit property in Government Khatian No.320 as part of the suit plot No.640, within the knowledge and notice of the plaintiff. Although the suit plot was included in the Government Khata No.320as part of plot No.640 and recorded in the name of Government but the plaintiff's possession has never been affected in any manner. The plaintiff is in peaceful possession over the suit property since the day of Dola Purnima continuously, openly and uninterruptedly within the knowledge and notice of everybody. While the plaintiff is in peaceful possession over the suit property has his only residential house on 20.08.2011, the local revenue inspector taking advantage of recording of the suit property threatened to vacate the suit property which created a doubt on the title and possession of the plaintiff. After such threat the plaintiff obtained certified copy of the previous record of right and got to know that the suit property was recorded in the name of Government. He approached the Tahasildar for correction of R.O.R but the Tahasildar showed his inability. Finding no alternative the plaintiff issued notices U/s.80(1) C.P.C against the defendants and was compelled to file this suit.

The cause of action for the suit arose on 05.03.1999 when the suit property was recorded in the name of the plaintiff. Hence the

plaintiff has prayed for declaration of right, title , interest and possession over the suit land in his favour along with passing of decree of permanent injunction against the defendants from prohibiting them to enter upon the suit property and further more passing of a decree declaring the Hal record of rights with respect to the suit property as not been binding against the plaintiff.

4. Although the defendants i.e State of Orissa and Tahasildar Begunia have appeared and taken part in the suit but have not filed their written statement.

5. From the rival contention of the parties in their pleadings and hearing, 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 plaintiff has right, title , interest and possession over the suit land ?
- iv. Whether the plaintiff has perfected his title by way of adverse possession ?
- v. To what relief, is the plaintiff entitled ?

6. In order to prove its case the plaintiff has examined 4 witnesses and has exhibited 10 documents, while on the other hand to disprove the averments of the plaintiff the defendants had adduced no evidence.

### **7. Issue No.3 &4**

These issues needs to be discussed together as they deal with the crux of the suit. Let us now first discuss the evidence.P.W1 has stated in his evidence that he knows the plaintiff as a co-villager and also the defendants. He knows the suit property which measures 2 Gunthas and is a homestead land. The plaintiff is in peaceful possession over the suit property and the plaintiff ordinarily resides over the suit property and has his residential house. In his cross examination he has stated that he does not remember as to when the consolidation operation took place. He could not say if the suit land stood recorded in the name of Government prior to consolidation and if the same has been recorded in the name of the Government. He would not say if the said land as per the consolidation records has been recorded as “ Khela Padia” . He also could not say as to if he remembers consolidation and settlement operation , although the authorities had visited the concerned areas for verification. He has not seen any document of the plaintiff relating to this case. P.W.2 has in his evidence corroborated the evidence of P.W.1 and has in his cross examination stated that the plaintiff is a resident of village Chhima. The suit land also situates in village Chhima.. The plaintiff has filed this case with respect of a land which belongs to Government land. The suit land stands recorded in the name of Government. He could not say if the same was recorded in the name of Government. As per 1962 settlement records the land settlement operation was conducted during 2000 he has not seen the documents pertaining to the suit land. He has never disclosed before him as to how he came into possession of the

suit land as as to the other details of his possession. P.W.3 in his evidence has stated that the plaintiff is in peaceful possession over the suit land by constructing a residential house to the east of the homestead land of the plaintiff. One saranga Biswal is in possession over the land and similarly to the west one Kumara Biswal is in possession. At no point of time the suit land was used as “ Khela Padia” . In his cross examination he has stated that he has never seen the document pertaining to the suit land which was given to the plaintiff by the Government. He could not say as to when and how he got the suit land as a part of a large land. His father died around 10 years back, during the last settlement. He is a resident of Laxminarayan Mouza, whereas the plaintiff is the resident of Chhima Mouza. The distance between these two mouzas is around 100 meters. The plaintiff has got no house inside Chhima Mouza. He could not say if the plaintiff has got any land other than the suit land nor can he say anything about any such other lands of his.

7. P.W.4 who is the plaintiff in this case has in his evidence corroborated his entire plaint and has added that he is the owner in possession over the suit property measuring Aco.040 decimals as his only residential house and homestead. The suit property along with other property is recorded in the name of Government. In the previous settlement plot No.633 under Khata No.305, the status of the said land was “ Puratana Patita”. The said land was lying vacant and on the day of DolaPurnima during 1975, he encroached the suit property for the purpose of construction of his residential house as he was a landless person. After such encroachment he developed the suit property for

much money and labour and subsequently constructed his residential house and is residing therein with his family members as his only residential house. While he was in such peaceful possession, the local R.I initiated an encroachment case bearing No.319of 1998 against him. To consider his possession and after spot verification the Tahasildar settled the suit property in his favour and directed to prepare a separate record of rights for plot No.633/1014 in his favour. In the meantime a settlement operation was carried out and in the said settlement , without any proper verification and enquiry the authorities included the suit property in plot No.640 as “ Khela Padia” without his knowledge and notice. Even though the suit property is recorded in the name of Government , but his possession has never been affected. While he has been in such peaceful possession over the suit property, the local revenue inspector taking advantage of the wrong recording in the record of rights on 20.08.2011 threatened him to vacate the suit property. After such threatening, he obtained the certified copy of the Hal settlement record of rights and got to know that in the present settlement operation the suit land was wrongly mentioned as Government land.

8. Finding no other alternative he issued notices U/s.80(1) C.P.Cand then filed this case. In his cross examination he has stated that the present nature of the suit land is “ Khela Padia”. He could not say about the area of “ Khela Padia”. The area described in the R.O.R as “ Khela Padia” is normally not sufficient for being used as playground. He is a farmer by profession and he was present in the suit village during the settlement operation. During settlement operation, the settlement authorities visited all the parts of the village. They had

seen his house over the suit land, which is in existence since 1975. He has not filed any such notices or documents in connection with encroachment case No.329/1998. As per his R.O.R , his right is recorded as “ Dakhala Satwa Sunya”. He has been possessing the suit land by constructing a house there over since 1975. the revenue Inspector had not given any written threatening to him. The Tahasildar had also not given any return reply to him. He does not remembers the exact date when he had approached the Tahasildar for settlement operation in there Mouza was conducted during 1988.

On perusal of the record it is seen that vide Khata No.305, plot No.633 which was recorded as “ Puratana Patita” , the suit land was recorded in the name of state. The plaintiff had claimed that vide Khata No.286/23 he got title of the said land as he had been over possession of the same since 1975, and his said possession was adverse in nature to the interest of its true owner. On perusal of ROR in Khata No.286/23 it shows that the Satwa of the land is mentioned as Dakhala Satwa Sunya, this shows that the plaintiff has no possessory title over the same. Furthermore Khata No.320 which contains the suit plot No.640 i.e after carving out during Hal settlement operation the same was also found as a “ Khela Padia” ( Play ground) and was recorded in the name of Government. On perusal of Khata No.320 it is seen that the suit land has been recorded therein and in remarks columns it has been written that the suit land is a field. By the combined analysis of Khata No.305 of Mouza Chhima . Khata No.320 and Khata No.286/23 of Mouza Chhima , it is quite clear that the plaintiff had never any title over the same. Coming into questions of adverse possession, it is seen

that the plaintiff has failed to prove also his adverse possession in this case as he has through out his plaint stated that he entered into possession during the year 1975 but no such document has been filed by the plaintiff to show that he entered into possession during the year 1975. Furthermore he has also not filed the order sheet OF encroachment case No.329/98 to show that he had entered into possession in the year 1975 and thereby has been in possession uninterruptedly since 30 years. To make a successful plea of adverse possession a party needs to prove that his possession was open , continuous , peaceful and adverse to the true owner. In this case as the suit land is recorded in the name of Government the plaintiff needs to show that his possession needs to be adverse for 30 years. The plaintiffs prayer of adverse possession fails on the following ground:

Firstly, the plaintiff has not been able to prove his exact date of coming into possession through any document or oral evidence , secondly the encroachment case filed against the plaintiff, encroachment notices and the report in final settlement shows in Khata No.320 clearly shows that the possession, if at all of the plaintiff was not open and it was regularly challenged by the defendant. Hence in this scenario the plaintiff has also failed to prove the aspect of adverse possession and therefore is not entitled to get any relief .

9. P.W.4 who is the plaintiff in para 20 of his plaint has clearly stated that he could not say the area of the “ Play ground” i.e the present nature of the suit land. He has also stated that during settlement operation the settlement authorities have visited his village. P.W.3 in para 2 of his cross examination has stated that the plaintiff has got no

house inside Chhima village. This two evidence clearly shows that the plaintiff has got no house over the suit land and that the settlement authorities had also carried on their meticulous inspection during settlement and have found that the plaintiff had no house over the suit land.

P.W.2 in para -8 and P.W.1 in para 9 have clearly stated that they have got no knowledge about the suit land. From the above analysis of evidence, discussion it is quite clear that the plaintiff has failed to prove his right, title, interest and possession over the suit land and has also failed to prove his plea on adverse possession.

**10. Issue No. 1**

The plaintiff has in his plaint stated that the cause of action for the suit arose on 05.03.1999 when the suit property was corrected in his name and on 20.08.2011 when the local revenue inspector threatened the plaintiff to vacate the suit property. The defendant has clearly stated that the plaintiff has no right, title over the suit land . Hence the prayer of the plaintiff need not be allowed. Cause of action is boundle of right assertd by one party and denied by another. In this case as both the plaintiff and defendants asserts separate evidene, hence it can be said that the plaintiff has got cause of action to file the suit.

**11. Issue No. 2 & 5**

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

**ORDER**

The suit be and the same is dismissed on contest against the defendants, but without costs.

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

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 28<sup>th</sup> day of June , 2014.

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

**List of witnesses examined on behalf of Plaintiff :-**

P.W.1: Kamala Lochan Behera  
P.W.2: Sauri Biswal  
P.W.3: Baikuntha Behera  
P.W.4: Dharmananda Biswal

**List of witnesses examined on behalf of Defendants. :-**

NIL

**List of documents proved on behalf of the Plaintiff :-**

Ext.1 Affidavit evidence of P.W.1  
Ext.1/1 & 1/2 Signature of P.W.1 on Ext.1  
Ext.2 Affidavit evidence of P.W.2  
Ext.2/1 & 2/1 Signature of P.W.2 on Ext.2  
Ext.3 Affidavit evidence of P.W.3

- Ext.3/1 to 3/3      Signature of P.W.3 on Ext.3
- Ext.4              Affidavit evidence of P.W.4
- Ext.4/1 to 4/5      Signatures of P.W.4 on Ext.4
- Ext.5              Certified copy of ROR of Khata No.305 of Mouza  
Chhima
- Ext.6              Certified copy of ROR of Khata No.320 of Mouza  
Chhima
- Ext.7              ROR of Khata No.286/23
- Ext.8              Office copy of S.80 C.P.C, notice
- Ext.9              Postal receipt
- Ext.10              Hal sabik information.

**List of documents proved on behalf of the Defendants :**

NIL

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