

**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 30th day of June, 2014

C.S. 51/ 2005.

Bira Dhusasan Pradhan, aged about 46 yrs, S/o- Chintamani
Pradhan of Vill.- Palla, P.O.- Pallahat, P.S./ Dist- Khordha.

..... Plaintiff.

-Versus-

1. Prahallad Barik, aged about 45 yrs, S/o- Sanatan Barik.
2. Mukti Prasad Das, aged about 50 yrs, S/o- Basudev Das.
3. Jagat Bihari Mohapatra, aged about 40 yrs, S/o- Late Damodar
Mohapatra.

All are of Vill.- Palla, P.O.- Pallahat, P.S./ Dist- Khordha.

..... Defendants.

Counsel for Plaintiffs ... Sri T. Baral, Advocate
& Associates.

Counsel for defendant ... Sri B.D. Mohapatra, Advocate
& Associates.

.....
Date of Argument – 24.06.2014

Date of Judgment – 30.06.2014
.....

JUDGEMENT

1. The plaintiff has filed the suit with a prayer for declaration of right, title, interest and possession over the suit land in his favour along

with passing of a decree of permanent injunction prohibiting the defendants from entering upon the suit land along with to pass a mandatory injunction directing the defendants to remove the concrete road laid over the portion of the suit land and also to pass a decree for recovery of possession.

2. The plaintiff's case in a nut shell is that;

The plaintiff is the manager and KARTA of his joint hindu Mitakshyara family and has brought this suit against the defendants in their individual capacities. The homestead land appertaining to khata No. 901, plot No. 109 with an area of Ac. 0.024 decimals out of Ac. 0.113 decimals is the subject matter of the suit and hereinafter called as the suit land. The plaintiff is the owner in peaceful possession over the suit land, having his right, title, interest on it and he is paying rent to the state and has also obtained rent receipts in that regard. The Hal ROR of the year 2003 has been issued in favour of the plaintiff in respect of the suit plot. The plaintiff had got his residential house on the portion of the suit plot No. 179 and the suit land is being used by the plaintiff as his BARI land, but the defendants have got their houses to the west of their suit land intervened by a road and absolutely the defendants have got no manner of right, title, interest over the suit land. In the mean time the defendants have encroached a major portion of the road which is situated in between the homestead land of both the parties and further defendants have been trying to put a construction over a portion of the suit land forcibly, in spite of the protest by the plaintiff. The defendants are highly influential persons and they have

got no manner of right, title, interest and possession over the suit land. Due to ill feeling between the parties and in order to grab the suit land the defendants are threatening to put a forcible construction over the suit land. On 03.07.2005, when the plaintiff was present over the suit land the defendants tried to dig plinth over a portion of the suit land, but due to protest made by the plaintiff, the defendants could not succeed with their attempt. On 04.07.2005, the defendants gathered stones, sands etc. near the suit land and threatened to put a pucca construction over the suit land within a very short period. The plaintiff is completely afraid of the high handed actions of the defendants and finding no other alternative the plaintiff has filed the suit for declaration of right, title and interest of the plaintiff and for permanent injunction against the defendants over the suit land. The cause of action of this suit arose on 03.07.2005, when the defendants tried to dig plinth over a portion of the suit land and on 04.07.2005, when the defendants gathered stones, sands etc. near the suit land. During the pendency of the suit the defendants violated the order of status-quo in I.A. No. 50/2005 by entering into the suit land and laid a concrete road over a portion of the suit land since 15.12.2007 to 20.12.2007. Hence the plaintiffs also wants to seek relief of mandatory injunction and to remove the concrete road from the portion of the suit land further to recover the same and to deliver it to the plaintiff. Hence plaintiff has prayed for declaration of right, title, interest and possession over the suit land along with passing of a decree of permanent injunction, mandatorily injuncting the defendants to remove the concrete road and to pass a decree of recovery of possession against the defendants.

03. The defendants have appeared and defendant Nos. 1 & 2 have filed their written statement stating therein that the plaintiff has no cause of action to file this suit and the suit is liable to be dismissed for mis-joinder of parties. The plaintiff is not enjoying the suit land as his Bari land. In fact the plaintiff has not left any portion of the land as Bari, as per suit plot No. 179 as per the hand sketch map of the plaintiff. The defendants have never tried to put construction over the portion of the suit land forcibly as the plaintiff has gathered his entire land, i.e. suit plot No. 179 by raising a compound late-rite stone wall and as there is no space left by the plaintiff in the suit plot, beyond the said compound wall in the western side, the chances of raising any construction over a portion of the suit land by the defendants is impossible. The defendants have never tried to dig any plinth over a portion of the suit land. There has never been any cause of action on 03.07.2005 & 04.07.2005. the plaintiff is the owner in possession of the suit land, where the defendant Nos. 1 & 2 are the owner in possession of the plot No. 183 and 184. A public road appertaining to plot No. 180 having a width of more than 12 links is intervening the said land of both the parties. The plaintiff has already constructed the boundary wall of late-rite stone in western side boundary line of his plot. The said boundary wall of the plaintiff is also the western side wall of his two pucca rooms having R.C.C. Room and the frontage of the plaintiff's land is in north- east corner of his land towards north. On the other hand the defendants have their frontage in eastern side of their land and as such they have their ingress and egress of their land to the said road, i.e. plot No. 180. The plaintiff mean while tried to occupy some portion from the road in question, but due to strong

resistance of the defendants, he could not succeed. As such the plaintiff has brought the present suit against the defendants with positive and fabricated allegations and with illegal claims in order to satisfy his ego and to create some portion from the said public road being left by the defendant from their purchased land.

04. The said road in question appertains to plot No. 180 is more than 12 links width running from north to south and intervening land of both the parties and the plaintiff is in possession of his area to an extent of Ac. 0.113 decimals in suit plot No. 179 by encircling the same with late-rite stone wall from all sides. The road in question is left by the defendants from some portion of their purchased land for their use as well as for the use of general public and accordingly the road has been carved out in the Hal ROR being published in the last consolidation operation. Hence the claim of the plaintiff is baseless and not supported with any law and fact.

4. From the rival contention of both the parties, the following issues are drawn up for consideration.

ISSUES :-

- i. Whether the plaintiff has any cause of action to file this suit?
- ii. Whether the suit is maintainable?
- iii. Whether the suit is liable to be dismissed due to non-joinder of necessary party?
- iv. Whether the plaintiff is entitled to a right, title and interest over

the suit land?

- v. Whether the disputed road is a government road or private property?
- vi. Whether defendant has encroached some parts of the suit land
- vii. To what further relief is the plaintiff entitled?

5. In order to prove its case the plaintiff has examined only two witnesses and has exhibited nine documents, which includes the affidavit of P.W. 1 & 2 as Ext. 1 & 4. While on the other hand the defendants have adduced five witnesses and has exhibited six documents, which includes the evidence of D.W. 1, 2, 3, 4 & 5 as Ext. A, B, C, D & F respectively. Ext. E is the certified copy of Amin report in Demarcation case No. 81/1997 before the Tahsildar, Khordha.

FINDINGS

Issue Nos. iv, v & vi.

06. These three issues are taken up together for consideration as it deals with the most important dispute in the suit and are inter linked with each other. Let us now discuss the evidence in detail.

P.W. 1 has in his evidence stated that he is the plaintiff in this suit and that the suit land is the homestead land, which is situated in mouza Palla in plot NO. 179 with an area of Ac. 0.024 decimals. He is the owner in possession over the suit land having his right, title and interest on it and he was paying rent to the state regularly. The Hal ROR of year 2003 has been recorded in his favour and he has got his residential house over a portion of the suit plot No. 179. He is

possessing the suit land as his homestead land and he also resides along with his family over there. The defendants have got their house to the west of the suit land intervened by a road, hence they have no right, title and interest over the suit land. The defendants have encroached the road which is situated in between the homestead land of his and that all the defendants and further they are trying to put construction over the portion of suit land forcibly. The defendants are highly influential persons of the locality and they want to get the suit land by disposing him. On 03.07.2005 and 04.07.2005, the defendants tried to dispossess him by digging plinth and gathering stones over the suit land. During pendency of the suit the defendants also violated the order of status-quo and made a road over the suit land. In his cross-examination he has stated that he serving as a land surveyor. He has got training, expertize and experience in land survey measurement. He has seen the revenue map appertaining to the village, where his land situates. In the map there is a demarcating stone by the western side of the road. As per the map one such demarcating land is there, where his plot is situated. This stone as per the map situates on the western side of the land at a distance of around 1500 links. The distance between his land and the aforesaid *Khordha Palla Totapada Pichu* road is around 430 links. No such demarcating boundary stone is in between the road and plot of his land either on the field or on the map. There is no demarcating stone in between the said pichu road and his land. The suit plot was measured by court Amin and he was present at the time of measurement. He does not remember the exact date of measurement and can produce the sanction order if asked. The measurement work was completed in two days. He Prahallad Barik and Mukti Prasad Das

had identified the suit land. While carrying on the measurement work, the commissioner measure the suit plot. No reference point were taken on the northern and southern side. The said Highway and three other plots in respect of the land of Gundicha in his land. He also cannot say the numbers of these three intervening plots. Gundicha is a permanent resident of the suit village and he cannot say his father's name. The suit land bounded on three sides and it is open on its western side. His house stands on the middle of the suit plot and late-rite stones are assembled up to a certain height over the suit land. No such possession is there on the western side of his house. The length of his land on the eastern and western side up to his construction is around 120 links. The breadth of the northern side from east to west is around 75 links and the breadth in the southern side is 80 links. The aforesaid length and breadth are all approximate measurement relating to the area form to the east of his western side wall of his house. This does not include the land to the west of his suit land. The road is in existence to the adjacent south of the suit plot. This road came into existence around a year ago and it was not present earlier. The road adjoining the western side wall of his house connect to the road. This road on the west of his house is of his land and the defendants have forcibly cemented it and made it a road. A concrete name plate is there on another plot by the side of aforesaid road. On the said other plot on the north-west corner, the existing construction the PHALAKA is kept. He cannot say as to what has been written on the said board. To the further west or the aforesaid road on the west of his house of the defendants situates. No other house is present along side the suit of the defendants. The defendants have construction their house encroaching a portion of his land. The

aforementioned road and portion of the house of the defendants situates on his land. A road plot, the same being plot No. 180 measures Ac. 0.012 decimals in between his plot and the plot of the defendants as per the Hal map. The road plot is present in the west of his land and to the east of the land of the defendants. Though he had approached the police against the defendants for the construction of road by them, yet he had not approached any other forum or authority in this respect. He had however made demarcation application before Tahsildar, Khordha. He does not remember the number of this demarcation case. In response to such demarcation case, his land was duly demarcated by the Tahasildar, within eight days thereof and the defendants demolished it. He constructed the house over the suit plot in 1996. The construction was completed in July, 1998. The disputed road by the western side of his house was constructed in December, 2007. The said road in question had been constructed by the Government much prior to the institution of this case.

07. P.W. 2 in his evidence has stated that he knows the plaintiff and the defendants. He has seen the suit land, which measures an area of Ac. 0.024 decimals out of Ac. 0.113 decimals. His house is situated near the suit land. Bira Dhusasan Pradhan is residing over the rest portion of the suit land as his homestead land along with family members. Prahallad Barik and others have their house situated to the rest of Bira Dhusasan Pradhan. Prahallad Barik and others have encroached the suit land of Bira Dhusasan Pradhan from his Bari side by putting a cement concrete road and extending their R.C.C. Roof over their house and also dug his well on the said land of the plaintiff.

In addition to this construction of cemented road and well Prahallad Barik has also constructed a NODHA over the suit land of the plaintiff. This constructions have been made for about 6 years back as previously there was no road on the back side of the plaintiff's homestead land and front side of the land of Prahallad Barik. The south of the plaintiff's house, a government run, which stands from N.H. - 5 to the burial ground. There is also no government road situated to the southern side of land of Usharani Baliarsingh. In his cross-examination he has stated that since 1992 he has been working as an advocate clerk in Tahsil office, Khordha. The land over which he resides was purchased by him around five years ago from the wife of Basudev Nayak. He does not remember the khata number and plot number of the said land purchased by him. In fact the vendee was his wife in whose name it was purchased and the area of the land purchased was Ac. 0.090 decimals. The road, that exists on the eastern side of his land runs from Lokeswar temple up to north-eastern corner. Now the aforesaid road and the road existing between the lands of the plaintiff and defendants form one road only. This complete road is now being used by one and all including the parties to this case, for going to Lokeswar Temple and other places. The road to the east of his land and the road in between the lands of the parties now form one cemented road. The road to the east of his land has been constructed as per Gopabandhu Gramya Sadaka Yojana. The road, which situates to the east of his land is the only road to facilitate entry and the exit from his house. Similarly, the road in between the land of the plaintiff and defendants is the only road to facilitate entry and exit from the house of defendants. Electric polls are there by the side of the road to the east of

his house. The defendants have taken electricity connection from a poll that situate at a distance of around 100 meters on south-eastern corner on their land. No other poll is there in between this 100 meter distance. No electric poll is present by the side of the road in between the lands of both the side. The distance between the poll from which this line has been drawn and its previous poll is around 50 feet. Lands from 8 plots had been given for the road on the east of his land. He cannot say the area of the land over which the road situate. He also cannot say the length and breadth of the road. The suit land measures Ac. 0.024 decimals and he cannot say the khata number and plot number over the same. He cannot say the length and breadth of the land, which is under the possession of the plaintiff.

08. D.W. 1 in his evidence stated that he knows both the parties and that he has seen disputed land, which is a C.C. Road constructed over Hal plot No. 180 by government of Orissa under Gopabandhu Gramya Sadaka Yojana. The plaintiff's land and plot is well bounded from all sides by late-rite stones and is situated just adjacent to the said disputed land. The defendants have their ingress and egress to their respective building only through the said C.C. Road like other residents of the vicinity. The plaintiff's western side building work has been constructed by him on the western side boundary line of his land. The plaintiff in order to grab some area of the C.C. Road has brought this present suit. In his cross-examination he had stated that he had seen the house of the defendants, but he cannot say the length and breadth of the land over which their house situate. He also cannot say the area of the land of the defendants. He also cannot say in whose name plot No. 180 stands recorded. He also cannot say the extent of

any encroachment by each of the defendants out of this plot. He cannot say the length and breadth of the plaintiff's plot. On the western side of the plaintiff's house there is no such cement boundary wall. Stones have been kept one above the other up to a height of three feet. He could not say if the defendants have constructed their house encroaching a portion of plot No. 180.

09. D.W. 2 in his evidence stated that he has seen the disputed land, which is a C.C. Road constructed by government. The plaintiff's land and plot is well bounded from all the sides by late-rite stone wall and is situated just adjacent to the land and building of the defendants in the western side. The defendants had their ingress and egress to their respective building to the main road only through the said C.C. Road like other resistance of the vicinity. The plaintiff's western side building wall has been constructed by him on the western side boundary line of his land. The plaintiff in order to grab some area from the said existing C.C. Road has brought the present suit against the defendants with false allegations. In his cross-examination he has stated that Saubhagya rani is his wife. The disputed C.C. Road was constructed about 7 to 8 years ago. The said road around intervenes the plaintiff's land and lands of the defendants. He was not the contractor of the construction of that road. The road has been constructed over plot No. 180. he could not say about length and breadth of this entire plot. Plot No. 180 stands recorded in the names of the defendants. This three defendants have not any such land out of plot No. 180, rather they have left their land for construction of the road. He could not say the length and breadth of the lands of the defendants. He has not seen

any document regarding the fact that the disputed road was constructed out of the government fund. His house situates on the eastern side of Khordha main road. He is a resident of Barunei Sahi. The distance between Lokeswar Temple and Barunei Sari is around half kilometer.

10. D.W. 3 in his evidence has corroborated the evidence of D.W. 3 and has in his cross-examination stated that he is a residence of Majhi Sahi. Their colony situates on the eastern side of the National Highway. The house of the parties situates on the western side of the National Highway. The distance between the suit land and their house is around 600 meters. He could not say as to from whom the defendants had purchased their land. Each of them had purchased 4 GUNTHAS of land. He cannot say the khata number, plot number and area of the land over which the disputed road exists. The disputed road is 12 feet in width. The length of this road is around half kilometer. This road is an existence in front of the house of the defendants. The width of the land of each of the defendants must be around 30 feet. The lands of the defendants stands recorded in their name. Each of the defendant has left Ac. 0.004 decimals from their respective land for construction of the disputed road, which has been constructed by Panchayat. He was not a contractor for construction of the said road. He cannot say as to what was the length and breadth of the plaintiffs land. No such boundary wall is there on the western side of the plaintiff's land. A road is present on the adjacent side on defendant Nos. 1's land.

11. D.W. 4 in his evidence has stated that he is defendant No.

1 in the present suit and that this is a false case filed against them to harass them. The plaintiff is the recorded owner of suit plot No. 179, whereas the defendant Nos. 1 to 3 are owner in possession of Hal plot No. 183, 184 & 206 respectively. He has purchased an area of Ac. 0.072 decimals from his vendor Akshya kumar Kar, but in the Hal consolidation ROR, the east of this plot had been reduced to Ac. 0.068 decimals as the rest Ac. 0.004 decimals has been amalgamated in the Hal plot No. 180. The plot No. 180 even though stands recorded in the name of the defendants, but practically the said land is being used by general public as a road. The Telephone Department of government has also fixed the the telephone poles in the western boundary line of the said road to draw telephone connections. Similarly, CESU has also led electric wires over the said road. The plaintiff has constructed boundary wall of late-rite stone on the western side boundary line of his plot. The frontage and the building of the defendant is in eastern side of their land and as such they have their ingress and egress towards the said road. When the plaintiff tried to occupy some portion from the road in question forcibly, they raised objection for which the plaintiff has filed this false suit. The suit plot No. 179 was demarcated by the government Amin on an application by the plaintiff. The C.C. Road exists just adjacent to the western side of the plaintiffs building and is being constructed out of Gopabandhu Gramina Rojagara Yojana. In order to grab some area from the existing C.C. Road the plaintiff has brought this false suit. In his cross-examination he stated that the demarcation was done during 1997. He had purchased his land from one Akshya Kumar Kar in 1993. He had purchased about Ac. 0.072 decimals out of Ac. 0.215 decimals from Sabik plot No. 278. Prahallad

Barik and Jagat bihari Mohapatra had each purchased Ac. 0.072 decimals, each out of the said plot No. 278. He had purchased from Akshya by registered sale deed No. 2152 dt. 03.07.1992. He had placed the original deed before the Bank. Out of their respective Ac. 0.072 decimals, he, Prahallad Barik and Jagat Bihari Mohapatra had left Ac. 0.004 decimals each on the eastern side of their land for the purpose of their road as there was no government road by the side of their purchased land. The Ac. 0.012 decimals left for the purpose of road became plot No. 180 in the Hal settlement. This land stands recorded in their name. The length of plot No. 180 is 124 links, whereas its width varies from 15 links to 18 links at different places. Their residential plots in the Hal settlement became Ac. 0.068 decimals each, after Ac. 0.004 decimals has been taken up from them. Plot No. 182, which measures Ac. 0.013 decimals situates to the adjacent south of plot No. 184 belonging to Prahallad. Plot No. 182 is a road. This plot, i.e. plot No. 182 is a part and parcel of Sabik plot No. 278, out of which they three had purchased their lands. The plot, i.e. plot No. 182 stands recorded in the name of Jyotsnamayee. That the Sabik plot No. 278 measures Ac. 0.215 decimals. They three had purchased their respective lands as per the Sabik settlement records. In his further cross-examination he states that the said Palla Totapada has become mouza Palla in the Hal settlement operation. The length and breadth of his purchased land are 190 links and 90 links respectively. The length and breadth of the purchased land of the other two defendants must be around the same as his land. Plot No. 180 measures Ac. 0.012 decimals. He cannot say its length and breadth. Plot No. 183 belongs to Prahallad situated to adjacent suit of his land. His land is in plot No.

184 and that he had earlier inadvertently said that Prahallad had also purchased his land. Plot No. 185 & 205 are road and are in existence to the adjacent west of his land. Hal consolidation record appertaining to the suit mouza were published in 2003. The Tahsil amin, who had measured their land in 1997 prior to publication of consolidation records. The said measurement had been done as per the Sabik settlement records. Electricity poles are present on plot No. 176 near their house. No such poles are present in front of their house. Such poles are present at a distance of about 5 to 6 inches from his house.

12. D.W. 5 in his examination in chief corroborated the evidence of D.W. 4 and has in his cross-examination stated that he has filed the certified copy of registered sale deed No. 31681 dt. 03.12.1990 and that he had deposited the original in a Bank and accordingly could not produce it. In Hal settlement Palla Totapada had become Palla and his purchased land was plot No. 183. As per original record Plot No. 183 measured Ac. 0.068 decimals. He along with other defendants relinquished a portion of their share for construction of a road, i.e. plot No. 180 measuring Ac. 0.012 decimals. The road stands recorded in the name of Government. The length of plot No. 180 is around 135 links. The sabik plot No. 278 measures Ac. 0.215 decimals. He could not say if Ac. 0.072 decimals was not left in plot No. 278 decimals, i.e. when he has purchased. He had purchased from the southern portion of plot No. 278 adjacent to the eastern and western boundary lines. No such road and plot of his vendor was there to the adjacent side of plot No. 278. His vendor agitated him and wrongly mentioned in the deal that a road was there to the east of the land

transacted vide the deed. He could not say if similar facts have also been wrongly noted in the deeds of that defendants. He donated lands in Hal Plot No. 180 from out of their purchased lands of Sabik plot No. 278 only. A well is present in the southern eastern corner of his land. The said well is in existence over his land, i.e. Hal plot No. 183. It is a fact that a road plot bearing No. 182 stands recorded in the name of Jyotsnamayee Das. He could not file any document to show that government has constructed the above road. No electric people is present in front of his house, but a telephone pole is present. Electricity to his house is being drawn from a pole standing over Hal plot No. 176. they have never constructed road by encroaching vacant land of the plaintiff.

13. The sole contention now is to be discussed is as to whether the suit land and more specifically the road therein is a government or private road. D.W. 1 In para 8 of his evidence has stated that he has not seen any document showing that the road over plot No. 180 was constructed by the government. D.W. 2 in para – 11 of his evidence has stated that he has not seen any document regarding the fact that the disputed road was constructed out of the government fund. D.W. 3 in para 9 of his evidence has stated that the disputed part of the land does not belong to the defendant and the said road has an independent existence. D.W. 5 has in para – 20 of his cross-examination stated that the disputed road as plot No. 180 is not their private road. From the above analysis of the evidence adduced by the defendants it is quite clear that they denied ownership over the said disputed plot. However, on perusal of the record given by amin

commissioner, which is taken as a piece of corroborative evidence the position becomes absolutely clear. On perusal of the record it is seen that the amin commissioner report was already accepted on the point of law and technicalities. However, it is the settled position of law that the report of amin commission is only a piece of evidence and at best can be used as a corroborative evidence. The defendant has also filed various objections to substantiate this common principle of law. Vide *K. Raghunath Rao Vrs. Smt. Jail Ajmi* 1987 CLT 304.

15. Taking the evidence of amin commissioner also as a corroborative evidence the dispute in this case is more or less settled. On perusal of the record of amin commission it is seen that he had in page – 2 of his report stated that he had asked the plaintiff and defendants while doing his inquiry to show some fixed points and thereafter began his demarcation. During demarcation he found that the disputed area of Ac. 0.025 decimals has a cement concrete road over it. The said road forms a part of plot No. 179 and is on the west of plot No. 179. Further more some part of plot No. 179 has also been encroached by the defendants. The defendants have forcibly possessed some parts of the plots of plaintiff. Hence it can be clearly said that this area which is shown as a road in plot No. 180 is actually not a road, but is the land of the plaintiff under plot No. 179. From the Ac. 0.11 decimals the plaintiff is in possession of Ac. 0.090 decimals while the rest Ac. 0.002 decimals has become the disputed land. The area shown in the map in plot No. 180 is fully occupied by the defendants, they also have made there house and verandah over it. However, on the other hand over plot No. 179 a common road for public has been made.

From his entire inquiry he came to know that the defendants are fully enjoying their plot and on suit plot a road is present. The defendants have also admitted that plot no 179 belongs to the plaintiff. Ext 2 also clearly shows that the plaintiff is the owner of plot 179 of ac0.113 dec. On careful scrutiny from the above evidence and the report of amin commission it is quite clear that the said road is not a government road. The burden of proving as to whether the road belonged to the plaintiff or defendant was on the plaintiff, but when the defendants stated that the said road belonged to government, the burden of proving the same was on the defendants. Not a single piece of documentary evidence was there to show that the said road belonged to government. Hence from the above analysis it is quite clear that the said road does not belong to government land and is a private road. The above issues are answered accordingly.

Issue No. iii.

16. The defendants sole allegations is that the suit is liable to be dismissed due to non-joinder of state of Orissa as a necessary party. The plaintiff has clearly stated that his entire prayer for relief is against the defendant and the road is not a government road. Hence the state should not be made as a party. In my opinion the defendant has also filed to show that the said road was in any way constructed by the government has no agreement or document has been filed by the defendant in that regard. Hence it can be said that the suit is not liable to be dismissed for non-joinder of necessary parties.

Issue No. i.

17. the plaintiff has clearly stated that the cause of action for filing this suit arose on 03.07.2005 when the defendants tired to dig

plinth over a portion of the suit land and on 04.07.2005 when the defendants gathered stone and sand etc. the defendants have clearly stated the plaintiff does not have any cause of action to file this suit, in fact the defendant have gone further to states that the plaintiff has no right over the suit land. Cause of action is a bundle right, assaulted by one part and denied by another. Hence in view of the rival claims of the parties it can be said that the plaintiff has got cause of action to file the suit.

Issue No. vii.&ii

18. As no specific prayer has been made in this case. Hence order.

ORDER.

The suit be and the same is decreed on contest against the defendants, but without cost. The plaintiffs right, title, interest and possession over the suit land is hereby declared in favour of the plaintiff. The defendants are permanently injuncted and prohibited to enter into the suit land and directed not to create any disturbance over the same. The defendants are also mandatorily injuncted to remove the concrete road over the portion of suit land, falling in the share of the plaintiff and deliver the same to the plaintiff. Failing which the plaintiff would remove the same at his cost through the process of the court and by realizing the amount from the defendants.

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

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 30th day of June, 2014.

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

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Bira Dhusasan Pradhan.
P.W. 2 Tapan Kumar Pattanaik.

List of witnesses examined on behalf of Defendant no.1 :-

D.W. 1 Gobinda Chandra Pradhan.
D.W. 2 Janaki Ballav Baral.
D.W. 3 Lingaraj Sahoo.
D.W. 4 Mukti Prasad Das.
D.W. 5 Prahallad Barik.

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence of P.W. 1.
Ext. 1/1 to ¼ Signature of P.W. 1 on Ext. 1.
Ext. 2 consolidation ROR of khata No. 901 of mouza Palla.
Ext. 3 & 3/1 Rent receipts.
Ext. 4 Affidavit evidence of P.W. 2.
Ext. 4/1 to 4/2 Signature of P.W. 2 on Ext. 4.
Ext. 5 Certified copy of ROR of khata No. 195 of Mouza Palla.
Ext. 6 Certified copy of ROR of khata No. 168 of Mouza Palla.
Ext. 7 Certified copy of RSD No. 2152 dt. 03.07.1992.
Ext. 8 Certified copy of RSD No. 3168 dt. 03.12.1990.
Ext. 9 Certified copy of RSD No. 915 dt. 23.03.1990.

List of documents proved on behalf of the Defendant :-

Ext. A Affidavit evidence of D.W. 1.
Ext. A/1 & A/2 Signatures of D.W. 1 on Ext. 1
Ext. B Affidavit evidence of D.W. 2.
Ext. B/1 & B/2 Signatures of D.W. 2 on Ext. B.

Ext. C	Affidavit evidence of D.W. 3.
Ext. C/1 & C/2	Signatures of D.W. 3 on Ext. 3.
Ext. D	Affidavit evidence of D.W. 4.
Ext. D/1 to D/4	Signatures of D.W. 4 on Ext. 4.
Ext. E	Certified copy of Amin report in demarcation case No. 81/97, before Tahsildar, Khordha.
Ext. F	Affidavit evidence of D.W. 5.
Ext. F/1 to F/4	Signatures of D.W. 5 on Ext. F.

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