

**HEADING OF A DECISION IN A CIVIL SUIT  
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

*Sri Abhilash Senapati*, BALL.B  
Civil Judge (Jr. Divn.), Khurda.

Dated the 22 nd day of September , 2014

**C.S 51/2013**

1. Nirupama Bhanja, aged about 55 years,  
w/o Late Hemanta Kumar Bhanja .
2. Manoranjan Bhanja, aged about 35 years,
3. Manas Ranjan Bhanja, aged about 33 years,  
Both are s/o Late Hemanta Kumar Bhanja .  
All are of vill - Haladia Purunasahi, P.O- Haladia, PS- Khordha, Dist-  
Khordha

..... Plaintiffs.

**-Versus-**

1. Laxmi Narayan Deb Represented through trustee Laxminarayan Prasad Ram, Aged about 73 years, s/o Late Jagganath Prasad Ram, vill- Jajarsingh, P.S-Khordha, Dist-Khordha.
2. Jagannath Pattanaik, Aged about 55 years, s/o Late Bipra Charan Pattanaik, vill- Jagamara, P.S-Khandagiri, Dist-Khordha.

.....Defendants

Counsel for Plaintiffs ... Sri D.K.Kar,Advocate  
& Associates  
Counsel for Defendant ... Sri T.K.Baral,Advocate &  
Associates

.....  
Date of Argument – 09.09.2014

Date of Judgment – 22.09.2014  
.....

### **JUDGEMENT**

1. The plaintiff has filed this suit with a prayer for declaring the right, title, possession of the plaintiff over the suit property along with a decree injuncting the defendant NO.3 to come over the suit property and not to take up any construction work over any portion of the suit property.

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

The suit property situated in Mouza Tarakai under Sabik Khata No.362 appertaining to Sabik plot No.1011 of area Ac 0.210 decimal out of Ac 0.455 decimals , sabik plot No.1448 of an area of Ac 0.680 decimal, Sabik plot No.1450 of Ac 0.135 decimal of Ac 1.310 decimal, specifically given in the schedule of the plaint and herein after referred to as the suit property. The suit property belongs to the deity , Laxminarayan Dev, the interim managing trusty Laxmi Narayan Ram who is the managing affairs of the deity , out of the income of the suit property along with other undisputed properties. Laxmi Narayan Prasad Ram in order for some necessity of the deity intended to sale the suit property and approached the husband of the plaintiff No.1 and

the plaintiff. After ascertaining about the necessity of the deity and required permission of the endowment commissioner the plaintiff as well as the husband of the plaintiff, consented to purchase the suit property. On 16.06.1976 the defendant No.1 executed a registered sale deed in favour of plaintiff No.1 for consideration of Rs.700/- which was received by the defendant No.1 at the time of endorsement of registration ticket in favour of the plaintiff. After getting all the consideration money, the defendant NO.1 delivered possession of the suit property to the plaintiff NO.1 by moving around the same and identified the suit property in presence of the plaintiff's husband, plaintiff No.1 and witnesses present at that time. The plaintiff used to possess the same till now and used to pay the rent and cess to the Government. The rent and cess was paid through R./I Haladia regularly and in lieu of the payment of rent the plaintiff used to obtain the rent receipts in token of her possession over the same till now. Again the defendant No.1 approached the husband of the plaintiff during the year 1978 for sale of the suit property in order to meet the necessary expenditure of the deity. The husband of the plaintiff after ascertaining the necessity and after getting the permission of the endowment commission consented to purchase the same. On 21.06.1978 the defendant No.1 executed a registered sale deed with respect to the suit property in area Ac 0.210 decimal. The defendant No.1 at the time of endorsement of registration ticket received consideration money of Rs.300/- from the husband of the plaintiff and delivered the possession and the suit property by moving and identifying the same to the husband of the plaintiff in presence of witnesses. The husband of the plaintiff used to pay the rent of the suit

land to RI Haladia, till his death. After the death of the husband of the plaintiff, the plaintiff was paying the rent with respect to the suit property till now. In the year 2001 the plaintiff went to her son's house who was serving out of Khurda District. As his son was suffering from severe illness she stayed from for about 3 years at the place of the service of his son. After returning from the place of service of his son she approached the Tahasildar, Khurda for mutation of her name along with the name of the plaintiffs with respect to the suit property to which the Tahasildar, Khurda advised the plaintiff No.1 to approach the civil court as the R.O.R stood in name of defendant No.1 as per the consolidation operation. The plaintiff No.2 applied for information about Hal and Sabik from Tahasildar, Khurda and got the same on 18.02.2013. The defendant No.3 has no right, title and interest over the suit property but he was trying to start road over the suit property in plot NO.2739 and is trying to take up construction work over the suit property. The defendant No.3 stacked stones and other construction materials nearby the suit land to which the plaintiff No.2 raised objection on 18.03.2013 and the defendant No.3 said that the plaintiff's have no right over the suit land and the C.S R.O.R stood recorded in the name of defendant No.1 and as such he would never listen to the version of the plaintiff and thereby the plaintiff filed this suit. The cause of action for filling of this suit arose on 18.03.2013 , the day the plaintiff No.2 raised objection before the defendant NO.3 not to take up any construction work or to take any road over the suit property. Hence the plaintiff has filed this suit with a prayer for declaring the right, title , possession of the plaintiff over the suit property and a decree for injuncting the defendant No.1 to come over the suit property

and to take up any construction work over any portion of the suit property.

3. The defendant No.2 has appeared and has filed his W.S in this suit. The reply of the defendant in a nutshell is that the suit is defective for non-joinder and mis-joinder of the parties. The suit is barred by limitation of time. Even though the suit property belongs to the deity Laxmi Narayan Dev, the Laxminarayan Prasad Ram was never managing the affairs of the deity in any manner. The deity had no necessity for sale of the suit land in favour of the plaintiff. As per the allegations made in para 5 & 6 of the plaintiff, the sale deed alleged to be executed in favour of plaintiff No.1 in respect of the suit land on 16.06.1976 is wrong and illegal. The suit properties have never been alienated in favour of the plaintiff NO.1 in any manner and he has not derived any manner of right , title , interest and possession over the suit land and that there has been no payment of consideration for sale of the suit land as alleged for the complainant. The allegation in para 7 to 11 of the plaint are as false and baseless. The plaintiff never used to possess the suit land and has never paid any rent over the same. No land has been alienated for the necessity of the deity Laxmi Narayan Dev as the deity has sufficient income for his maintenance. Even if any sale deed is alleged to be executed in respect of the suit land, the same is wrong and illegal in the eye of law and the plaintiff's have not partitioned any title over the suit land in any manner. The plaintiff never went in the year 2001 to her son who was serving outside and was suffering from severe illness stayed there for about 3 years at the place of the service of his son. All the allegations made by the plaintiff

are false and baseless. The Tahasildar, Khurda had never advised the plaintiff No.1 to approach the Civil Court as the R.O.R of the suit land is recorded in the name of the defendant No.1 in the C.S R.O.R. Furthermore in the cause title of the plaint, when nobody has been impleaded as defendant No.3, it is completely needless to say that defendant No.3 has no right, title or interest over the suit properties and he is trying to start a road over the suit plot No.2739 and that the defendant No.3 has never stacked stones , sands etc near the suit land to look after the construction work. It is also false to say that on 18.03.2013 the plaintiff No.2 raised objection and that the defendant No.3 stated that the plaintiff's has no right over the suit land. In fact the plaintiff has got no manner of right, title, interest and possession over the suit land, as the suit land stands recorded in the name of Laxminarayan Dev in the Sabik as well as Hal R.O.R. Rather the defendant No.2 has got sufficient land for his accommodation as per allegation in para.14 of the plaint . The plaintiff has no cause of action to file this suit against the defendant No.2 and as such cause of action as alleged by the plaintiff are all false and he is not entitled for any right , title, interest and possession over the suit land, in any manner and only with an aim to drag this answering defendant No.2 into the suit the plaintiff has filed the suit against him.

4. The defendant No.1 who is the trustee of the deity Laxmi Narayan Dev i.e Laxmi Narayan Prasad Ram had appeared but has not contested in the present suit. As per the order dtd. 25.07.2013 both the plaintiff and defendant have filed a joint compromise petition which was duly signed by all three plaintiff's and defendant No.1 under the

attestation and identification of their respective counsels. The plaintiff and defendant No.1 as per order dtd.25.07.2013 were present in court signed the objection for compromise willfully and claimed to have settled their dispute amicably as per the terms mentioned in the compromise petition. As per order dtd. 31.07.2013 as there is no full and final redress of the suit hence the compromise would not result in basing of a final order or decree however the compromise petition was made a part of the record and as per the said order, the same was to be looked into at the time of passing of judgment . As per the compromise petition it is seen that the said Laxmi Narayan Prasad Ram as a trustee of Laxmi Narayan Dev, for need of money to reach the temple and the trust after getting permission from endowment division Orissa sold the suit land in Sabik Khata NO.372, plot NO.1448 of about Ac 0.780 decimal, Sabik plot NO.1011 of Ac 0.210 and Hal Khata No.712 of plot No.2737 of area Ac 0.120 decimal, plot no.2737 of Ac 0.40 decimal and plot No.2740 of area Ac 0.90 decimal, plot No.2741 of area Ac 0.415 decimal through registered sale deed to the plaintiff No.1 and her dead husband. The Hal settlement authorities during carrying of settlement operation wrongfully recorded the suit land in his name without serving any notice upon him they have no objection if as per the above compromise petition the plaintiff would be made the recorded owner over the suit land. Hence the defendant No.1 being represented by the trustee has prayed to record the suit land in the name of the plaintiff

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 suit is liable to be dismissed for mis-joinder and non-joinder of necessary parties ?
- iv. Whether the suit property has been validly sold ?
- v. Whether there is any necessity to sale the suit property ?
- vi. Whether the plaintiff is in possession over the suit land ?
- vii. To what relief, is the plaintiff entitled ?

5. In order to prove its case the plaintiff has examined as many as four witnesses and has exhibited 8 documents which includes the affidavit evidence of P.Ws 1 to 4 as Ext.1,.2,3 & 8 . Ext.4 and Ext.5 is the registered sale deed No.60200, dtd. 16.06.1976 and registered sale deed No.3038 / dtd.27.06.1978 respectively. Ext.6 is the Hal Sabik correlation and Ext.7 series is the rent receipts filed by the plaintiff. While on the other hand to disprove the allegation of the plaintiff the defendant has examined three witnesses on his behalf .

6. **Issue Nos. 4, 5 & 6.**

These issues are most important and are interlinked with each other hence they are taken up for consideration at the earliest.

The plaintiff has clearly in her evidence has stated that she has been in possession over the suit land by virtue of the registered sale

deed No. 6020 and 3038 dt. 16.06.1976 and 27.06.1978 and by virtue of those two sale deeds, she had been in possession over the suit land. The question which now needs to be decided, with respect to issue No. 4 as to whether the suit property has been validly sold ?

Sec. 19 of **Hindu Religious Endowment Act, 1951 Act** :-

*“Alienation of Immovable Trust Property – (1)  
Notwithstanding anything contained in any law for the time being in force no transfer by exchange, sale or mortgage and no lease for term exceeding five years of any immovable property belonging to, or endowed for the purpose of, any religious institution, shall be made unless it is sanctioned by the commissioner as being necessary or beneficial to the institution and no such transfer shall be valid or operative unless it is so sanctioned.”*

The plaintiff in order to prove the validity of the registered sale deed has filed both the sale deeds in Ext. 4 & 5. Ext. 4, which is the registered sale deed No. 6020 clearly from its contents shows that the land involved therein was sold after taking the permission of the concerned authorities. Similarly, Ext. 5, which is the registered sale deed No. 3038 dt. 27.06.1978 shows that the land therein were also sold after taking the permission of the concerned authorities. The plaintiff has through both sale deeds claimed that sanction was accorded to him U/s- 19 of Orissa Hindu Religious Endowment Act. However, Coming into those documents it is seen that no where any specific sanction order has been mentioned therein. Further more no sanction letter or sanction order has been filed by the plaintiff to get the benefit of doubt U/s- 19 of OHRE Act, 1951. Further more even if

for the sake it would admitted that sanction was given to the defendants for selling the said land it is seen that no evidence has been brought forth by the plaintiff from the endowment commissioner or any evidence of any officer from the endowment commissioner to prove about the said permission. Hence it can be said that compliance of Sec. 19 has not been properly put by the plaintiff: to add to it coming into the oral evidence by the plaintiff, it is seen that she herself has in para – 13 clearly stated that she could not say from how much land and from which single plot the suit land were purchased by her and her husband. The property, which she had purchased is the deity's property and in para – 15 she states that permission from the endowment commissioner had been obtained prior to execution of the sale transaction. The evidence of P.W. 3 shows that she has no specific idea about the suit land as she has clearly stated that she could not say the specific plots purchased by her, being the vendee herself. Furthermore, in para – 16 she himself adds that she could not say about the length and breadth and boundary details of the suit land. Similarly, P.W. 2 in para – 2 of his evidence has stated that he earns his livelihood by working for the plaintiff in her lands. P.W. 1 has clearly in his evidence stated that he does not know the plaintiff and defendant of this case and that he does not have any land near the suit land. He also could not say the khata number, plot number etc. of the suit land. These evidence of P.W. 1 & 3 clearly shows that they have got no idea about the suit land and thereby do not help the plaintiff's claim of valid sale. Coming into another aspect of valid sale, i.e. payment of consideration and delivery of possession, i.e. execution of sale deed it is seen that the plaintiff has neither examined any scribe or any

witness to that effect. The plaintiff has also not stated the reasons for non-examination of the scribe and the witness. P.W. 3, who is the plaintiff has in para – 9 and para – 10 marked the signature of the scribe Basudev Patjosi and the witness Laxminarayan in both the sale deeds. Non-examination of the above two witnesses or any other witnesses to the sale creates a big doubt on the execution of the sale deed. Hence in my opinion in absence of any sanction letter alongwith the absence of any evidence from the office of commissioner, to add to it no witness to the sale being examined and furthermore P.W. 1 & 2 notwithstanding the cross-examination with respect to the sale deed, it can be said that the sale which has been done has not been done validly.

7. Coming into issue No. 5 it is seen that one of the most essential ingredient to get alienation of trust property is whether the said transaction is “**necessary or beneficial** to the institution”.

In 2007 (supp. - II) OLR 1084. it was held that  
*“Sanction for alienation of the property belonging to a Hindu religious endowment – It may be granted only in a case where pressing and urgent legal necessity is established and proved – While testing the question of legal necessity, regard must be had to the necessity of the institution and the imminent danger to be averted or the benefit to be conferred upon the institution – The property should not be permitted to be sold at the whims and caprices of the persons in the management in*

*absence of real legal necessity – Requirement/ Legal necessity is the since qua non for according permission for sale- The same has to be adjudged keeping in mind as to whether alienation of the property would be beneficial and in the interest of the institution or not ."*

P.W. 3 in para – 15 has clearly stated that she had purchased the suit property, but she could not say as to for what necessity and requirements the deity's properties were sold. She further states that the deity had got no such requirement or necessity for sale of his property. Both the registered sale deeds also does not specify the reasons for sale and in a broad way states that the said transaction was done to carry out the necessary expenses as speculated U/s- 19 of OHRD. In my opinion if any such transaction is to be done the same must be necessary or beneficial to the institution. The plaintiff has clearly denied about any such necessity. The sale deeds also does not clearly point out to any such necessity. Hence in my opinion the plaintiff has failed to prove as to whether there was any necessity to sell the suit property. Hence issue Nos. 4 & 5 are answered accordingly.

8. Coming into issue No. 4 as to whether the plaintiff is in possession over the suit land. It is seen that the defendant has clearly in his evidence stated that they are possessing the suit land and that the plaintiff has no right over the same. The plaintiff has in his plaint stated that the defendants have stacked stones near the suit land for carrying on construction. All the witnesses apart from P.W. 3 & 4 of the plaintiff have clearly admitted that they have no idea about the suit

land. While P.W. 1 clearly states that he knows the plaintiff and defendant in this case but in para – 7 fails to say the khata number, plot number of the suit land and also states that he does not have any land near the suit land. On the other side P.W. 2 has admitted that he earns his livelihood by working for the plaintiff. Hence in my opinion the evidence of P.W. 2 needs to be taken with a pinch of salt. P.W. 2 has in his evidence stated that paddy crops has been grown over the suit land. P.W. 3 is the plaintiff has in his evidence stated that she could not say the khata number, plot number of the suit land. She has also stated that she could not say the length, breadth and boundary details of the suit land. P.W. 4 is the son of the plaintiff has although corroborated, but has not spoken anything about their possession and to their possession in which respect of the suit land. He has only stated about the defendant trying to encroach over the same. The Hal Sabik correlation filed by the plaintiff in Ext. 6 clearly shows that the defendant has title over the suit land and also has possession. All the witnesses of the defendant corroborated to the aspect of the possession by the defendant. In a civil case it is upto the plaintiff to prove his case. Although on one hand all the witness of the plaintiff have corroborated to the possession of the plaintiff and on the other hand, all the witnesses of defendants have corroborated to the evidence of defendant, but Ext. 6 clearly shows that defendant is the recorded owner of the suit land and that the plaintiff failing to prove the sale deed or the delivery of possession, thereby it can be said that he has not been able to prove the possession over the suit land in his favour.

**Issue No. 3.**

9. The defendant has clearly in his argument stated that the suit is liable to be dismissed for mis-joinder and non-joinder of necessary parties. With respect to non-joinder of necessary parties, the defendant has clearly stated that the landed properties covered under Ext. 5 has been purchased in the name of the late husband of the plaintiff No. 1 namely Hemanta Kumar Bhanja on 27.06.1978 vide sale deed No. 3038 and after death of husband of the plaintiff No. 1 all his successors have got right, title, interest on it. P.W. 3 has in para – 14 in his cross-examination stated that she has got three daughters namely Anusaya, Nalimi Itima and two sons namely Manoranjan and Manas. All her children are alive. Hence non addition of the above persons as parties in the suit clearly renders the suit as bad for non-joinder of necessary parties. Learned counsel for the plaintiff states that they have prayed for declaration of right, title, interest and possession over the suit land in favour of Nirupama Bhanja and her two sons namely Manoranjan and Manas. They have nowhere stated that the daughters of Nirupama do not any share over the suit land. Hence the suit cannot be dismissed on the ground of non-joinder of necessary parties. On perusal of the record it is seen that P.W. 3 has clearly admitted about her three daughters, but has not added them as parties. No relinquishment of share has also been done by the three sisters. Hence in my opinion non addition of the above three daughters clearly proves non-joinder of necessary parties.

Coming into the next aspect of mis-joinder of parties it is seen that the plaintiff has in his plaint clearly claimed relief against passing

of decree of injunction against defendant No. 3. The plaintiff has in para – 13 stated that the defendant No. 3 has no right, title and interest over the suit property and he is trying to start a road over the same. The entire contents of Para – 13 of the plaint aims towards defendant No. 3. Although the said matter was raised during argument, but no reply was brought forth to counter the same. On perusal of the plaint it is seen that there is no defendant No. 3 in the suit. Hence it can be said that the suit also suffers from mis-joinder of parties.

**Issue Nos. 1 & 2.**

10. The plaintiff has stated that the cause of action to file this suit arose on 13.03.2013 the day when plaintiff No. 2 raised objection before defendant No. 3 not to take up any construction work over the suit property. The defendant has clearly denied to the cause of action. The plaintiff has failed to prove the sale deed, alongwith the necessity for such transaction and his possession and hence it can be said that the plaintiff has failed to prove the cause of action. Coming into the question of maintainability it is seen that apart from the fact that the plaintiff has not been able to prove the same along with the sanction of the appropriate authority the plaintiff suit also fails due to non-joinder and mis-joinder of parties. Hence it can be also said that the suit is not maintainable according to law.

**Issue No. 7.**

11. As no specific prayer has been, hence order.

**ORDER.**

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

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

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 2<sup>nd</sup> day of July, 2014.

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

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

P.W.1         Arjuna Swain  
P.W.2         Fakira Swain  
P.W.3         Nirupama Bhanja  
P.W.4         Manoranjan Bhanja

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

D.W.1         Harihara Sahoo  
D.W.2         Fakira Behera  
D.W.3         Durga Ch. Barik

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

- Ext.1: Affidavit evidence of P.W.1  
Ext.1/1 & 1/2: Signatures of P.W.1 on Ext.1  
Ext.2: Affidavit evidence of P.W.2  
Ext.2/1 & 2/2: Signatures of P.W.2 on Ext.2  
Ext.3: Affidavit evidence of P.W.3  
Ext.3/1 & 3/2: Signatures of P.W.3 on Ext.3  
Ext.4: Registered Sale Deed No. 6020 dt 16.6.76  
Ext.4/1 : Signatures of Basudev Pattajoshi on Ext.4  
Ext.4/2 to 4/4: Signature of Laxmi Narayan on Ext 4  
Ext.5: Registered Sale Deed No 3038 dt 27.6.78  
Ext 5/1: Signature of Basudev Pattajoshi on Ext.5  
Ext 5/2 to 5/4: Signature of Laxmi Narayan on Ext 5  
Ext 6: Hal Sabak Information  
Ext.7 to 7/3: Rent Receipt  
Ext.8: Affidavit evidence of P.W.4  
Ext.8/1 : Signatures of Basudev Pattajoshi on Ext.4

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

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

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