

**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 3rd day of September, 2014

C.S. 58/ 2009.

Gandharb Biswal, aged about 50 yrs, S/o- Nabin Gochhayat,
of Vill.- Abhimanpur, P.S.- Tangi, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Bhima Behera, aged about 65 yrs. (Expired).
2. Makar Behera, aged about 63 yrs, S/o-
of Vill.- Ujalagopinathpur, P.O.- Abhimanpur, P.S.- Tangi, Dist-
Khordha.

..... Defendants.

Counsel for Plaintiffs	...	Sri N. Das, Advocate & Associates.
Counsel for defendant	...	, Advocate & Associates.

.....
Date of Argument – 18.08.2014

Date of Judgment – 03.09.2014
.....

JUDGEMENT

The plaintiff has filed this suit with a prayer for

declaration of title, confirmation of possession along with permanent injunction.

02. The plaintiffs story in a nutshell is that :-

He has filed this suit as a legal heir of Late Nabina Gochhayat @ Biswal. The suit land originally belonged to his father Nabina Gochhayat @ Biswal and after his death as the recorded owner the plaintiff has filed this suit as a owner of mouza Abhimanpur, khata No. 26, plot No. 33, Bagayat – II for an area of Ac. 0.355 decimals and the plaintiff has right, title, interest and possession over the suit plot. The plaintiff has submitted that the defendants have no manner of right, title, interest and possession whatsoever over the suit property, but in a mischievous intention the defendants are creating disturbances and have forcibly trespassed into the suit property while trying to disposes the peaceful possession of the plaintiff. The plaintiffs wants to raise a boundary wall and construction over the foundation given in the plaint schedule. On 05.09.2009 the defendants have all through out raised allegation and have started creating disturbances and have also gathered buffaloes over the suit land. The defendants are not removing the group of buffaloes from the suit property and want to disposes the peaceful possession of the plaintiff and are also forcibly gathering the group of bullocks over the suit property every day. The defendants have no possession, right, title and interest over the suit land. Despite having no such document in their favour the defendants by showing a false document bearing RSD No. 445 dt. 26.02.1982 are trying to possess the said land. The cause of action arose on 08.09.2009 at about 8.00 A.M when the defendants forcibly trespassed into the suit

property and gathered his bullocks over the suit land. When the plaintiffs and his brothers raised allegations and tried to evict the defendant from the suit plot, the defendant behaved in an unruly manner and started to forcibly occupy the suit property. The plaintiffs have a prima-facie case in their favour and in case the defendants would not be evicted from the suit property then apart from the physical possession of the plaintiff being disturbed the nature and character of the suit land will also be changed. Hence the plaintiff has filed for permanent injunction restraining the defendants along with his agents in any manner interfering with the plaintiffs suit land and other construction. Hence the plaintiff has prayed for creating permanent injunction for restraining the defendants from interfering in any manner into the schedule property and also declare the title of the suit land in favour of the plaintiff and confirm his possession and finally to declare the sale deed No. 445 dt. 26.02.1982 as void document.

03. The defendant has appeared and filed his written statement stating therein that the plaintiff has no cause of action in the suit and that he neither has a prima-facie case nor balance of convenience tilts in his favour. Nabina Gochhayat was the owner of the suit property and after his death, his son Dandapani Biswal and the present plaintiff were left behind as a legal heirs of said Nabina Gochhayat and the plaintiff is not the sole legal heir of said Nabina Gochhayat. Hence in respect of the suit property both the sons accrued the right of ownership after the death of their father. The plaintiff has been never paying any rent to the state in respect of the suit property at any point of time. The defendants have never created any disturbance nor have

forcibly trespassed into the suit property nor tried to disposes the peaceful possession of the plaintiff. The plaintiff with some mischievous intention has brought this suit by suppressing the fact of sale of a portion of the suit property by his elder brother to execute a sale deed on behalf of the plaintiff as a legal guardian. The elder brother of the plaintiff namely Dandapani has executed a sale deed bearing registered sale deed No. 4456 dt. 26.02.1982 in favour of Bhima Behera, Makar Behera, Nakula Behera and Pandaba Behera in respect of an area of Ac. 0.193 ½ decimals, under khata No. 26, plot No. 33 of mouza Abhimanpur. The brother of the plaintiff thereafter delivered possession of the suit land to the defendant and his two brothers Dandapani Behera also executed the above mentioned sale deed on behalf of the plaintiff as the plaintiff was then a minor. After taking delivery of possession, the defendant and the other two brothers were possessing the above suit land peacefully without any interruption from any corner. The cause of action mentioned in the above paragraph of the plaintiff is an imaginary one. The defendants and his brothers have never created disturbances over the suit plot and have also never gathered any MAINSI/ buffaloes over the suit land. The defendants have never tried to disposes the plaintiff from his peaceful possession. In fact the defendant and his brothers are keeping buffaloes over their purchased land. The plaintiff due to political rivalry and village group-ism has brought this suit against the defendants. The date of cause of action is completely false as on the said date the defendant had never cause any disturbances. Further more the brother of the plaintiff or the plaintiff himself have never made any allegation to them for any objectionable work. The plaintiff has no

prima-facie case and has also suppressing the fact of her sale of a portion of land from the suit property. The defendants being the rightful owner and having possession over the portion of the suit property they cannot be restrained or injuncted through the propose of law. Hence the suit needs to be dismissed.

4. Taking into account the rival pleadings of both the sides, the following few issues have been framed in this case for adjudication of the real dispute between the parties.

ISSUES

- i. Whether the plaintiff has any cause of action to file this suit?
- ii. Whether the suit is maintainable according to law?
- iii. Whether the suit is liable to be dismissed for non-joinder of necessary parties?
- iv. Whether the plaintiff has right, title, interest and possession over the suit land?
- v. Whether the defendants have encroached over the suit land forcibly?
- vi. Whether the sale deed bearing No. 445 dt. 26.02.1982 is a valid document?
- vii. To what other reliefs is the plaintiff entitled?

5. In order to prove its case the plaintiff has examined four witnesses and has exhibited two documents, which includes the certified copy of the ROR under khata No. 26 as Ext. 1 & Ext. 2 series

of rent receipts.

While in order to disprove the allegations the defendants has examined only two witness and have also exhibited tow documents, which includes in Ext. A – the registered sale deed bearing No. 445 dt. 26.02.1982 and in Ext. B the rent receipts.

FINDINGS

Issue Nos. vi.

06. This issue being the most important is taken up first for consideration.

Lets now analyze the evidence with regard to the above issue to come to a just decision of this suit.

P.W. 1, who is the plaintiff in this case has stated that neither his father nor his brother or he himself had ever transferred the possession of the suit plot or sold any property to the defendant. In his cross-examination he has also denied the transfer of the suit land. P.W. 2 has also stated that there has never been any sale of the suit land. P.W. 3, who is the brother of the plaintiff and as per the allegation of the defendants had sold the part of the suit land to them has in his examination in chief stated that he has never sold the suit land. In his cross-examination he has stated that he had never sold Ac. 0.193 ½ decimals of the suit land to four defendants vide sale deed No. 445 dt. 26.02.1982. He has also denied about possession of the said area to the defendants. He could not delivery the total land present in khata No. 26. P.W. 4 has in his evidence has also corroborated the evidence of the plaintiff. Interestingly the two witnesses examined on behalf of the

defendants and their evidence has gone unchallenged by the plaintiff. They have clearly stated about the sale deed bearing No. 445 dt. 26.02.1982 being sold by the brother of the plaintiff to the defendants.

Coming into the aspect of fraud it is seen that Sec. 17 of the Indian Contract Act defines Fraud as “fraud means and includes any of the following acts committed by a party to a contract or by his agents with an intend to deceive another party was to or his agent, or to induce him to enter into the contract.

1. Suggestion as to fact that which is delivered by one, who does not believed it to be true.
2. The act of concealment of a fact by one having knowledge or believe of the fact.
3. A compromise made with an intention of not performing it.
4. Any other act fitted to deceive.
5. Any such act of motive specially declared to be fraudulent.”

The essentials of fraud are:-

- (a) There should be a false statement by a person, who himself does not believed the statement to be true.
- (b) The statement should be made with wrongfully, intention of deceiving another party and inducing him to enter into a contract of that basis.

In KAMALAKANTA Vrs. PRAKASH DEVI AIR 1976, RAJASTHAN 79, It was held that the plaintiff “Kamalakanta filed the suit against his mother Prakash Devi and some others seeking cancellation of a trust deed on the ground that his signature to it were obtained by fraud by falsely telling him that it was a general power of

attorney. The deed in this case attested by the plaintiff's father and an advocate. The plaintiff was an educated man and had all the means to know the contents of the document under this circumstances it was held that there was no fraud in this case.”

In the present case at hand the plaintiff's brother has not brought this suit. Although the sale deed clearly shows about his involvement and his signing of the documents. On the contrary to the opinion by the plaintiff that the alleged sale deed was a fraudulent document, I am of the opinion that the said sale deed given in favour of the defendant is a genuine document. The above view of mine is supported by the evidence of D.W. 1 & 2, which has gone unchallenged. Further more the plaintiff has also stated that there were witnesses namely Judhithira Biswal and other persons at the spot. The same averments have not been challenged by the defendants. Hence at this stage, it can be said that the defendant has failed to prove that fraud has been committed in the alleged sale deed. Although all the witnesses examined by the plaintiff have spoken about the said sale deed being a void document, but nothing specific with regard to the spot has been elucidate by the plaintiff. The burden of prove is on the plaintiff to prove that the said document through which the plaintiff claimed title, is a forged document. The plaintiff has failed to corroborate his claim through oral or documentary evidences and it can be clearly said that the present sale deed is a valid document.

Issue Nos. iv & v.

07. The plaintiff has in his plaint stated the suit land is of an

area of Ac. 0.395 decimals. The plaintiff Gandharba Biswal is the son of Nabin Gochhayat. The plaintiff to prove his claim of right, title, interest has also filed the certified copy of the ROR in khata No. 26 having plot No. 123 & 33 which shows that the said area of Ac. 0.980 decimals and Ac. 0.390 decimals is recorded in the name of Nabin Gochhayat. Although the plaintiff has nowhere in his plaint stated about his brother, but has in his evidence clearly stated that he has the brother and that neither his brother nor his father had made any sale deed in favour of the defendants. In view of the defendants being able to prove the sale deed executed by the brother of the plaintiff has valid, hence it can be clearly said that leaving aside the lands mentioned in the sale deed the plaintiff is the owner along with his brother of the rest of the suit land.

Coming to the question of encroachment over the suit land, it is quite clear that the defendant has clearly proved his claim about ownership of his share of the suit land and that his share of the suit land forms part of the entire suit land. The above documents filed by the defendants, i.e. a registered sale deed and the corroborating oral evidence given by the defendants clearly shows that the defendant has not encroached the suit land on the contrary is owner of a part of the suit land.

Issue No. iii.

08. The defendants have clearly stated that the suit is liable to be dismissed for non-joinder of necessary parties as the plaintiff has

not added his brother, who is a co-owner of the suit land and had sold a part of it to the defendant. The plaintiff has in his evidence at para – 4 admitted about his presence of his brother Gandharba Biswal. In P.W. 3 the plaintiff has examined his brother namely Dandapani Behera. In my opinion P.W. 3 is a necessary party to the suit and without his presence it would have been quite difficult to draw a decree. However, the examination of P.W. 3, i.e. Dandapani Behera, who as per the allegation of the defendants needed to have been made as a party in this suit as clearly contested in this suit and has denied to the allegations of the defendants. Hence in my opinion the suit cannot be dismissed only on the ground for non-joinder of necessary parties.

Issue Nos. i & ii.

09. The plaintiff has clearly stated that the cause of action of this suit arose on 08.09.2009 at about 8.00 A.M. When the defendant forcibly trespassed into the suit property and gathered buffaloes thereon. The defendants have clearly denied to the cause of action as alleged by the plaintiffs and have clearly stated that they have purchased the suit land and all the allegations of the plaintiff as squarely wrong. The plaintiff has failed to prove that the alleged sale deed is a void document and also failed to prove that the defendants have encroached the suit land. Hence in my opinion the plaintiff neither has a cause of action to file this suit and the suit is maintainable according to law.

Issue No. vii.

10. As no specific prayer has been made in this regard, hence no specific order needs to be made. Hence order.

ORDER.

The suit of the plaintiff be and the same is dismissed on contest against the defendants, but in the circumstances without any 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 3rd day of September, 2014.

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

List of witnesses examined on behalf of Plaintiff :-

P.W.1	Gandhar Biswal.
P.W. 2	Yudhistir Biswal.
P.W. 3	Dandapani Biswal.
P.W. 4	Narayan Rautaray.

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

D.W. 1	Nalu Behera.
D.W. 2	Halu Behera.

List of documents proved on behalf of the Plaintiff :-

Ext.1 Certified copy of ROR under khata No. 26 of
mouza Abhimanpur.

Ext. 2 & 2/a Rent receipts.

List of documents proved on behalf of the Defendant :-

Ext. A RSD bearing No. 445 dt. 26.02.1982.

Ext. B to B/15 Rent receipts.

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