

**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 9th day of July, 2014

C.S.72 /2007

1. Late Chandra Mani Nayak, aged about 70 years
S/o: Late Khetra Nayak
Vill: Gada duarsahi, P.O/P.S/Dist: Khurda
 2. Banka Nayak, aged about 33 years
 3. Dasarathi Nayak, aged about 28 years
Both are S/o: Late Chandramani Nayak
Vill: Gada Duarsahi, P.O/P.S/Dist: Khurda
 4. Biki Nayak, aged about 35 years,
D/o: Late Chandramani Nayak
At/Pr.: W/o: Late Pathani Nayak,
Vill/ P.O: Benapanjari, P.S; Jatni, Dist: Khordha
 5. Pinki Nayak, aged about 27 years,
D/o: Late Chandramani Nayak
At/Pr.: W/o: Ulla Nayak,
Vill: Baghathunga, P.O/ P.S: Delanga, Dist: Puri
- Plaintiffs.

-Versus-

1. Gobinda @ Jambua Nayak, aged about 35 years

S/o: Chaitanya Nayak

2. Trinath Nayak, aged about 40 years,

S/o: Sankar Nayak

3. Adhikari @ Gunia Nayak, aged about 25 years,

S/o: Gaji Nayak,

Sl. No. 1 to 3 are of Vill: Gadaduar saha, P.O/P.S/Dist: Khurda

..... Defendants.

4. Kedar Nayak, aged about 45 years

5. Gaura Nayak , aged about 40 years

6. Bauria Nayak, aged about 35 years

7. Aparti Nayak, aged about 35 years,

Sl. No. 4 to 7 are S/o: Late Subash Nayak

Vill: Gada duar Sahi, P.O/P.S/Dist: Khurda

8. Ruma Nayak, aged about 60 years,

Vill: Bilipada, P.O/P.S: Pipili, Dist: Puri

9. Suna Nayak, aged about 55 years

Vill: Gada Duar Ssahi, P.O/P.S/Dist: Khordha

10. Susama Nayak, aged about 42 years,

Vill: Kunjar, P.O/P.S: Pipili, Dist: Puri

Counsel for Plaintiffs ... Budhadev Mohapatra, Advocate
& Associates

Counsel for Defendants ... None

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Date of Argument – 25.06.2014

Date of Judgment – 09.07.2014
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JUDGEMENT

1. The plaintiff has filed this suit with a prayer for passing of a decree of permanent injunction against the defendants prohibiting them from entering upon the suit property and from raising any construction over the same, and restraining them from creating any sort of disturbance in the peaceful possession of the plaintiff.

2. The plaintiff's case in short is as follows;

That he is the Manager and Karta of the joint Hindu Mitakhyara and has filed this suit against the defendant. The suit land appertains to Khata No.260, plot No.123 of an area of Ac 0.080 decimal out of Ac 0.104 decimal and corresponding to Sabik R.O.R of 1929. The same land corresponds to Hal plot No.216 In Hal Khata NO.333 and area of Ac 0.080 decimal. The plaintiff and proforma defendant Nos. 4 to 10 are the owner in peaceful possession of the suit land. The said land was purchased by Khetra Naik who was the father of the plaintiff namely Chandramani Behera , grand father of plaintiff No. 2 to 4 and grand father of proforma defendant No. 4 to 10. by virtue of a registered sale deed No.5848 , dtd. 04.06.1958 executed by one Baban Kandi for a good consideration and that the vendor, Baban Kandhi had delivered the possession of the suit land in favour of Khetra Naik and Dharma Naik and since the date of purchase Khetra Naik and Dharma Naik are in possession over the same. After their death the plaintiff and proforma defendant have succeeded into the interest of Khetra abnd Dharma and are

possessing the same. The suit land is being used by the plaintiff and proforma defendant as a “ Badi” land. The defendants are strangers and they have got no manner of right, title , interest and possession over the same. On 16.12.2007 when the plaintiff who was present over the suit land , the defendants tried to dig a plinth over the portion of the suit land. On 17.12.2007 the defendants gathered sands, stones etc and also threatened to put a Pucca constriction over the suit land. The proforma defendants have got joint interest over the suit land , but as they were absent in the village during filling of this suit, hence they could not be impleaded as plaintiff.

3. The cause of action for this suit arose on 16.12.2007, the date when the defendants tried to dig a plinth over the suit land and on 17.12.2007 when the defendants gathered stones , sands etc near the suit land and threatend to raise Pucca construction over the suit land. Hence the plaintiff has prayed to pass a decree of permanent injunction against the defendant prohibiting them from entering upon the suit land and from raising any construction over the same or creating any sort of disturbance in the peaceful possession of the plaintiff and the proforma defendnats.

4. The defendant Nos. 1 to 3 have appeared and have filed their W.S stating therein that the suit for injunction is not maintainable in the absence of any prayer of declaration of title. The plaintiff , proforma defendant have no semblance of possession over the suit land and as such they are not entitled to seek relief of injunction. Sabik plot no.216 was never purchased by Khetra Naik in fact the plaintiffs and proforma defendants No. 4 to 10 are not the successors of Khetra Naik and his brother Dharama Naik. The plaintiff and proforma defendant have never used the suit land as Badi and they have never raised any crops over the

same. In fact the defendants and their co-sharers are possessing the same since the time of their ancestors, peacefully. The defendants and their co-sharers had two rooms over the suit land, during the time of their ancestors. Those have been demolished in course of time, but the remnants still remain. The question of protest by the plaintiff to the attempt of defendants for putting any construction does not arise at all. In fact it is not the plaintiff, the defendants who have the right, title, interest and possession over the suit land i.e defendant Nos. 1 to 3.

5. Proforma defendant No.4 to 10 have also appeared and filed their W.S stating therein that there is no cause of action to file this suit and that the plaintiff and the proforma defendants Nos. 4 to 10, are the owners in peaceful possession over the suit land having their right, title and interest over the same. The suit land is being used by the plaintiff and proforma defendant no. 4 to 10 as a Badi land over which they used to raise seasonal crops and also they kept fire woods, straw bundles over the same. The defendants are strangers and they have got no manner of right, title interest and possession over the suit land but with an aim to have some illegal gain the defendants are creating disturbance over the same. On 16.12.2007 taking advantage of the absence of proforma defendant Nos. 4 to 10, the defendant Nos. 1 to 3 tried to dig a plinth over a portion of the suit land, but they could not succeed in their attempt due to protest of the plaintiff. Similarly on 17.12.2007 the defendants have gathered stones, sands etc near the suit land and they have threatened to put a Pucca construction over the suit land. The proforma defendant nos. 4 to 10 have joint interest over the suit land and they are over right to safe guard their interest over the same. In the mean time the defendants Nos. 1 to 3 had determined to proceed with the forcible

construction over the suit land without looking into the interest and ownership of the plaintiff and proforma defendant Nos. 4 to 10. during lifetime of Khetra Naik who is the father of the plaintiff and brother of Khetra Naik, namely Dharma Naik purchased the suit land by virtue of the registered sale deed dtd. 04.06.1958 and were in peaceful over it. During their life time and after their death now the plaintiffs and proforma defendants are possessing the suit land peacefully having their right title and interest on it. The defendants Nos. 1 to 3 have no right over the suit land.

6. 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 is possessing the suit land ?
- iv. Whether the defendant Nos. 1 to 3 have tried to encroach over the suit land for making any construction over the same ?
- v. To what relief, is the plaintiff entitled ?

6. In order to prove its case the plaintiff has examined 2 witnesses and has exhibited 2 documents which includes the affidavit evidence of P.W.1 along with Certified copy of 1962 settlement R.O.R of Khata No.333, Ext.3 is a registered sale deed of 5848/ dtd.04.06.1958 and Hal sabik information. While on the other hand to disprove the averments of the plaintiff, the defendant has adduced only one witness, and has not filed any document in that regard.

7. **Issue NO. 3 &4:-**

As these issues are most important to the present case at hand, hence they are taken up together for consideration. Let us first discuss the evidence adduced by both the parties for going to a just decisions of this case.

P.W.1 who is the plaintiff No.1 in this case has in his evidence stated that he knows the suit properties bearing Khata No.260, plot No.123 with an area of Ac 0.080 decimal as per Sabik R.O.R of 1929/30 which corresponds to Hal Khata No.333 to Hal plot No.216. The plaintiff and proforma defendants Nos. 4 to 10 are the owners in peaceful possession over the same having their right, title and interest over it. The suit land was purchased by Khetra Naik who happened to be their grand father and one Dharama Naik who happened to be the grand father of Khetra Naik, by virtue of a registered sale deed NO.5848 , dtd. 04.06.1998, executed by one Babana Kandhi for consideration. The said Baban Kandhi had delivered the possession of the suit land in favour of Khetra Naik and Dharama Naik who remain in possession over the same. During their life time and after their death they i.e the plaintiff and proforma defendants have succeeded to the interest of Khetra Naik and Dharama Naik over the suit land and have become exclusive owner in possession of the suit land. The suit land is used as the “ Badi” land over which seasonal crops were being grown. The defendants are strangers and have got no manner of right, title , interest and possession over the suit land, and with an aim of grabbing the suit land , they are creating disturbance in their possession. On 16.12.2007 the defendants tried to dig a plinth over a portion of the suit land, but due to their protest they could not succeed in their attempts. On 17.12.2008 the defendants gathered

sands, stones etc and threatend to put the pucca construction over the suit land forcibly. In his cross examination he has stated that defendant Nos. 4 to 10 are also the owners in possession over the suit land and along with the aforementioned defendants he and other plaintiff are using the suit land as their “ Badi” land for storage of crops ,fire woods etc.

Defendant Nos. 1 to 3 have got no share and interest in the suit land. He has got no objection if it is held that defendant Nos. 4 to 6 are also owners of the suit land.

8. P.W.2 has in his evidence stated that he knows both the parties and that the plaintiff and proforma defendants Nos. 4 to 10 are the owners in peaceful possession over the suit land. The suit land is used as a Badi over which the plaintiffs and proforma defendants Nos. 4 to 10 raised seasonal crops and keep fire woods, straw bundles etc, since the time of the ancestors of the plaintiff and proforma defendant Nos. 4 to 10. The defendants Nos. 1 to 3 have got no manner of right, title , interest and possession over the suit land. In his cross examination he has stated that the suit land is in Gada Khordha. There are seasional crops over the suit land . Plaintiff and defendant nos. 4 to 10 are the owners of suit land. The defendants Nos. 1 to 3 have no right over the suit land.

9. D.W.1 the only witness examined on behalf of defendants has in his evidence stated that he knows the parties and is the proforma defendant No.5 in the suit property. The suit property are situated in Mouza Gada Khordha and the suit land extends to an area of Ac 0.080 decimal. The plaintiff and the proforma defendant are the owners in possession over the suit land having right, title and interest over the same. The defendant Nos. 1 to 3 have got no manner of their possession or title over the suit land. The suit land is being used as Badi where they

are raising seasonal crops each year and besides that they keep fire woods, straw bundles over the suit land since time of their ancestor. In his cross examination he has stated that the plaintiff are the owners of the suit land and that the plaintiff along with proforma defendants are possessing the suit land. The plaintiff and proforma defendants are cultivating the suit land.

Let us now come into the analysis of exhibits filed by the plaintiff. Ext.2 is the Hal Khata NO.333 having plot No.200 and 216 with an area of Ac 0.005 and AC 0.105 in toto AC 0.110 decimal recorded in the name of one Dama Khandi who is the son of Bhagabat Kandhi. Ext.3 is the registered sale deed executed by one Babane Kandhi who is the original son of recorded owner Dama Kandhi who sold to Khetra Naik and Dharama Naik. The suit land i.e for an area of about Ac 0.080 decimal from Sabik Khata No.260 and Sabik Plot No.123. Ext.4 is an application for information which shows that Hal khata No.333 containing plot NO.216 of Ac 0.105 decimal corresponds to Sabik Khata No.260 and plot No.123. 10. From the above analysis of oral and documentary evidence it is quite clear that the plaintiff has got the title over the suit land by virtue of the registered sale deed and the Hal Sabik co-relation along with the proforma defendants. The documents filed by the plaintiff goes clearly to show their title and possession over the same. The Defendant Nos. 1 to 3 have neither adduced any evidence nor have filed any document in that regard. Hence it can be said that the plaintiff is in possession over the suit land. All the witnesses adduced by the plaintiff and the defendant Nos. 4 to 10 have corroborated that the defendant Nos. 1 to 3 are threatening to start construction over the suit land. Keeping into account the above discussion of evidence, it is quite clear that the

defendant Nos. 1 to 3 have failed to show any of their right over the suit land, it is also proved that without any right or title they are trying to encroach the suit land . Hence the above issues are answered accordingly.

11. **Issue No.1**

The plaintiff has clearly stated that the cause of action of this suit are arose on 16.12.2007 and on 17.12.2007 when the defendants gathered stones etc near the suit land and threatened to raise of Pucca construction over the suit land the defendant nos. 1 to 3 had denied the allegations of the plaintiff and are stated that as they are in possession over the suit land hence there is no question of threatening to the plaintiff. Cause of action is a bundle of rights asserted by one party and denied by another. In this case as both the parties have a common dispute , it can be said that the plaintiff has got cause of action to file this suit.

12. **Issue NO. 2 &5**

As no specific prayer has been made in this regard, hence ordered

ORDER

The suit be and the same is decreed on contest against the defendants, but without costs. But defendant Nos. 1 to 3 are permanently injuncted and prohibited from entering upon the suit land and from raising any construction over the same and not to disturb the peaceful possession of the plaintiff.

(ABHILASH SENAPATI)

CIVIL JUDGE(JR.DIV), KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 9th day of July , 2014.

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

List of witnesses examined on behalf of Plaintiff :-

P.W.1: Banka Nayak

P.W.2: Kedar Nayak

List of witnesses examined on behalf of Defendants. :-

D.W.1 Gaura Nayak

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 Certified copy of 1962 settlement ROR of Khata No.333 of
Mouza Khurda

Ext.3 R.S.D No.5848/ dtd.04.06.1958

Ext.4 Hal Sabik information

List of documents proved on behalf of the Defendants :

NIL

(ABHILASH SENAPATI)
CIVIL JUDGE, KHURDA