

**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 2nd day of September, 2014

C.S. 76/2005.

Prafulla Kumar Majhi, aged about 36 yrs, S/o- Paramananda Majhi, At/P.O.- Saradhapur, P.S./Dist- Nayagarh, presently residing at Sriramnagar (Near postal Colony), Khordha, P.O./P.S./Dist- Khordha.

..... Plaintiff.

-Versus-

1. Smt. Nirupama Ratna, aged about 29 yrs, W/o- Pramod Kumar Sethi, of Vill./P.O./P.S.- Baideswar, Dist- Cuttack present residing at Ramnagar, Khordha, P.O./P.S./Dist- Khordha.
2. Krushna @ Krushna Chandra Pattanaik, aged about 49 yrs, S/o- Rajkishore Pattanaik, of Jajarsingh, Barunei Sahi, P.O./P.S./Dist- Khordha, presently working as Manager Crompton Grieves, Delta Square, Bhubaneswar, P.O.- Siripur, Bhubaneswar, P.S.- Khandagiri, Dist- Khordha.
3. Siba Prasad Mohanty, aged about 49 yrs, S/o- Nrusingha Charan Mohanty of 38 Bapujinagar, Bhubaneswar, P.O.- Bapujinagar, P.S.- Capital Thana, Bhubaneswar, Dist- Khordha, presently working as Executive Engineer, CESCO, Nayagarh Electrical Division, P.O./P.S./Dist- Khordha.

..... Defendants.

Counsel for Plaintiffs

... Sri S.K. Das, Advocate
& Associates.

Counsel for defendant ... Ex-parte.

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Date of Argument – 16.08.2014

Date of Judgment – 02.09.2014
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JUDGEMENT

The plaintiff has filed this suit with a prayer for declaration and equitable relief.

02. The plaintiff's suit in a nutshell is that:-

A piece of land appertaining to mutation plot No. 2573/3735 under khata No. 648/729 having an area of 50 feet X 13 feet from middle and a piece of land appertaining to mutation plot No. 2573/3714 under khata No. 648/711 having an area of 45 feet X 13 feet is the subject matter of the suit land. As per the settlement ROR of the year 1962 John Bania Das and Bira Bikram Das were recorded owner of the entire suit plot in khata No. 174, plot No. 2573 having an area of Ac. 0.430 decimals. For their legal necessity they alienated the are to the extent of Ac. 0.072 decimals from western side of the suit plot to one Muralidhar Pattanaik. After the said transfer the aforesaid recorded owners for their legal necessity alienated an are of Ac. 0.072 decimals from western side of the suit plot to one Muralidhar Pattanaik. After the said transfer the recorded owners for their legal necessity alienated an area of Ac. 0.719 decimals under registered sale

deed No. 420 to Krushna Chandra Pattanaik and also delivered possession to him. Similarly, they have also alienated the rest area from plot No. 2573. consequent upon such transaction the defendant No. 2 was able to mutated his purchased area in the revenue record and therefore, his area got renumbered as plot No. 2573/3714 and a new khata opened bearing khata No. 648/711. Similarly, on the strength of a mutation application the revenue authority has also renumbered the purchased area of defendant No. 3 as plot No. 2537/3735. A patch of government land adjoins on the north to the suit plot No. 2573. Both defendant Nos. 2 & 3 have purchased their respective lands on 07.02.1990 and on the same day delivery of possession was given to them. While the defendant Nos. 2 & 3 were possessing their respective purchased land, they desired to transfer their land in favour of the intending purchasers. For the convenience of the intending purchaser and for their ingress and egress to the main road existing over the government plot they desired to sale out of the land of the east-west direction. The plaintiff being an intending purchaser submitted his offer before defendant Nos. 2 & 3 to purchased a piece of land in his name. Accordingly the two sale deeds were prepared and executed by defendant Nos. 2 & 3 on one day, i.e. on 12.02.2001 in favour of the plaintiff. Sale deed bearing No. 433 has been executed by Krushna Chandra Pattanaik, the defendant No. 2 holds an area to the extend of Ac. 0.036 ½ decimals out of Ac. 0.179 decimals. Similarly, sale deed bearing No. 436 dt. 12.02.2001 was executed by Siba Prasad Mohanty, the defendant No. 3 in favour of the plaintiff, which holds an area of Ac. 0.040 decimals out of Ac. 0.179 decimals from the middle in mutation plot No. 1573/3735. Both the purchased area of the plaintiff

is in continuous plot. Both the vendors of the plaintiff at the time of execution of sale deed left an area to the extent of Ac. 0.014 decimals to the eastern side of his purchased land in favour of the plaintiff as a “road” and the same is also reflected in the respective sale deed. The plaintiff has already muted his purchased land in his favour and as such the land purchased from the defendant No. 2 has been renumbered as plot No. 2573/3714/4141 and the land purchased from defendant No. 3 has been renumbered as plot No. 2573/3735/4142. The plaintiff is paying rent and cess to the government. When the plaintiff had been enjoying the suit schedule land for the purpose of a road from the date of his purchase from defendant Nos. 2 & 3, i.e. since 12.02.2001. The plaintiff had been using the road by surrounding the same by a late rite stone wall. When the matter stood thus the defendant No. 1 purchased some area to the eastern side of the suit plot. i.e. mutation plot No. 2573/3714 & 2573/3735 from defendant Nos. 2 & 3 in the year 2001 where the suit land is now intervening the lands of plaintiff and defendant No. 1. Further the defendant No. 1 has also got her building plan approved from the town planning BDA, Bhubaneswar. Surprisingly on 07.09.2005, the defendant No. 1 erected a wall over on the western side stone pillar get of the suit land causing obstruction over the right of way of the plaintiff over the suit land. On the next day when the plaintiff came to know about such illegal act of the defendant No. 1 he immediately rust to her and request him to remove such an obstruction by showing the sale deed on which he had got the right of way. The defendant derived to such right of way and also did not show the sale deed executed by Krushna Chandra Pattanaik in his favour. Neither Krushna Chandra Pattanaik nor Siba Prasad Mohanty have any

title over them to sale any portion of the suit land in favour of defendant No. 1. If defendant No. 2 had executed any sale deed in favour of defendant No. 1 then it is ifso-facto from. The cause of action for this suit arose on 12.02.2001, when the plaintiff had got the right of way over the suit land. Hence the plaintiff has prayed for declaration stating that he has a land to enjoy the land purchased sale deed No. 433 as a passage, further declaring the defendants have no right to obstruct the same and to mandatorily injunct the defendant to remove the obstruction/ construction from the suit land.

03. On the other hand the defendants although have appeared, but have not taken part in the suit for which they were turned ex-parte.

04. In order to prove its case the plaintiff has examined two witnesses and has exhibited six documents/ includes the affidavit evidence of P.W. 1 & 2 along with certificate of registered sale deed No. 433 and 436 dt. 12.02.2001 and certified copy of mutation ROR in khata No. 648/1162 along with rent receipt.

05. P.W. 1, who is a co-villager has in his evidence stated that he knows both the parties and it seen the suit land, which is present in mouza Jajarsingh having size of 12 to 13 feet covering two plots and was being used as a passage by the plaintiff. Since 10 years back to approach the public road from his dwelling house, situated in the western side of the suit land. The land of the plaintiff and the defendant No. 1 is intervened by the suit land, which was left by their vendors for their common use.

P.W. 2 has in his evidence corroborated the entire plaint.

06. Coming into the documentary evidence it is seen that the certified copy of the registered sale deed No. 433 & 436 shows the plaintiffs share over the suit land. The mutation ROR of khata No. 648/1162 clearly shows that Prafulla Kumar Majhi, i.e. the plaintiff in this suit is the owner of plot No. 2573/3714/4141 and 2573/3735/4142 from the above oral and documentary evidence it is quite clear that as per the registered sale deed the plaintiff has got a right of way passed by the vendor of the plaintiff to him. Hence at this stage the defendant has no right over the disputed land. Hence order.

ORDER.

The suit be and the same is decreed on ex-parte against the defendant, but without cost. The plaintiff has right to enjoy the suit land in pursuance to his purchased land under sale deed No. 433 & 436 dt. 12.02.2001 as a passage from eastern side of his house to the road and the defendants have no right to obstruct the same. The defendants have also mandatorily injuncted and directed to remove the obstruction from over the suit land within a period of three months, failing which the plaintiff is at liberty to take the help of court for removal the same.

Advocate's fee at uncontested scale.

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

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 2nd day of September, 2014.

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

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Bijay Kumar Acharya.
P.W. 2 Prafulla Kumar Majhi.

List of witnesses examined on behalf of Defendants :-

None

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence of P.W. 1.
Ext. 1/1 Signature of P.W. 1 on Ext. 1.
Ext. 2 Affidavit evidence of P.W. 2
Ext. 2/1 to 2/5 Signature of P.W. 2 on Ext. 2.
Ext. 3 Certified copy of RSD No. 433 dt. 12.02.2001.
Ext. 4 Certified copy of RSD No. 436 dt. 12.02.2001.
Ext. 5 Certified copy of Mutation ROR of khata No.
648/1162 of mouza Jajarsingh.
Ext. 6 Rent receipt.

List of documents proved on behalf of the Defendant :-

None

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