

**HEADING OF DECISION IN THE ORIGINAL SUIT.**

**DIST: KHORDHA.**

**IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA**

**PRESENT :-**

*Sri Raj Kishore Lenka  
Senior Civil Judge, Khordha.*

**Dated this the 1<sup>st</sup> day of September, 2014**

**C.S. 107/ 2010**

Jogi Harichandan, aged about 63 yrs, S/o- Late Indramani Harichandan  
of Vill.- Rambhabil, P.O./P.S.- Jankia, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Bhagirathi Harichandan, aged about 70 yrs.
2. Adhikari Harichandan, aged about 65 yrs.
3. Surath harichandan, aged about 60 yrs,  
are sons of Late Raja @ Rajan Harichandan.
4. Trilochan Harichandan, aged about 35 yrs, S/o- Late Dasarathi Harichandan.  
Sl. Nos. 1 to 4 are of Vill.- Rambhabil, P.O./P.S.- Jankia, Dist- Khordha.
5. Banita Das, aged about 55 yrs, D/o- Late Kunja Harichandan, at present W/o-  
Sunei Das, of vill.- Jajpur, P.O./P.S.- Nirakarpur, Dist- Khordha.
6. Basu Harichandan, aged about 66 yrs, S/o- Late Indramani Harichandan.
7. Bidesi Harichandan, aged about 40 yrs, S/o- Late Balabhadra Harichandan.  
Al Nos. 6 & 7 are of Vill.- Rambhabil, P.O./P.S.- Jankia, Dist- Khordha.
8. Indu Harichandan, aged about 60 yrs, W/o- Late Dasha Harichandan.
9. Sukanti Harichandan, aged about 22 yrs, D/o- Late Dasha Harichandan.
10. Basanti Harichandan, aged about 18 yrs, D/o- Late Dasha Harichandan.  
All are of Vill.- Rambhabil, P.O./P.S.- Jankia, Dist- Khordha.

11. Puspalata Harichandan @ Jena, D/o- Late Dasha Harichandan and W/o- Santha  
Jena of Vill.- Kalarajhara, P.O.- Haja, P.S.- Jankia, Dist- Khordha.

..... Defendants.

Counsel for Plaintiff ... Sri T. Baral & Associates  
Advocates, Khordha

Counsel for defendant ... Sri L. K. Pradhan & Associates,  
Advocates, Khordha

.....  
Date of conclusion of Argument – 11.08.2014

Date of pronouncement of Judgment – 01.09.2014  
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### **JUDGMENT**

This is a suit for partition simplicitor.

02. The plaintiff's case is that himself and defendants are joint owners of the landed and homestead property recorded under khata No. 249 of mouza Rambhabil, total measuring Ac. 1.725 decimals (Schedule A property) and under khata No. 402 of mouza Rambhabil total measuring Ac. 0.065 decimals (schedule B property, both schedule A and B properties hereinafter referred to be 'suit property'). As per the plaint, the suit property stands recorded in the ROR of year 1962 in the name of the defendant Nos. 1 to 3 and the ancestors of defendant Nos. 4 to 7. During life time of the recorded tenants they were in joint possession over the suit property and after death of Kunja Harichandan, the suit properties are in joint possession of all as no partition by metes and bounds has been effected between the parties. The plaintiff claims 1/8<sup>th</sup> share over the Schedule A property and 1/12<sup>th</sup> share over schedule B property. Like wise he has mentioned that the defendant Nos. 4 to 6 are entitled to get 1/8<sup>th</sup> share,

defendant No. 7 is entitled for  $1/4^{\text{th}}$  share and defendant Nos. 1 to 3 are entitled for  $1/12^{\text{th}}$  share out of schedule A property and defendant Nos. 1 to 3 are entitled to get  $1/9^{\text{th}}$  share, defendant Nos. 4 & 5 are entitled to get  $1/6^{\text{th}}$  share each and defendant No. 6 is entitled for  $1/12^{\text{th}}$  share each and the defendant No. 7 is entitled for  $1/6^{\text{th}}$  share over schedule B property. It is further contended by the plaintiff that in order to avoid future litigation among the parties the plaintiff requested the defendants on 10.03.2010 for partition by metes and bounds to which the defendants refused and basing on such cause of action he preferred the suit for partition.

03. Initially the defendant Nos. 3,4, 5 & 7 appeared before the court and submitted their written statement by raising no objection in the claim of the plaintiff and basing on which this court settled issue. The suit against defendant Nos. 1, 2 & 6 set ex-parte.

In the mean time, during pendency of the suit defendant Nos. 9 to 11 approached the court to implead them as parties as per the provision U/o- 1 R- 10 (2) CPC and this court after hearing the parties observed that they are the legal successors of Dasha Harichandan, who is the son of one of the recorded tenant namely Kunja Harichandan. Holding them as necessary parties, this court directed the plaintiff to file the consolidated plaint and accordingly the plaintiff has filed his consolidated plaint by impleading defendant Nos. 8 to 11 and the suit is proceeded accordingly. The defendant Nos. 8 to 11 even though participated in the proceeding, did not cross-examined the plaintiff's witnesses.

04. After taking account of rival pleadings of both the parties, the following issues have been settled for final adjudication of the dispute.

**I S S U E S.**

1. Is the suit maintainable?
2. Is there any cause of action to bring such a suit against the defendants?
3. Is the plaintiff entitled for 1/8<sup>th</sup> share from schedule A property and similarly 1/12<sup>th</sup> share from Schedule B property?

05. In order to prove his case three witnesses have been examined on behalf of the plaintiff and none from the side of the defendants. The plaintiff only relied upon one document such as the ROR under khata No. 249 of mouza Rambhail as Ext. 1, which is schedule A property.

**FINDINGS.**

**Issue Nos. 3.**

06. The above being the most pivotal issue is taken up first for consideration.

The plaintiff in the present suit has come with a prayer for partition over two properties as depicted in the plaint as Schedule A & B property. Schedule A property is recorded under khata No. 249 vide Ext. 1 and Schedule B property is recorded under khata No. 402 of mouza Rambhail. Now, before deciding the share of the parties it is quite desirable for the court to see whether the suit property is partible in nature or not?

In the plaint as well as in his evidence in chief, the plaintiff, who is examined as P.W. 3 has stated that the suit property stands recorded in the ROR of 1962, in the name of his grandfather, defendant Nos. 1 to 3 and ancestors of defendant

Nos. 4 to 7. There is no whisper whether the suit property is the joint family property or purchased by the recorded tenants. It is true that partition is a severance of joint status. But the party prior to demand a specific share on partition, has to clarify the nature and the status of the property. Unless and until the nature and character of the property is elucidated, it shall not possible for the court to decide the absolute share of the parties because of the reason that a share is nothing but his specific interest over the specific property what he derived from his status over the said property as well as the nature of the property itself. That being the necessity for a case of partition, challenge by the defendant or not is immaterial. In case the suit property is ancestral and devolved upon the present recorded tenants then the share will be decided according to their manner of inheritance or else if the suit property is the self acquired property of the parties the same may be decided accordingly. But, that fact which is ought to be clarified by the plaintiff, has not been put forwarded. Recording of names in the ROR is not a basis to decide the interest of the parties over his specific property. In an alternative if it is accepted by the court that the claim of the plaintiff has not been challenged by any of the defendants, still it is upon the plaintiff to establish on which basis he has claiming 1/8th share over the suit property or 1/12<sup>th</sup> share over schedule B property. He has to substantiate the reason behind his claim. Unless and until the plaintiff substantiates his claim before the court, there is no scope for the court to accept his bald testimony to be true. The onus always lies on the plaintiff to establish his case convincingly with reasonable fact and circumstances, which is completely lacking in this case.

07. It is further ascertained by this court that defendant Nos. 8 to 11 have impleaded as parties because they have been initially left out by the plaintiff out of the suit matter. Subsequently they came to the court as per the provision U/o- 1 R- 10 CPC filed by the above defendants as this court in its order dt. 19.03.2013 held that they are the legal successors of Dasha Harichandan, who is the deceased son of the recorded tenant late Kunja Harichandan. The plaintiff and defendant No. 6 are also the legal successors of Kunja Harichandan and accordingly the plaintiff amended his plaint, but the surprising fact is that the plaintiff has not reflected anything about the interest of the defendant Nos. 8 to 11 over the suit property. It is true that even though their share has not been reflected in the plaint, the court can grant a specific relief by obtaining necessary information from the pleading as well as the evidence and documents relied upon therein. But, the surprising fact is that no evidence has been adduced with relating to the interest of defendant Nos. 8 to 11 and the plaintiff is completely silent about the share of defendant Nos. 8 to 11. Therefore, the claim of the plaintiff over the suit property by demanding  $1/8^{\text{th}}$  and  $1/12^{\text{th}}$  share over it appears to be out of contest.

08. Apart from the above infirmities, it is further learnt that the plaintiff has committed a gross mistake by not including all the properties for partition at the time of hearing of the suit. He has admitted that schedule A & B properties are recorded jointly in the name of the plaintiff, defendant Nos. 1 to 3 are the successors of defendant Nos. 4 to 7. The suit is heard by this court and the issues have been settled on the said pleading of the plaintiff but he committed another blunder by not adducing any evidence with regards to schedule B property. As per his pleading and examination

chief, schedule B property was recorded under khata No. 402 of mouza Rambhail. But surprising fact is that no document has been relied upon by the plaintiff at the time of exhibiting the documents nor make any prayer at any stage of this case to exhibit the ROR of schedule B property. Therefore, impliedly the plaintiff obviated the schedule B property from partition and this act of the plaintiff implies that he has prompted this court for partial partition.

It is also true that partial partition is permissible in different fact and circumstances of the case and particularly when a specific property is not partible in nature or both the parties have agreed upon not to effect partition of a specific property and to keep it in joint possession, but in the present case the pleading and evidence in chief of the plaintiff clearly reveals that he has come to the court for partition of schedule A & B property, but he only exhibited and produced the schedule A property and remained silent over schedule B property. Therefore, this court cannot *sua sponte* take cognizance of the said fact and will proceed for partition by including the schedule-B property, wherein the plaintiff is not interested for partition. The forgoing discussion leads to the conclusion that the pleading of the plaintiff is not only completely evasive, but also quite misconceived one. Similarly, the evidence adduced from the side of the plaintiff even though not challenged, his attempt for a partial partition by using the process of the court is not maintainable at all. Therefore, the suit properties are not partible in nature and as such the plaintiff is not entitled for the relief as sought for.

**Issue Nos. 1 & 2 .**

09. So far as the question of maintainability is concerned in view of the aforesaid discussion since the plaintiff has come to the court with a evasive pleading and subsequently diverted his case for a partial partition, the suit is not maintainable in nature and accordingly the plaintiff is not entitled for any relief as sought for. Hence it is order.

**ORDER.**

The suit of the plaintiff be and the same is hereby dismissed on contest against the defendant Nos. 8 to 11 while ex-parte against defendant Nos. 1 to 7, but in the circumstances without any cost.

Advocates fees are at contested scale.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 1<sup>st</sup> day of September, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

P.W. 1         Damodar Jena.  
P.W. 2         Meru Pradhan.  
P.W. 3         Jogi Harichandan.

List of witnesses examined on behalf of Defendants :-

None

List of documents admitted on behalf of the Plaintiff :-

Ext. 1         ROR in khata No. 249 of mouza Rambhabil.

List of documents admitted on behalf of Defendants :-

Nil.

Senior Civil Judge, Khordha.