

**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 4th day of July, 2014

C.S. 179/ 2010

1. Niranjan Sahoo, aged about 44 yrs, S/o- Late Chaitanya Sahoo of Vill.- Jhinkijhari, P.O.- Nijigarh Tapanga, P.S.- Khordha Sadar, Dist- Khordha.
2. Smt. Rama Sahoo, aged about 55 yrs., W/o- Nrusingha Charan Sahoo, at plot No. 190/329, Pokhariput, Bhubaneswar, P.O.- Palasapalli, Aerodome Area, Bhubaneswar – 751020, Dist- Khordha.

..... plaintiffs.

-Versus-

1. Pathani Sahoo, aged about 60 yrs, S/o- Late Bauri Sahoo.
2. Siba Sahoo, aged about 47 yrs, S/o- Late Danei Sahoo.
Both are of Vill.- Jhinkijhari, P.O.- Nijigarh Tapanga,
P.S.- Khordha Sadar, Dist- Khordha.

..... Defendants.

Counsel for plaintiffs' ... Sri A. K. Pattanaik and Associates
Advocates, Khordha

Counsel for defendant ... Sri B.D. Mohapatra and associates,
Advocates, Khordha

Date of conclusion of Argument – 25.06.2014
Date of pronouncement of Judgment – 04.07.2014

JUDGMENT

This is a suit for partition and permanent injunction.

02. The plaintiffs' case is that the properties recorded under Sabik khata No. 103 and plot No. 998 of mouza Jhinkijhari, total measuring Ac. 0.30 decimals, corresponding to Hal khata No. 170, plot No. 1109 having an area of Ac. 0.115 decimals and khata No. 332, plot No. 1108 measuring Ac. 0.175 decimals (hereinafter referred to be the suit property) is the ancestral property of both the parties and under joint possession. The suit property stands recorded in the name of Chaitanya Sahoo and Bauri Sahoo. As per the genealogy, Nidhi Sahoo is the common ancestor of both the parties. He has two sons namely Panu and Bauri, both are dead now. Panu is survived by Chaitanya and Bauri is survived by Danei and Pathani. Chaitanya Sahoo died survived by the plaintiffs. Pathani Sahoo is defendant No. 1. Danei is dead survived by defendant No. 2. The plaintiffs' specific case is that the parties to the suit have all sort of right, title, interest and possession over the suit property and they have been paying rent and cess to the government as token of their possession. Even though they have been enjoying their property by mutual arrangement, the plaintiffs' jointly having half share and the defendants having the rest half share over the entire suit property. But, the defendants on 13.04.2010 with the help of hired laborers tried to dig plinth encroaching towards the area under possession of the plaintiffs. The plaintiffs' No. 1 objected the defendants regarding such illegal action, but the defendants turned a deaf ear. It is further contended by the plaintiffs' that on 03.05.2010 the defendants

taking advantage of wrong recording of the ROR in their name, have gathered some construction materials over the suit property. It is again contended by the plaintiffs that the khata No. 332 is recorded in the name of Bauri Sahoo and after his death the said property is in possession of both the parties to the present suit. It is also averred by the plaintiffs' that on 07.05.2010 the plaintiffs' asked the defendants for amicable partition, but the defendants did not agree with the said suggestion and as such the plaintiffs' filed the present suit seeking partition of the suit property as well as permanent injunction against the defendants from alienating the suit property to anybody or to change the nature and character of the suit till the partition is effected.

03. The defendants appeared after being noticed by the court and submitted their joint written statement. Both the defendants in their joint written statement have contended that the suit is not maintainable in the eye of law. There is no cause of action and the suit is also defective for non-joinder of necessary parties. The case of the defendants is that the whole claim of the plaintiffs' over the suit property is baseless, false and misleading. While disputing the whole claim of the plaintiffs', they have to say that the suit property is neither the ancestral property nor in joint possession of both the parties. The nature and character of the suit is complete different and as such the claim of the plaintiffs' regarding his half share over the entire property is not tenable in the eye of law. The specific case of the defendants is that the ROR has been issued during settlement of year 1965 in respect of khata No. 332 and 170 in favour of the ancestors of the defendants and plaintiffs' respectively. The plaintiffs' have no claim over the landed properties recorded under khata No. 332 as by

virtue of an amicable arrangement among the ancestors of the parties, the CS ROR of 1965 in respect of the suit land has been issued in favour of the recorded owners and the ancestor of the parties remained in possession of their landed properties recorded separately in their name and after death of both the recorded tenants their legal heirs are in peaceful possession of the suit property separately recorded in the name of their ancestors. Ultimately, the defendants have to say that there is no cause of action for institution of the suit and as such the suit is liable to be dismissed.

04. The rival pleadings of both the parties give rise of the following issues for an useful adjudication.

I S S U E S.

- i. Is the suit maintainable in the eye of law?
- ii. Is there any cause of action to bring this case against the defendants?
- iii. Whether the plaintiffs are entitled for a decree of partition against the defendants?
- iv. Whether the suit is defective for non-joinder of necessary parties?
- v. Whether the suit properties are the ancestral properties of the parties?
- vi. Whether the plaintiffs are entitled to get ½ share over the suit land?
- vii. Whether the ROR issued during settlement operation of the year 1965 in respect of khata No. 332 & 170 are correct and genuine?
- viii. Whether the plaintiffs have any claim over the landed properties covered under khata No. 332?
- ix. Whether the plaintiffs have right over the landed properties recorded in the name of the ancestors of the defendants in respect of the suit land?
- x. Any other relief which the plaintiffs are entitled to?

05. In order to prove its case, the plaintiff No. 1 only examined himself as P.W. 1. Three documents have been exhibited through P.W. 1, which are as follows -

Certified copy of Sabik ROR in khata No. 103 of mouza Jhinkijhara is marked as Ext. 1, Certified copy of Hal ROR in khata No. 170 of mouza Jhinkijhara as Ext. 2, Certified copy of Hal ROR in khata No. 332 of mouza Jhinkijhara as Ext. 3.

No evidence has been adduced on behalf of the defendants nor any documents has been relied upon.

FINDINGS.

Issue Nos. III, V, VI & VIII.

06. The plaintiffs' have sought for partition of the suit property by claiming the same to be their ancestral property having their joint right, title, interest and possession over the same. Wherein, the defendants have claimed that even though the suit property is the ancestral property of the parties, but as per the amicable arrangement the suit property was recorded separately in the name of the respective ancestors of both the parties and as such the plaintiffs' cannot claim share over the properties, which has been recorded in the name of the ancestor of the defendants in the Hal settlement operation around 45 years back. Now the question crops up whether the suit property by its nature and character is partible or not?

Lets now come to the pleading of the plaintiffs'. In the plaint the suit property has been described to be measuring Ac. 0.30 decimals as per the Sabik khata No. 103 and plot No. 198. To that effect P.W. 1 adduced evidence by supporting the pleading of the plaintiffs' and also exhibited the certified copy of the Sabik ROR to be

Ext. 1, which reveals that properties had been recorded under khata No. 103, plot No. 998 measuring Ac. 0.30 decimals. The further claim of the plaintiff's is that, Ext. 1 corresponds to Hal khata No. 176, plot No. 1109 having an area of Ac. 0.115 decimals and khata No. 332 plot No. 1108 measuring Ac. 0.175 decimals. But not a scarp of paper has been submitted to invite any reference to establish such a fact. Therefore, it is became quite difficult for the court to infer that Ext. 1 relates to the suit property recorded under khata No. 170 & 332 as described above. It may further be noted that the Hal ROR in respect of khata No. 170 has been marked as Ext. 2 and in respect of Khata No-332 as Ext. 3. As per the Sabik ROR vide Ext. 1, the suit property is a homestead property measuring Ac. 0.30 decimals, whereas the property under Ext. 2 extend to Ac. 0.115 decimals and properties under khata No. 332 extend to Ac. 0.175 decimals. P.W. 1 in his cross-examination has deposed that he has filed this case for land measuring Ac. 0.300 decimals of KISAMA "GHARABARI". Taking a note of the said fact this court again reverts back to the documents. Lets assume that during the Sabik settlement operation one Acre of land was measured to be 100 decimals and during Hal operation one acre of land was measured to be 1000 decimals. Therefore, in the Sabik ROR the area has been mentioned to be Ac. 0.30 decimals. If Ac. 0.30 decimals of land as per the Sabik ROR vide Ext. 1 implies 300 decimals, the corresponding Hal ROR is to reflect the exact area of the land as per the subsequently Hal measurement. But, the total area of the land under Ext. 2 & 3 is 290 decimals. There is absolutely no factual match between the area of the land mentioned under sabik khata No. 103 and the so called corresponding record of right under Hal khata

No. 170 and 332 of mouza Jhinkijhari. The plaintiffs' has to explain all the missing circumstances, to establish that he had come to the court in a clean hand with all fairness. It is not the out look of the court to presume any fact to be true without any cogent, concrete and reliable evidence, even though not challenged. The plaintiffs who bring this suit are required to prove their case for an useful and lawful adjudication, which is completely lacking in this case.

07. Needless to say that this is a case for partition, wherein some properties have been involved and for which it is the duty of the court to verify all the documents and events involving therein in order to prevent any miscarriage of justice likely to be occasioned in case any specific order is passed by accepting any incomplete and unproved facts. Therefore, this court has again visited the documents relied upon by the plaintiffs' and not challenged by the defendants. The plaintiffs' have to say that this property is their ancestral property and having their right, title and interest over the entire suit property. On perusal of Ext. 1, it is found that the said property (suit property) belongs to 'JAGANNATH MAHAPRAVU, C/o- superintendent of the king Shri Ramachandra Dev – II. Similarly, the suit property under Ext. 2 & 3 is also recorded in the name of SHRI JAGANNATH MAHA PRAVU BIJE PURI, C/O- Administrator 'JAGANNATH' temple management committee. Now it is crystal clear that 'SHRI JAGANNATH MAHAPRAVU BIJE PURI' is the recorded owner of the entire suit property. The deity being perpetually minor, the property is under the administrative control of the managing committee of Puri temple. Therefore, neither the plaintiffs' nor the defendants can claim a title over the suit property. All the

properties even though recorded in the name of ancestors of both the parties, the nature of their possession has been mentioned to be “EKHARAJITA MAHALA”. The said “EKHARAJITA MAHALA” is an Arabic term implies “Land assigned for expenses’. The king of lord Jagannath is the trusty of the such type of landed property who entrusted the same to others like the ancestor of the present parties. Therefore, the suit property has been allotted to the ancestor of both the parties for the purpose of service to the deity and as such the property cannot be claimed to be the ancestral property of the parties. The whole suit property belongs to 'SHRI JAGANNATH MAHA PRAVU BIJE PURI' and the ancestors of the plaintiffs' and defendants and after them the property being inheritable in nature was devolved upon the plaintiffs' and defendants. Therefore, the plaintiffs' and defendants cannot claim their exclusive right, title and interest over such property. However, their right, interest, and possession over the suit property whatsoever is conditional to the extend of their duties to the deity for which the suit property has been allotted to their ancestors and subsequently devolved upon them. They are bounded by their duties only. It is also true that only the service to the deity or the purpose for which the suit property has been entrusted to their ancestor is partiable, but the property of the deity itself is not partiable at all. Therefore, the entire suit property is not partiable. The claim of the plaintiffs' over the entire suit property including the properties under khata No. 332 is not acceptable at all. The plaintiffs' is not entitled for the relief of partition over the suit property.

Issue Nos. VII & IX

08. So far as the question of recording of the Hal ROR in respect of khata No. 332 and 170 is concerned, issue has been settled by this court reading its genuineness. After going through the pleading as well as the evidence adduced therein it is ascertained by this court that the correctness of the record of right has not been challenged by the plaintiffs' in this case, rather they have claimed their joint possession over the property recorded under khata No. 332 and 170. Basing on such jointness of possession, the plaintiffs' claimed that the properties recorded in both the RORs being their ancestral property and they are in joint possession, even though the same as recorded in the name of Chaitanya Sahoo and Bauri sahuo respectively, the plaintiffs' and defendants are equally entitled for half share each. Since the genuineness is not under dispute, and no evidence has been adduced thereon, it is the opinion of this court that such issue under the above circumstances needs no answer. But, so far as the right of the plaintiffs' over the suit property is concerned, in view of the forgoing discussion it has already been held that the right of the plaintiffs and the defendants are confined to the service of the deity for which the suit property has been provided to the ancestor/ancestors of both the parties by the recorded owner of the suit property and accordingly the said right was devolved upon the plaintiffs' and defendants only for enjoyment of the suit property consequent upon their service to the deity. The above issues are answered accordingly.

Issue Nos. I, II, IV & X.

09. The defendants in their written statement have rightly raised the question of maintainability on the ground of non-joinder of necessary parties and

regarding the maintainability of the suit. In the written statement the plaintiffs' have specifically averred that all the properties of both the parties have not been included for partition and the suit is also defective for non-joinder of necessary parties. Coming to the first question regarding maintainability of the suit for the reason of partial partition, it is quite pertinent to have a look at the pleading of the plaintiffs'. In the pleading the plaintiffs' specifically stated that both the parties have some ancestral landed property, which is the subject matter of the suit. In the cross-examination, P.W. 1 has specifically and categorically stated that besides the suit land they have other agricultural land measuring Ac. 0.650 decimals recorded in the name of chaitanya Sahoo. The said Chaitanya Sahoo is the ancestor of the plaintiffs'. If the bare pleading of the plaintiffs' as above is accepted, he has to say that all the properties are ancestral property. But He has only included the properties recorded in the name of Chaitnaya Sahu, father of th plaintiffs and Bauri Sahu, father of defendant no-1 and grand father of defendant No-2 and left the other property recored in the name of such Chaitnaya Sahu. However in face of admission by the plaintiff No-1 (P.W-1) that they have other agricultural land, which has not been included in the present suit for partition, he clearly admitted that they have came to the court for partial partition, which is not permissible in the eye of law. Though it was not included at the time of institution of the suit, after the filing of the written statement by defendant, it is become the bounden duty of the plaintiffs' to include all the properties recorded in the name of common ancestor for partition. A partial partition cannot be entertained.

10. So far as the question of non-joinder of necessary parties is concerned, the legal aspect to that effect has already been discussed by this court. The suit belongs to SHRI JAGANNATH MAHA PRAVU BIJE PURI. He is the recorded tenant of the whole suit property. Being the recorded tenant and real owner of the suit property, he is a necessary party to the suit, in absence of which a proper adjudication is not possible. The recorded owner of the suit property being not impleaded, the suit is also defective for non-joinder of necessary parties. The suit is not maintainable in nature. The plaintiffs' in view of the forgoing discussions are not entitled for any relief. Hence it is order.

ORDER

The suit of the plaintiffs' be and the same is hereby dismissed on contest against the defendants, 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 4th day of July, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of plaintiffs's :-

P.W. 1 Niranjan Sahoo.

List of witnesses examined on behalf of Defendants :-

None

List of documents admitted on behalf of the plaintiffs' :-

