

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANPUR.

Present:

Sri Satya Ranjan Pradhan, LL.B.,
Senior Civil Judge, Banpur.

Civil Suit No.12/132 of 2014/2006

Paadma Charan Khuntia, aged about 69 years,

S/o Late Gobardhar Khuntia of Vill: Vhasiri,

Po: Anatarkiari, P.S: Banpur, Dist: Khurda.

... Plaintiff.

-Versus-

1. Umakanta Jena, aged about 52 years, S/o Rankanath Jena.
2. Ramesh Jena, aged about 45 years, S/o Rankanath Jena.
3. Rankanath Jena, aged about 87 years, S/o Late Krushna Jena.

All are of Vill: Vhasiri, Po: Anatarkiari, P.S:
Banpur, Dist: Khurda.

.....Defendants

Counsel for the plaintiff ... Sri S.N.Mahapatra, Advocate
& his Associates.

Counsel for the defendant No.1 ... B.D. Mahapatra, Advocate
& his associates.

Counsel for the defendant No.2 & 3 ... B.S. Satapathy, Advocate
& associate.

Date of Argument – 15.07.2014

Date of Judgment – 21.07.2014

J U D G M E N T.

This is a suit for permanent injunction.

2. The case of the plaintiff, as per the plaint is:-

That the suit property situated in Mouza Damodarpur, pertaining to Khata No.8, Chaka No.50, & Plot No.220 with an Area of Ac.1.580 decimals corresponding to Sabik Khata No.02 and Plot No.108/153 was originally owned by one Achhuani Dei who was the wife of Defendant No.3 and mother of defendant No.1 and 2. In the year 1992 she died after a prolonged disease. For her treatment defendant No.3 had incurred loan from others. For repayment of the said loan the defendant No.3 thought it to dispose of the suit land by way of mortgage. Therefore he proposed to lease out the suit land to the plaintiff for a consideration of Rs.1,00,000/-, The said proposal was accepted by the plaintiff. Accordingly on 25.01.1993 the defendant No.3 executed a permanent lease deed for a consideration of Rs.1,00,000/- in favour of the plaintiff. As per the terms and conditions of the lease deed the plaintiff will possess the suit property and will make it suitable for cultivation. In return the plaintiff will give ten nauties of paddy to the defendant NO.3 per year. The plaintiff claims that although the said deed was an unregistered deed still then he had acquired a good possessory right over the suit property in view of his long standing possession, and the defendants after the execution of the sale deed although have no right, title & interest over the suit property are creating disturbances over it. On 12.062006 all the defendants with mischievous intention came in a group and threatened to dispossess the plaintiff from the suit property. Submitting the aforesaid facts the plaintiff filed the suit praying

to pass a decree of permanent injunction against the defendants thereby restraining them from entering into the suit property and disturbing the peaceful possession of the plaintiff.

Being summoned all the defendants appeared. Out of them only defendant Nos 2 & 3 filed their W.S but filed it separately. Defendant No.1 was set ex-parte on 14.10.2011. In his W.S the defendant No.2 denied all the averments made by the plaintiff in his plaint. In his W.S he clearly mentioned that his mother Achhuani Dei did not die out of prolonged illness rather met her death naturally at the age of 65. He categorically denied about the execution of lease deed by defendant No.3 in favour of the plaintiff and also denied about the claim of the plaintiff that he is in possession over the suit property. As per the facts mentioned in the W.S this defendant along with his brother defendant No.1, father defendant No.3 and his sister are possessing the suit property whereas after the death of their mother the plaintiff who is having no interest over the suit property claiming his right over it by virtue of a forged document which was never executed by defendant No.3. In addition to that he claim that the suit is not maintainable on the ground of limitation and for non-joinder of necessary party. Citing the aforesaid fact he prayed to dismiss the suit filed by the plaintiff.

Like defendant No.2 defendant No.3 filed his W.S denying all the averments made by the plaintiff in his plaint. He also categorically denied to have executed any lease deed in favour of the plaintiff rather claimed

the said deed relied by the plaintiff to be a forged one. So far as the possession over the suit property is concerned it was claimed by the defendant No.3 that after the death of his wife their children such as defendant Nos. 1,2 and her daughter Pratima Jena are possessing the suit property. Citing the aforesaid facts he also prayed to dismiss the plaint of the plaintiff.

4. On the above pleadings of the parties the following issues were settled.

I S S U E S.

- 1) Is the suit is maintainable ?
- 2) Is there any cause of action for the plaintiff to file the suit?
- 3) Whether the suit is barred by limitation?
- 4) Whether the plaintiff is entitled for permanent injunction as prayed for?
- 5) Is the plaintiff entitled to any other relief?

5. In order to substantiate his case the plaintiff has examined only one witness. On the other hand the defendant No.2 examined himself as D.W.1 and produced documents like ROR and rent receipts of the suit land which were marked as Ext. A & B series.

F I N D I N G S.

6. Issue No.4 :- This being the most important issue is taken first for discussion.

In this issue it is to be determined as to whether the plaintiff is entitled for any permanent injunction against the defendants or not. As revealed from the plaint the plaintiff is claiming his possession over the suit property on the basis of 'lease deed' said to be executed by defendant No.3. It was the duty of the plaintiff to prove the same. It is admitted by the plaintiff that the suit property was originally owned by Achhuani Dei. After her death her husband i.e. defendant No. 3 had executed the lease deed and by virtue of that deed he claims to be in possession of the suit property and has prayed to restrain the defendants permanently from entering into it. Although the onus was on the plaintiff to prove the aforesaid facts, he did not appear in the court to adduce evidence from his side. Not only that he did not examine himself from his side but also he did not mark that 'lease deed' basing upon which this suit was instituted. However he only produced one witness namely Bulu Khuntia who is not a witness to the alleged lease deed. As per the version of the said witness he has seen the suit property being possessed by the plaintiff since last 20 years. On the other hand defendant No.2 examined himself as D.W.1. As per his version after the death of her mother he along with his brother defendant No.1 and sister Pratima Jena are in possessing the suit property. The suit property is also recorded in their names in the consolidation proceeding. To substantiate the same he filed the consolidation ROR pertaining to the suit property which is marked as Ext.A from the side of

the defendants. In addition to that he filed the rent receipts which are marked as Ext.B series. While deposing he further denied the averments made by the plaintiff in his plaint regarding the execution of lease deed in his favour. In a civil case the standard of proof is different from that of a civil case. Here the standard of proof is not so much strict. The party who asserts the existence of a fact must prove his case on the touch stone of 'preponderance of probability'. It is defined as 'the greater weight of the evidence superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. Simply saying it means "the pre existence of fact which is more probable than not". On evaluating the evidence adduced by both the sides it is found out that although the onus was on the plaintiff to establish his claim over the suit property he could not discharge the said onus by adducing proper evidence which is beyond the preponderance of probabilities. On the other hand as revealed from the Exts.A & B series defendant No.1 and 2 along with their sister are the recorded tenant of the suit property as such no order can be passed as claimed by he plaintiff against the defendants.

7. Issue No.1:- So far as the maintainability of the suit is concerned the defendants claimed that the suit is not maintainable on the ground of non-joinder of necessary party and on the ground of its being a suit for permanent injunction simplicitor. During course of the

argument of the case the counsel for appearing for the defendants submitted that as the suit property stands recorded in the name of Defendant Nos. 1, 2, 3 and the sister of D.W.1 & 2 Pratima Jena the said Pratima Jena should have been impleaded as one of the party in the suit but the plaintiff did not make Pratima Jena as one of the defendant for which the suit is not maintainable. That apart, as the suit property stands recorded in the name of the defendants a simple suit for permanent injunction is not maintainable. In addition to the present prayer for permanent injunction the plaintiff should have prayed for declaration of his right, title & interest over the suit property. In absence of such declaration this suit is not maintainable in the eye of law. On perusal of the case record the alleged submission made by the learned counsel for the defendants are found to be true and in my opinion the present suit is not maintainable on the aforesaid ground.

Issue Nos 2,3 & 5

8. Although these issues were framed basing upon the rival pleadings of both parties. However no evidence was adduced by both the parties concerning these issues. None agitated these issues during hearing or argument of this suit. Hence no findings are given on these issues. Hence it is ordered.

O R D E R.

The suit be and the same is dismissed on contest against the defendants no.2 and 3 but ex parte against defendant no.1, but in the circumstances without cost.

Advocate's fee is at the contested scale.

Senior Civil Judge, Banpur

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 21st day of July, 2014.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1 Bulu Khuntia

List of witness examined on behalf of defendants :-

D.W.1 Ramesh Jena

List of documents admitted into evidence by the Plaintiff:-

Nil

List of documents admitted into evidence by defendants :-

Ext-A ROR

Ext..B to B/4 Rent receipts.

Senior Civil Judge, Banpur.