

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANPUR.

Present:

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

C.S. 05/231 of 2014/2011

Pramod Mohapatra, aged about 35 years,
S/o Late Paban Mohapatra of Vill: Bisunidih,
Po: Khanata, P.S: Banpur, Dist: Khurda.

.....Plaintiff.

-Versus-

1. Laxmidhar Mohapatra, aged about 60 years, S/o Raghunath Mohapatra
 2. Adikanda Mohapatra, aged about 55 years, S/o Raghunath Mohapatra
 3. Narasingha Mohapatra, aged about 50 years, S/o Raghunath Mohapatra
- All are of Vill: Bisunidih, Po:Khanata, Po: Banpur, Dist: Khurda.

..... Defendants.

4. Satya Manjari Mohapatra, aged about 65 years, W/o Late Pabana Mohapatra
of Vill: Bisunidih, Po: Khanata, P.S: Banpur, Dist: Khurda.
5. Pratima Baral, aged about 42 years, D/o Late Pabana Mohapatra
A/P W/o Surendra Baral of Vill/Po: Kuhudi, P.S:Tangi, Dist: Khurda.
6. Pramila Mallik, aged about 38 years, S/o Late Pabana Mohapatra
A/P W/o Sukumar Mallik of Vill: Chasa Khanda, Po: Mangalpur,
P.S/Dist: Jajpur.
7. Mamata Mohapatra, aged about 32 years, S/o Late Pabana Mohapatra A/P
W/o Bikash Mohapatra of Chakeisiani, Po/P.S: Rasulgada , Bhubaneswar,
Dist: Khurda.

..... Proforma Defendants

Counsel for the plaintiff ...

Sri S.K.Lenka, Advocate
& his Associates.

Counsel for the defendants

Sri S.N.Mishra Advocate
& his associates.

Date of Argument – 03.01.2015

Date of Judgment – 09.01.2015

J U D G M E N T

1. This is a suit for partition filed by the plaintiff Pramod Mohapatra.
2. The case of the plaintiff as per the plaint is that:

The suit properties are the ancestral properties of the parties. so far as

the relation of the parties are concerned it is mentioned in the plaint that the defendants No.1,2 and 3 are the paternal uncles of the plaintiff proforma defendant No.4 is his mother and proforma defendant No.5 to 7 are his sisters. Regarding the suit properties it is mentioned that the suit properties are their joint properties and they are possessing it jointly till date. Out of the schedule properties, schedule-A properties stands recorded in the name of Late Pabana Mohapatra (who is father of the plaintiff and defendant No.5 to 7) along with defendant Nos. 1 to 3. Similarly schedule -B property stands recorded in the name of Pabana Mohapatra, defendant Nos. 1 to 3 and one Subani Mohapatra who happens to be the deceased mother of defendant No.1 to 3 and grand mother of plaintiff and proforma defendant Nos. 5 to 7. After her death as well as the death of Pabana Mohapatra the plaintiff and defendants are possessing the schedule 'B' property. Like wise schedule -C property stands recorded in the name of Pabana Mohapatra and Adikanda Mohapatra (defendant No.2). Regarding the cause of action for filling of the suit the plaintiff claimed that due to the misunderstanding among the parties now it is not possible on their part to hold the suit property jointly For that on 22.07.2011, he went to the defendants and asked for partition requesting 1/4th interest for himself as well as for proforma defendant No.4 to 7 over schedule A and B properties and 1/2 interest out of schedule C property. But the defendants did not listen to him. For the aforesaid reason the plaintiff had filed the present suit claiming his share as well as the shares of proforma defendants as per the aforesaid ratio over schedule A, B & C property. On perusal of the present amended plaint and previous plaint it reveals that although initially the suit was instituted for partition of schedule A, B and C property

the plaintiff further included schedule D,E,F,G and H properties by way of amendment. However no prayer was made in the prayer portion of the plaint regarding the division of the said properties as well as his interest over it.

3. Being summoned all the defendants appeared, however filed separate W.S. The defendant Nos. 1 to 3 and 4 to 7 filed two separate W.S. In their W.S filed by the defendant Nos.1 to 3 they admitted the fact that the schedule A,B and C properties are their joint property that they are possessing it jointly as there was no previous partition between them. However they claimed that the plaintiff had omitted certain joint family properties deliberately from the present suit. So they mentioned the list thereof in schedule -I of the W.S. So far as the interest of the parties over the suit properties is concerned it is admitted by these defendants that the plaintiff along with defendant No.5 to 7 jointly entitled to have $1/4^{\text{th}}$ share out of the schedule -B property and defendant Nos 1 to 3 are having $1/4^{\text{th}}$ interest each over the same. Similarly they admitted the claim of the plaintiff over schedule C property. So far as Schedule-A property is concerned it is claimed by these defendants that it was jointly recorded in the name of Pabana Mohapatra (the father of the plaintiff and proforma defendant Nos. 5 to 7) along with defendant Nos.1,2 and 3. By an amicable arrangement defendants No.1 had sold his share of 55 decimals of land out of 220 decimals of land in Plot No.219 to Pabana Mohapatra and defendant No.2 through a registered sale deed bearing No.691 dated 2.5.97. It is further claimed by these defendants. That Schedule- C property is a part and parcel of Schedule-A property. So as per the aforesaid sale the plaintiff and proforma defendant Nos. 4 to 7 are entitled to have $1/3^{\text{rd}}$ share jointly and defendant Nos 2 and 3 are entitled to have

1/3rd share each over the schedule A property in Plot No.219 having total area of Ac.0.220 decimals and defendant No.1 has no interest over rest schedule-A property as he had sold his interest as mentioned earlier. Citing the aforesaid facts these defendants claimed to make partition of the suit property in the aforesaid manner.

Proforma defendant No.4 to 7 have filed their WS jointly. In their W.S they questioned about the maintainability of the suit along with the reason for filling the suit against them. However they admitted the other claims made by the plaintiff in his plaint.

4. On the above pleadings of the parties the following issues were settled.
 - 1) Whether the suit properties are partible in nature?
 - 2) Whether the plaintiff, proforma defendant No.4 to 7 are entitled to have 1/4th share and defendant No.1 to 3 are entitled to have 1/4th share each over the schedule A and B property?
 - 3) Whether plaintiff, proforma defendant No.4 to 7 are entitled to have 1/2 share and defendant No.2 is entitled to have 1/2 share over Schedule C property?
 - 4) Whether by an amicable arrangement defendant No.1 had sold his share of Ac.0.055 decimals of land in Plot No.219 to Pabana Mohapatra and defendant No.2 through R.S.D No.691 dated 02.05.1997?
 - 5) Whether Schedule-C is a part an parcel of schedule-A property and that plaintiff and proforma defendant Nos 4 to 7 are entitled to 1/3rd share jointly out of the said property whereas defendant No.2 & 3 are entitled to have 1/3rd share out of in Plot No.219 of schedule A property?
 - 6) Whether each co-sharer is entitled to have 1/4th share over schedule-1 property of the W.S.
 - 7) To what other relief the plaintiff is entitled to?
5. In order to substantiate his case the plaintiff had examined four witnesses

including himself as P.W.4 and proved certain documents in his favour as Ext.1 to 8. Similarly the defendants examined one witness on their behalf and relied upon certain documents.

F I N D I N G S.

6. Issue No. 1

So far as this issue is concerned on perusal of the plaint it reveals that the suit was instituted for partition of the schedule A to H properties. However during course of argument of the suit the counsel for the defendant No.1 to 3 raised objection for partition of schedule D, E, F and G properties on the ground that as some other recorded tenants are there along with the plaintiff and defendants they should have made parties to the present suit. But as they are not made parties in their absence the said properties can not be partitioned. On perusal of the ROR it reveals that the suit property in Khata No.191 is recorded in the name of Pabana Mohapatra, Laxmidhar Mohapatra, Adikanda Mohapatra, Narasingha Mohapatra, Subani Mohapatra, Jagannath Mohapatra and Rankanath Mohapatra. The property in Khata No.192 is recorded in the name of Pabana Mohapatra, Laxmidhar Mohapara, Adikanda Mohapatra, Narasingha Mohapatra, Dusasana Barik, Kubera Barik and , Gouranga Barik. The property in Khata No.193 is recorded in the name of Pabana Mohapatra, Laxmidhar Mohapatra, Adikanda Mohapatra, Narasingha Mohapatra, Subani Mohapatra, Jagannath Mohapatra, Rankanath Mohapatra, Brajasundar Subudhi, Nabina Sundar Subudhi, Muralidhar Subudhi and Bijay Kumar Subudhi. The property in Khata No. 194 is recorded in the name of Pabana Mohapatra, Laxmidhar Mohapatra, Adikanda Mohapatra, Narasingha Mohapatra,

Subani Mohapatra, Jagannath Mohapatra, Rankanath Mohapatra, Brajasundar Subudhi, Nabinasundar Subudhi, Bijay Kumar Subudhi. Out of those persons only the legal heirs of Pabana Mohapatra and defendant No.1 to 3 were made parties . So in my opinion the properties mentioned under schedule D,E, F & G can not be partitioned in absence of those recorded tenants. So far as the other properties under schedule A,B,C & H are concerned there are some properties which are Chaka land which can not be partitioned as per Section.34 of the Orissa consolidation of Holding and Prevention of fragmentation of land Act-1972. Which reads as follows:- Sec. 34(1) No agricultural land in a locality shall be transferred or partitioned so as to create a fragment. The definition of fragment is provided U/s 2(m) of the said Act which reads as follows:- "fragment means a compact parcel of agricultural land held by a land owner by himself or jointly with others comprising an area which is less than (i) one acre in the district of Cuttack, Puri, Balasore and Ganjam and in the Anandapur subdivision in the district of Keonjhar, and (ii) two acres in the other areas of the state..... On perusal of the schedule of properties along with the copy of R.O.Rs filed by the plaintiff it reveals that Plot Nos.407 &743 under Khata No.190 and Plot Nos.548,582,770 in Khata Noa.187 are Chaka lands which can not be partitioned . However the rest properties mentioned in schedule A, B,C & H are partible in nature.

ISSUE NO.S. 2,3,4. 5,6 & 7

As these issues are interrelated with each other, these are taken together for discussion. Here we have to carve out the shares of each parties to the suit. On perusal of the plaint it reveals that the plaintiff has claimed 1/4th share out of schedule

A & B property for himself and proforma defendant No.4 to 7 jointly and $\frac{1}{2}$ share out of schedule C property. By way of amendment of the plaint the plaintiff had included schedule D,E,F, G & H properties in the schedule of the property, but no prayer has been made claiming any share out of those properties which seems to be inadvertence. As the plaintiff had included those properties in the schedule of the plaint it seems that the plaintiff had shown his intention for severance of jointness of status from others. As discussed in the preceding issue the properties under Schedule D,E,F & G are not partible. Similarly Plot No.548,582 & 770 out of schedule H property are also not partible as the plaintiff had not made all the legal heirs as parties. Now the question will arise whether such type of partial partition is permissible? And the answer is yes. Partial partition in respect of property or person is permissible. If one person wants to sever his jointness from some people and wants to continue his joint status with other coparcener he can do so. By virtue of this principle the property under schedule D,E,F & G could have been partitioned but for effective partition the presence of other coparcener was necessary. As the plaintiff had not made those coparcener as party the aforesaid property could not be partitioned but there is no problem including his share from other properties.

Here in the suit the plaintiff had claimed $\frac{1}{4}$ th share for himself as well as for proforma defendants Nos.4 to 7 jointly from schedule A & B property and $\frac{1}{2}$ share out of the schedule -C property. On the other hand although the defendant No.1 to 3 admitted the claim of the plaintiff in respect of the schedule-B and C property raised doubt regarding his portion of share with respect to schedule A property. In the W.S filed by defendant No.1 to 3 it was claimed that there is no separate existence of

schedule-C property and it is a part and parcel of Schedule-A property. Out of the total area Ac.0.220 decimals in Plot No.219 under Khata No.189 defendant No.1 had sold his share Ac.0.055 decimals to Pabana Mohapatra and defendant No.2 Adikanda Mohapatra. So the plaintiff along with proforma defendant No. 4 to 7 are having $1/3^{\text{rd}}$ interest over the suit property whereas defendant No. 2 & 3 are having $1/3^{\text{rd}}$ interest each over Schedule A property in Plot No. 219. Further it was mentioned in the said W.S. that as defendant No.1 had sold his share to others in the aforesaid manner. He has no interest over rest portion of schedule-A property. Although this is their statements as per the W.S but while being examined as D.W.1 Laxmidhar Mohapatra did not disclose the same. He only disclosed that the property described in the schedule-C of the plaint is a portion of Schedule-A property and it was sold by him to Pabana Mohapatra and defendant No.2 equally. Similarly no documentary evidence was also adduced to prove the same. On perusal of the ROR of schedule -C property it reveals that the schedule A property is recorded in the name of Pabana and Adikanda only. Although the other facts were claimed by these defendants in their W.S. they could not able to justify it during the course of the hearing of the suit. On the other hand the proforma defendant No.4 to 7 had admitted the claim of the plaintiff. So considering the fact that as well as perusing the ROR filed by the parties the claim of the plaintiff is allowed. He is having $1/4^{\text{th}}$ interest over Schedule- A and B and plot No.593 of Schedule -H property along with proforma defendant No.4 to 7 jointly ($1/20^{\text{th}}$ share individually) defendants No1 to 3 are having $1/4^{\text{th}}$ share each out of the said property. Similarly the plaintiff, proforma defendant No.4 to 7 are having $1/2^{\text{th}}$ share jointly ($1/10^{\text{th}}$ share individually) out of schedule -C property like

wise defendant No.2 have $\frac{1}{2}$ share out of the Schedule C property. As the list of property mentioned in the schedule of the W.S was included in the plaint by way of amendment no relief as mentioned in issue no.6 can be awarded separately. Hence it is ordered.

O R D E R.

The suit be and the same is preliminarily decreed in part on contest against the defendants but without cost.

The plaintiff and proforma defendant No.4 to 7 are entitled to have $\frac{1}{4}$ th interest over Schedule- A and B and Plot No. 593 of Schedule- H property jointly and $\frac{1}{20}$ th interest individually, defendants No1 to 3 are entitled to have $\frac{1}{4}$ th share each out of the said property. Similarly the plaintiff, proforma defendant No.4 to 7 are entitled to have $\frac{1}{2}$ th share jointly and $\frac{1}{10}$ th share individually. Similarly the defendant No.2 is entitled to have $\frac{1}{2}$ share over the suit property. Both the parties are directed to effect partition among themselves by metes and bounds within 2 months hence. Failing which any party to the suit is at liberty to effect the partition of the said properties through the process of law.

Advocate's fee is at the exparte scale.

Sr. Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 9th day of January, 2015.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1	Dibyasomgja Mahapatra
P.W.2	Arun Kumar Biswal

P.W.3. Pramod Mahapatra

List of witness examined on behalf of defendants :-

D.W.1 Laxmidhar Mohapatra

List of documents admitted into evidence by the Plaintiff:-

Ext-1 ROR No.189

Ext.2 ROR No.190

Ext.3 ROR No. 414/87

Ext.4 ROR No.191

Ext.5 ROR No.192

Ext.6 ROR No.193

Ext.7 ROR No.194

Ext.8 ROR No.187

List of documents admitted into evidence by defendants :-

Nil

Senior Civil Judge, Banpur.