

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANPUR.

Present:

Sri Satya Ranjan Pradhan, LL.B.,
Senior Civil Judge, Banpur.Civil Suit No 116/65 of 2014/2013

1. Mina Kumari Senapati, aged about 57 years, W/o Late Gobinda Senapati.
 2. Gayatri Senapati, aged about 30 years, W/o Umasankar Subudhi.
- Both are of Bazarsahi, Banpur, Po/P.S:Banapur, Dist: Khordha.

..... Plaintiff.

-Versus-

1. Prafulla Kumar Sundaray, aged about 50 lyears, S/o Srihari Sundaray of Vill: Kumandal, Po/P.S:Balugaon, Dist: Khordha
 2. Khagesh Kumar Paikray, aged about 47 years, S/o Paramananda Paikaray of Vill: Paramananda Paikaray, At:: Dikhitipada, Po/P.S:Banpur, Dist: Khordha
-Defendants.
3. Bibekananda Senapati, aged about 27 years, S/o Late Gobinda Senapati, At:Main Road, Balugaon, Po/P.S: Balugaon, Dist: Khordha.
 4. Rekha Senapati, aged about 34 years, W/o S. Sankar , At: Berhampur, Krishnapeta Sahi, P.S: Badabazar, Po: Berhampur, Dist: Ganjam.
 5. Rithu Senapati, aged about 33 years, W/o Bibhuti Bhusana Patra, At: Baramunda, Jagamara, P.S: Khandagiri, Po: Bhubaneswar, Dist: Khordha.
 6. Pinki Senapati, aged about 32 ;years, W/o Prasanta Choudhury, At: L.I.C,Colony, Balugaon, Po/P.S: Balugaon, Dist: Khurdha.
 7. Suneli Senapati, aged about 28 years, W/o Chinari Dwarikanath Subudhi, At/Po: Mundamari, P.S: Dharakot, Dist: Ganjam.

..... Proforma Defendants.

Counsel for the plaintiff ...

Sri M.K.M . Mohapatra, Advocate
& Associates.

Counsel for the defendants

Sri S.K Mahapatra, Advocate
& associates.

Date of Argument – 21.01.2015

Date of Judgment – 02.02.2015

J U D G M E N T.

1. This is a suit filed by the plaintiffs for declaration of right, title, confirmation of possession and permanent injunction.

2. The case of the plaintiffs as per the plaint is that:

That the plaintiffs as well as the proforma defendants No.3 to 7 are the joint owners of the Schedule property situated in Mouza Balugaon under Khata No.321/146 and Plot No. 1267 with an area of Ac.0.285 decimals. As per the plaint the said suit land originally with an area of Ac.0.570 decimals was previously recorded in the name of D.Damodar Patra. After his death his successors in interest through their power of attorney holder D. Pradeep Kumar Patra sold the suit land with an area of Ac.0.285 decimals out of total Ac.0.570 decimals from Plot No.1267 to Gobinda Senapati who is father of proforma defendant No.3 to 7, plaintiff No.2 and husband of plaintiff No.1. On 27.04.2004 vide registered sale deed No.365 for a consideration of Rs.1,00,000/-. After payment of the consideration amount Gobinda Senapati was given the possession of the suit property. The other properties of Gobinda Senapati situated adjoining to the suit property towards its East and North. After purchase of the suit land Gobinda Senapati amalgamated the suit property with the land of his wife and possessed it in one compact area. Further after its purchase he mutated the said land in his name vide mutation case No.2097/2004. Accordingly mutation ROR was prepared in the name of Gobinda Senapati and the suit land was given a new Khata No. as 321/1104 and Plot No. 1267/2831. Separate map also prepared for the aforesaid plot. The said Gobinda Senapati died in the year

-2006 leaving behind both the plaintiffs and proforma defendant No.3 to 7. However on 11.02.2013 the defendant No.1 and 2 created nuisance over the suit property and tried to encroach upon the southern boundary line of the suit plot. They claimed that they have purchased the same from its recorded tenant. Thereafter the proforma defendant No.3 had filed a proceeding before the Executive Magistrate Khurda U/s 144 of Cr.P.C. which was registered as Misc case No.145/2013. In the said Misc case the defendants were restrained from entering into the suit land. It is contended by the plaintiffs, that in the said proceeding the defendants No.1 and 2 had claimed that they had purchased the suit land from one Gadadhar Patra on 09.02.2007 vide R.S.D No. 255. Now it is the claim of the plaintiff that as they are the first purchaser of the suit property the vendor of the subsequent sell do not have any right, title or interest over the suit property to confer the same in favour of defendant No.1 and 2. Citing the aforesaid fact the plaintiffs prayed to pass a decree declaring their right, title & interest as well as that of pro- defendant No.3 to 7 over the suit property and to pass a permanent injunction against the defendant No.1 and 2 thereby restraining them to come over the suit land.

3. All the defendants had appeared in the suit but did not file the show cause. Defendant No.1 and 2 were debarred from filing the W.S on 5.12.2013 as they did not file their show caused in time. On that day also proforma defendant No.3 to 7 were set exparte. Although defendant No.1 and 2 debarred from filing the W.S they were participating in the further proceeding of the suit till 27.06.2014. On that day they did not appear and were set exparte. Again from 5.7.14 they appeared and filed their haziras. On 17.09.2014 when the suit was posted for argument both the

defendants filed a petition U/s 151 C.P.C for allowing them to file the W.S and further to allow them to contest the suit . This court vide its order dated 24.11.2014 had allowed them to participate in the further hearing of the suit but rejected there contention to file W.S.

4. No issue was framed as the defendants did not file their W.S. However the plaintiffs have to prove that they have got the right, title and interest over the suit property thereby , they are entitled for the aforesaid prayer made in the plaint.

5. In order to substantiate its case the plaintiff No.1 examined herself as P.W.1 and proved certain documents. On the other hand defendants examined none.

6. Here in the suit to substantiate their claim the plaintiff No.1 examined herself as P.W.1. Regarding the acquiring of the suit property and its namer of possession it was stated by P.W.1. During her examination in chief that the suit property situated in Mouza Balugaon under Khata No.321/146 Plot No.1267 with an area of Ac.0.285 decimals stands recorded in the name of D. Damodar Patra. After the death of D. Damodar Patra the said property devolved upon his successors. The successors of late D.Damodar Patra through their power of attorney holder D. Pradeep Kumar Patra for their legal necessity sold an area of Ac.0.285 decimals from northern side out of Ac.0.570 decimals from Plot No. 1267 under Khata No. 321/146 of Mouza Balugaon to Gobinda Senapati on dated 27.04.2004 vide R.S.D No.465 after receiving consideration amount of Rupees one lakh. He also handed over possession of the suit property to the vendee Gobinda Senapati. As her property situated to the east and north of the purchased property all the said properties were amalgamated with each other and they possessed it in one compact area. The

land also mutated by Gobinda Senapati in to his name vide Mutation case No.2097/04. Accordingly mutation R.O.R was also prepared in the name of Gobinda Senapati and a separate mutation Khata No.321/1104 & Plot No.1267/2831 with an area of Ac.0.285 decimals was prepared. In this regard the plaintiff had produced the said sale deed along with the mutation R.O.R marked as Ext.1 & 2. Further it was stated by P.W.1 that her husband Gobinda Senapati died in the year 2006 leaving behind herself along with five daughters i.e. Plaintiff No.2 and proforma defendant No.4 to 7 and one son Bibekananda the proforma defendant No.3. After his death the suit land devolved upon them. To substantiate the same she produced the death certificate of Gobinda Senapati along with the legal heir certificates which supports her claim. So far as filing of the present suit is concerned it was stated by her that although they were possessing the suit land peacefully from the date of its purchase. The defendant No.1 and 2 created nuisance over it on 11.02.2013 and tried to encroach upon its southern boundary line by claiming that. They have purchased the same from its recorded tenant. Thereafter the proforma defendant No.3 had filed a proceeding before the Executive Magistrate Khurda U/s 144 of Cr.P.C. which was registered as Misc case No.145/2013. In the said Misc case although the defendants were restrained from entering into the suit land. However it is claimed by her that in the said proceeding the defendants No.1 and 2 had claimed that they had purchased the suit land from one Gadadhar Patra on 09.02.2007 vide R.S.D No. 255. Now it is the claim of the plaintiff that as they had purchased the suit property in the year 2004 the vendor of the subsequent sell did not have any right, title or interest over the suit property on 9.02.2007 to confer the same in favour of

defendant No.1 and 2. The said plaintiff was not cross examined by the contesting defendants so her statement remained unchallenged and accepted as it is. No other witness was examined from either side. From the said oral statement of P.W.1 as well as documents submitted by her it reveals that the averments which were made by plaintiffs in their plaint is correct. Late Gobinda Senapati had purchased the suit land vide sale deed marked as Ext.1. It was also subsequently mutated in his name. After his death the interest of the suit land devolved upon the plaintiffs and proforma defendant No.3 to 7 as they are the legal heirs of late Gobinda Senapati so they have got the exclusive ownership over the suit land and has the right to enjoy it to the exclusion of others. Hence order.

O R D E R.

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

The plaintiffs and proforma defendant No. 3 to 7 have got their right, title, interest over the suit land and their possession over the suit property is hereby confirmed. The defendants here by directed not to interfere and cause any sort of disturbance in the peaceful possession of the plaintiffs and prof-defendant No.3 to 7 over the suit property .

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 2nd day of February, 2015.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1 Mina Kumari Senapati.

List of witness examined on behalf of defendants :-

Nil

List of documents admitted into evidence by the Plaintiff:-

Ext-1 Certified copy of sale deed.

Ext.2 ROR No.321/1104

Ext.3 Rent receipt.

Ext.4 Death certificate.

Ext. 4 R.O.R. Bearing No.64 of Mouza Ankula.

Ext.5 Issue of legal heir certificate.

List of documents admitted into evidence by defendants :-

Nil

Senior Civil Judge, Banpur.