

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANPUR.

Present:

Sri Satya Ranjan Pradhan, LL.B.,
Senior Civil Judge, Banpur.Civil Suit No. 140/104 of 2014/2010Trinath Moharana, aged about 51 years, S/o Ramakrushna Moharana
of Vill: Aswaripatna, Po: Badakul, P.S: Balugaon, Dist: Khurda.

..... Plaintiff.

-Versus-

1. Ramakrushna Moharana, aged about 80 years, S/o Late Agadhu Maharana.
2. Gaurahari @ Dusasan Moharana, aged about 35 years, S/o Rama Krushan Moharana.
3. Smt. Hema Dei, aged about 72 years, W/o Ramakrushna Moharana . (Dead and expunged)
4. Sanjaya Kumar Moharana, aged about 7 years, S/o Gaurahari @ Dusasan Moharana, monor represented through father guardian Gaurahari @ Dusasan Maharana. Sl. No. 1 to 4 are of Vill: Aswaripatna, Po: Badakul, P.S: Balugaon, Dist: Khurda.
5. Sarojini Moharana, aged about 49 years, W/o Dibyasingha Moharana of Vill: Nimina, Po:Baulabandha, P.S: Banpur,Dist: Khurda.
6. Sukanti Maharana, aged about 47 years, W/o Mahendra Maharana of Vill/Po: Soran, P.S:Tangi, Dist: Khurda.
7. Saibani Moharana, aged about 45 years, W/o Rabi Moharana of Vill/Po: Hadapada, P.S: Jankia,Dist: Khurda.

.....Defendants

Counsel for the plaintiffSri N.Misahra, Advocate
& his Associates.Counsel for the defendants Sri S.K.Lenka, Advocate
& his associates.

Date of Argument – 22.12. 2014

Date of Judgment – 27.12.2014

J U D G M E N T .

1. This is a suit filed by the plaintiff Trinath Moharana for partition, declaration and for permanent injunction.

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

One Agadhu Moharana was the common ancestor of all the parties. The said Agadhu Maharana died leaving behind three sons namely Ramakrushna, Laxman and Satrugan. Originally the defendant No.1 Ramakrushna Moharana and his brother Laxman and Satrugan were staying in their paternal house situated at Bania sahi of Vill: Aswaripatna.

After it was sold defendant No.1 and his brother shifted to their maternal uncle's house situated at Mangaraj sahi. After death of Bhikari Maharana (maternal uncle of defendant No.1 and his brothers) his homestead land was jointly recorded in the name of defendant No.1 and his brothers. During their joint possession disturbances started between them for which defendant No.1 transferred his 1/3rd interest over the suit property in favour of his brothers namely Laxman and Satrugan for a consideration of Rs.500/- in the year 1968. Out of such sale proceed defendant No.1 had purchased the present disputed property for a consideration of Rs.400/- in the name of his wife i.e. defendant No.3, vide R.S.D. No. 2010 dated 14.04.1968 from one Budhi Bewa. Even though the defendant No.1 could not purchase the disputed property but could not able to construct any house over it due to his little income and continued to occupy certain rooms in his paternal uncle's house. During that period in the year 1981 the present plaintiff who is the eldest son of defendant No.1 went to Baghdad to work as a labour and continued to work there till July, 1983. During his tenure at Baghdad he had sent money regularly to defendant No.1 through Bank amounting more than Rs.1,00,000/- and other valuable items. Out of such money the defendant No.1 had constructed four roomed asbestos houses over the suit land with all other accessories and started leaving over it since 1982. Further out of the money sent by the plaintiff defendant No.1 spent money for the marriage of his daughter who are arrayed as defendant Nos.5 to 7. After returning from Baghdad he was serving in Gujarat for 2 ½ years and was sending money to the defendant No.1. Out of which the entire family affairs was being maintained. In due course of time the defendant No.2 became wayward and regularly addicted to wine for which disruption between them was started. Defendant No.1 and 3 being the parents supported defendant No.2 instead of cautioning him for which the matter was aggravated. Subsequently meeting was arranged wherein the property was amicably distributed among all the parties. As per the terms of the said compromise the plaintiff was to begin the

construction work of his house but could know from the villagers that defendant No.2 fraudulently got the suit property transferred in favour of his minor son defendant No.4 from defendant No.3. Thereafter he made inquiry in the Sub-Registrar office Banpur and found the matter to be true. Although he asked about such transfer from defendant No.3 she denied about such transfer of the property and had told to the plaintiff that the defendant No.2 had obtained her L.T.I on some papers on the pretext that he will apply for old age pension of her. Citing the aforesaid facts the plaintiff prayed to declare the R.S.D bearing No.227 dated. 3.2.2010 executed by defendant No.3 in favour of defendant No.4 to be fraudulent, null and void and not binding upon him, along with the prayer for passing the preliminary decree for partition allotting $\frac{1}{2}$ share in his favour and for passing permanent injunction against the defendant from interfering with his peaceful joint possession of the suit property.

3. All the defendants appeared in the suit and filed a joint W.S denying all the averments made by the plaintiff in his plaint. It is the claim of the defendants that after the death of Bhikari Moharana the properties were recorded in the name of defendant No.1 along with some others. Due to inconvenience defendant No.1 had left the said house after purchase of the suit property by defendant No.3, out of her (defendant No.3)own fund. After construction of a thatched house over it, defendant No.1 along with defendant No.3 and their family members shifted to the said house. So far as sending of money by the plaintiff is concerned it was claimed by the defendants that the plaintiff at no point of time had contributed a single pie either for construction of a house or for maintenance of the family affairs. Rather the defendant No.3 and 1 out of their own money with the help of defendant No.2 constructed a house which exists over the suit land. The plaintiff was working in Baghdad and after his return he started serving at the local police station as home-guard. After his marriage as per the advise of his wife he voluntarily had deserted the family and started living separately. After the plaintiff met with an accident he was brought to the house and was

assisted and treated by the family members. After recovery he demanded front portion of the house without looking to the interest of other family members. He also assaulted the defendant No.2 and tortured the defendant No.s 1 and 3. It is claimed by the defendants that the plaintiff never supported the old parents (defendant No. 1 and 3) rather assaulted them with the help of his wife and daughter, moreover as he was working in the police department he used to harass them in many ways. So far as transferring the suit land in favour of defendant No.4 is concerned the suit land was in fact transferred by defendant No.3 in favour of defendant No.4 and that was not fraudulent or sham but due to legal necessity the same was transferred. Citing the aforesaid facts the defendants prayed to dismiss the suit of the plaintiff.

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

- 1) Whether the suit is maintainable ?
- 2) Whether there is cause of action for the plaintiff to bring the suit?
- 3) Is the suit barred by limitation?
- 4) Whether the suit is defective for non-joinder of necessary parties?
- 5) Whether the Regd. Sale deed No.227 dated 3.2.2010 executed by defendant No.3 in favour of defendant No.4 is a fraudulent one?
- 6) Whether the suit property is partible by metes and bounds among the parties allotting half share in favour of plaintiff?
- 7) What relief, if any, the plaintiff is entitled to?

5. In order to substantiate his case the plaintiff has examined only six witnesses including himself as P.W.6 and proved certain documents in his favour. On the other hand the defendants examined four witnesses and produced certain documents.

F I N D I N G S.

6. Issue No.5 & 6 :-

These issues are inter linked with each other here are taken together for discussion.

Here in the suit the plaintiff claims to declare the sale deed bearing No.227 dated 3.2.10 executed by defendant No.3 in favour of defendant No.4 to be void and

fraudulent one and further claimed for partition. As per the pleadings of both the parties and documents furnished by them it is quite clear that the suit land stood recorded in the name of defendant No.3. As it was recorded exclusively in the name of defendant No.3 it was sold to defendant No.4. The plaintiff challenged its validity and legality with a prayer to declare the registered sale deed as void along with a prayer for partition. The basis on which such claim was made by the plaintiff is that (i) even though it was purchased and recorded in the name of defendant No.3 she was not the defacto owner of the suit land as defendant No.1 had purchased it in her name out of the money received after selling his share from the maternal uncle's property to his brothers and that even though the suit land was purchased no house could be constructed over it due to the poor financial condition of the family. Only after he went to Baghdad and send money the said house over the suit land could be constructed so it is a joint family property and (ii) secondly on the ground that the said suit land which was executed in favour of defendant No.4 by defendant No.3 was fraudulently obtained by defendant No.2 who is the father guardian of defendant No.4. Looking at the grounds which were taken by the plaintiff I am of the opinion that onus of proving the aforesaid facts lies on him. So as to establish the aforesaid facts the plaintiff had examined as many as six witnesses on his behalf including himself as P.W.6. So far as the first ground of objection is concerned it is the consistent plea of the plaintiff that although the suit land stood recorded in the name of defendant No.3 it was purchased by defendant No.1 in the name of defendant No.3 out of the sale proceed which he had received after selling his share of land to his brothers. To establish the same he had produced the witnesses like P.W.1,2 and 3 who stated that 'the ancestral house of the plaintiff at Bania Sahi was sold since long'. Thereafter the father of the plaintiff along with his brothers went to their maternal uncle's house situated at Mangaraj sahi in the same village. The defendant No.1 and his brothers inherited the said property and defendant No.1 sold his 1/3rd share to his other brothers about 40 years back

and out of that money this present suit land was purchased in the name of defendant No.3. The plaintiff also while being examined as P.W.6 stated the same-thing. On the other hand the defendants including the defendant No.1 and 3 denied such fact and claimed that the suit property was purchased by defendant No.3 out of her own fund. Apart from that defendant No.1 while being examined as D.W.3 further claimed that such allegation made by the plaintiff is false and he has never sold his share to his brothers rather he had instituted a partition suit against his brothers for his share out of that property and the said case was also decreed in his favour. To substantiate the same he produced the judgment and decree passed by the Court of Civil Judge (Jr.Divn) Banpur in T.S. 01/01 marked as Ext.C. On perusal of the said judgment and decree it reveals that in fact defendant No.1 had instituted a partition suit against his brothers claiming his 1/3rd share over the properties and that was decreed in his favour. So the claim made by the plaintiff seems not to be correct. So far as the witness Nos. 1,2 and 3 are concerned although they stated the aforesaid facts as discussed, neither they were the witnesses to the alleged sell so made by defendant No.1 in favour of his brothers nor a witness to the alleged purchase of the suit land by defendant No.3. Similarly although those facts were mentioned in the affidavits which were submitted as examination in chief of the said witness during their cross examination they (P.W.1 & 2) denied their knowledge about the contents of the said affidavit (para-7 of cross examination of P.W.1 & para- 6 of cross examination of P.W.2). So considering the aforesaid fact as well as going through the alleged Regd. sale deed marked as Ext.A it seems that the plaintiff could not able to establish such claim made by him.

Regarding the construction of house over the suit property and to consider the aforesaid suit land to be a joint family property the plaintiff claimed that in the year 1981 he went to Iraq to work as a dadan labour. There he worked for more than 2 ½ years and during his tenure at Iraq, he had sent money to his father worth of Rs.1,00,000/- which was utilised

for construction of the house over the suit land where in the family members are residing. In this regard he also stated that as because it was a joint family property several meetings were held for partition of the suit property. To substantiate the same he had produced the witnesses like P.Ws 1,2 ,3, 4 & 5. Out of them P.Ws 1,2 and 3 had categorically supported the claim of the plaintiff saying that the plaintiff had been to Iraq to work as a dadan labour from where he had sent money and out of that money the house over the suit land was constructed. Similarly P.Ws 3,4 and 5 stated about the meetings which were held to resolve the dispute between the parties wherein it was settled to divide the property amicably between the brothers. In order to substantiate the same the plaintiff had produced the documents such as the letter which were written by defendant No.1 to the plaintiff acknowledging the receipt of some money as well as the minute of the meeting held to resolve the dispute which were produced and marked as Ext.1. and Ext.3 to 5. From Ext.3 to 5 it is quite clear that the plaintiff had sent some money to the defendant No.1 who is his father for maintenance of the family affairs. But it is not clear from the said letters as to whether that money was utilised in the construction of the house over the suit property. On the other hand contrary to the submissions made by the counsel for the plaintiff, the counsel for the defendants submitted that the suit land was the exclusive property of defendant No.3 and by virtue of of his stay over the said house the plaintiff can not claim the same to be a joint family property and the defendant No.3 had every right to deal with that property as per her own will. In this regard he relied upon section 14 of the Hindu Succession Act -1956 which reads as follows:-

14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. tc "14. Property of a female Hindu to be her absolute property.—(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner." Explanation.—In this

sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act. tc "Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property. "(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

By submitting the aforesaid provision of law he further raised a question that when the property was in the name of defendant No.3 in her absence when the plaintiff and defendant No.1 and 2 made any settlement which was marked as Ext.1 how far that is binding upon the defendant No.3 and how the property can be said to be joint family property as only defendant No.3 allowed others to live in the said house. As discussed earlier the plaintiff had failed to establish that the suit land was purchased out of the money which was received by defendant No.1 after selling his share of land to his brothers. On the contrary as revealed from

the recitals of the sale deed marked as Ext.A that the suit property was produced by defendant No.3 out of her own fund and as rightly pointed out by the learned counsel for the defendants 'any property held by a female Hindu whether it was acquired before or after commencement of Hindu Succession Act the same shall be considered to be her absolute property'. As the suit land was purchased by defendant No.3 out of her own fund she became her absolute owner, irrespective of the fact that she allowed the plaintiff to stay over there. So far as the construction of the house is concerned although the plaintiff tried to establish his claim, I am of the opinion that he could not able to establish the same on the basis of preponderance of probabilities . Similarly as far as Ext.1 is concerned although the plaintiff tried to establish the fact of joint family property by relying upon that document. On perusal of that documents itself it revealed that it is an unregistered documents and that property worth more than Rs.100/- and the defendant No.3 was not a party to that settlement. In her absence any agreement entered into by the plaintiff and defendant Nos. 1 and 2 in respect of the suit land upon which she(defendant No.3) was the exclusive owner, she was not bound by the same.

The last ground on which the plaintiff challenged the deed executed by defendant No.3 in favour of defendant No.4 is that the defendant No.2 by practising fraud upon defendant No.3 could able to get the sale deed executed in favour of defendant No.2 from defendant No.3. In this regard he has mentioned in the plaint that after he came to know about such sale made by defendant No.3, he went to defendant No.3 and asked about the alleged sale. Being asked defendant No.3 told him that she had not executed any such deed in favour of defendant No.4 rather defendant No.2 had obtained her signature on a paper on the pretext that he will apply old age pension for her. It is a settled principle of law that one who alleges fraud must establish the fact of fraud. The plaintiff in order to establish the same also stated the same thing during his examination in chief. On the other hand the defendant No.3 who is

her mother denied such allegation in the W.S filed by her and claimed that she voluntarily had transferred the suit property in favour of defendant No.4. As because defendant No.3 died during the pendency of the suit she could not be examined. On the other hand defendant No.1 (her husband) and her daughters (defendants No. 5 to 7) also disclosed about such transfer made by the defendant No.3 and it was stated by the said witnesses that before transfer of such property she (defendant No.3) had consulted with them which indicates that no such fraud was practised upon the defendant No.3 for executing the sale deed. From the aforesaid discussion it reveals that although the plaintiff alleged about practising of fraud upon the defendant No.3 he could not able to produce any cogent evidence establishing his claim. In absence of the same it can not be said that the aforesaid sale deed was fraudulently obtained and was not binding on the plaintiff. Similarly as the property was the exclusive property of defendant No.3 who had transferred the same of her own in favour of defendant No.4 the same can not be partible further, thereby allotting any share in favour of the plaintiff.

Issue No. 2, 3 and 4.

7. During the course of hearing either party did not press these issues. Hence no findings.

Issue No.1., & 7

8. So far as the maintainability of the suit is concerned it is not specifically mentioned in the W.S submitted by defendants as to on which ground they claim the suit to be not maintainable. Similarly the defendants during hearing of the suit did not press this issue. So far as any other relief to which the plaintiff is entitled to is concerned, considering the aforesaid discussions I am of the view that the plaintiff is not entitled to any other relief.

O R D E R.

The suit be and the same is dismissed on contest against the defendants but in the circumstances without any 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 27th day of December, 2014.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1 Jatia Paikray.
P.W.2 Dinabandhu Paikray.
P.W.3 Prafulla Paikray.
P.W.4 Golakha Manasingh
P.W.5 Haramohan Pattnaik
P.W.6 Trinath Maharana

List of witness examined on behalf of defendants :-

D.W.1 Sabitri @ Saibani Maharana
D.W.2 Sarojini Maharana.
D.W.3 Ramakrushna Maharana.
D.W.4 Sauri Maharana

List of documents admitted into evidence by the Plaintiff:-

Ext.1 Mutual agreement.
Ext. 1/a Signature of P.W.1.
Ext.1/b Signature of P.W.6
Ext.1/c Signature of Rama Krushna Maharana.
Ext. 1/d Signature of Dhusasana Maharana.
Ext. 2 Certified copy of R.S.D. No.297/10.
Ext.3 Letter dated 10.04.82.
Ext.4 letter dated 25.04.82
Ext.5 letter dated 27.08.82.
Ext.6 letter dated 5.7.83.
Ext.7 Pass port.
Ext.8 Air Ticket.
Ext.9 Return ticket.
Ext.10 Photo identity card.
Ext.11 Attendance sheet
Ext.12 Passbook

List of documents admitted into evidence by defendants :-

Ext-A Sale deed

Ext.B Sale deed No.228 dt. 3.2.10

Ext.C Certified copy of judgment & decree in T.S.1/01.

List of documents admitted into evidence by Court.

Ext. X Copy of settlement.

Senior Civil Judge, Banpur.