

IN THE COURT OF THE SENIOR CIVIL JUDGE BANPUR.

PRESENT:-

Sri Satya Ranjan Pradhan,  
Senior Civil Judge, Banpur.

C.S. No 188/2014

Bangali Das, aged about 28 years,  
S/o Late Bhaskar Das.

Vill: Gualadih, Po: Punjiama,

P.S:Banpur, Dist: Khordha

... Plaintiff.

-Versus-

1. Indra Das, aged about 77 years, S/o Late Raghu Das of Vill: Gualadih, Po: Punjiama, P.S: Banpur, Dist: Khordha.
2. Kala Das, aged about 45 years, W/o Subala Das of Vill/Po: Pratap, P.S: Banpur, Dist: Khordha.
3. Nayan Das, aged about 43 years, W/o Babula das of Vill: Manikpur, Po: Pratap, P.S: Banpur, Dist: Khordha.
4. Jhunu Das, aged about 40 years, W/o Kalu Das of Vill: Chasangara, Po: Dibyasinghapur, P.S: Balugaon, Dist: Khordha.
5. Chhaila Das, aged about 38 lyears, W/o Kabi Das of ill: Chasangara, Po: Dibyasinghapur, P.S: Balugaon, Dist: Khordha.
6. Phula Das, aged about 60 years, W/o Late Bauri Das of Vill: Gualadiha, Po: Punjiama, P.S:Banpur, Dist: Khordha.
7. Pratima Das, aged about 38 years, W/o Bainsi Das, Vill: Aranga, Po: Niladriprasad, P.S:Banpur, Dist: Khordha. A/P: Gualadiha, Po: Punjiama, P.S:Banpur, Dist: Khordha.
8. Jayanti Das, aged about 36 years, W/o Bana Das of Vill: Beruanbadi, Po: Badasireipur, P.S: Banpur, Dist: Khordha.
9. Bipra Das, aged about 33 years, S/o Late Bauri Das of Vill: Gualadiha, Po: Punjiama, P.S:Banpur, Dist: Khordha.
10. Batua Das, aged about 31 years, S/o Late Bauri Das of Vill: Gualadiha, Po: Punjiama, P.S: Banpur, Dist: Khordha.
11. Pabhi Das, aged about 28 years, S/o Late Bauri Das of Vill: Gualadiha, Po: Punjiama, P.S:Banpur, Dist: Khordha.
12. Sisula Das, aged about 52 years, W/o Late Bhaskar Das of Vill: Gualadiha, Po: Punjiama, P.S: Banpur, Dist: Khordha.
13. Jamuna Das, aged about 30 years, W/o Amina Das of Vill: Manikpur, Po: Pratap, P.S: Banpur, Dist: Khordha

.... Defendants.

Counsel for Plaintiffs ... Sri B.Pradhan, Advocate  
and associates.

Counsel for defendants ... None.

Date of Exparte Argument – 15.01.2015

Date of Exparte Judgment – 27.01.2015

### EXPARTE JUDGMENT

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

The plaintiff and the defendants are the descendants of one common ancestor namely Raghu Nahak in whose name the ROR of the homestead land stands recorded. The said Raghu Nahak subsequently changed his surname from Nahak to Das. The said Raghu Nahak died leaving behind him three sons namely Indra Das, Bauri Das and Bhaskar Das. Out of the three sons Bauri Das and Bhaskar Das are dead now. Defendant No.6 to 11 are the legal successors of Late Bauri Das plaintiff along with defendant No.12 and 13 are the legal successors of late Bhaskar Das. So far as the schedule properties are concerned it is claimed by the plaintiff that the schedule A property stands recorded in the name of Raghu Nahak which is a gharabari property. Over the said Schedule-A property the ancestral dwelling house of the parties situates. In due course of time the family members of Raghu Nahak had increased. So for their convenience the legal successors of Bauri Das had shifted to Indira Abas house, so the Schedule-A property was inherited by Indra Das being the Karta of the joint family. As per one partition deed bearing No. 1574 dated 4.6.1987 legal successors of Raghu Nahak , Nadu Nahak, Kaibalya Nahak

Aintha Nahak and Jhasa Nahak partitioned their joint property measuring an area Ac.4.683 decimals in five plots of Khata No.30 and 32 situated in mouza Kandha Punjiama. Out of that property an area Ac.0.213 decimals in Plot No. 5/236 pertaining to Khata No.32 fell in the share of Indra Das defendant No.1 upon which one Indra Abas house was built. As per the amicable settlement the legal successors of Bauri Das are residing in the said Indra Abas house. The ROR of which stands recorded in the name of Indra Das (defendant No.1). The plaintiff along with other legal successors of late Bhaskar Das and defendant No.1 are residing in the ancestral dwelling house situated in schedule -A property. Defendant No.1 Indra Das has no son. All his daughters had got married, and are living in their matrimonial house. His wife was also expired. So far as the Schedule-B property is concerned it is mentioned in the plaint that the plaintiff and defendants are in joint possession over it. The ROR of Schedule- B property stands recorded in the name of three sons of Rghu Nahak, namely Indra Das, Late Bauri Das and Late Bhaskar Das. So far as the filing of the present suit is concerned it was claimed by the plaintiff that the cause of action arose on 30.01.2014 when he approached the defendants for partition but all the defendants gave a deaf year on it. Citing the aforesaid fact the plaintiff prayed to pass preliminary decree for partition allotting 2/3<sup>rd</sup> share to him from the 'B' schedule property and the entire property in schedule -A property in his favour.

3. Being summoned the defendants did not appear or file their W.S. Accordingly they were set ex-parte.

4. No issue was framed as the defendants did not file their W.S. However the plaintiff has to prove that he has got 2/3<sup>rd</sup> interest over Schedule-B property and full interest over over Schedule-A property.

5. To prove its case the plaintiff examined himself as P.W.1 and proved some documents marked on his behalf as Ext.1 & 2.

6. Here in the suit to substantiate his claim the plaintiff examined himself as P.W.1. During his examination in chief he stated that he along with all the defendants are the descendants of one common ancestor namely Raghu Nahak. The said Raghu Nahak changed his surname from Nahak to Das after the settlement. The said Raghu Nahak had three sons namely Indra Das, Bauri Das and Bhaskar Das. Before filing of the suit Bauri Das and Bhaskar Das were dead and Indra Das died during hearing of the suit. Defendant No.6 to 11 are the legal successors of Late Bauri Das and he along with defendant No.12 and 13 are the legal successors of late Bhaskar Das. Defendant No.2 to 5 are the successors of Indra Das. So far as the right of the parties over Schedule-A property is concerned it was stated by him that Schedule- A property which is a gharabari property stands recorded in the name of Raghu Nahak over which the ancestral dwelling house of the parties situates. In due course of time the family members of Raghu Nahak had increased. So for their convenience the legal successors of Bauri Das shifted to Indira Abas house, so the Schedule-A property was inherited by Indra Das being the Karta of the joint family. As per the one partition deed bearing No. 1574 dated 4.6.1987 legal successors of Raghu Nahak , Nadu Nahak, Kaibalya Nahak Ainth

Nahak and Jhasa Nahak partitioned their joint property measuring an area Ac.4.683 decimals in five plots of Khata No.30 and 32 situated in mouza Kandha Punjiama. Out of that property an area Ac.0.213 decimals in Plot No. 5/236 pertaining to Khata No.32 fell in the share of Indra Das (defendant No.1) upon which Indra Abas house was built. As per the amicable settlement. The legal successors of Bauri Das are residing in the said Indra Abas house. The ROR of which stands recorded in the name of Indra Das (defendant No.1) now he ( plaintiff) along with other legal successors of late Bhaskar Das and defendant No.1 ( till his death)are residing in the ancestral dwelling house. Defendant No.1 Indra Das had no son. All his daughters had got married and are living in their matrimonial house. His wife has also expired. Defendant No.1 was staying with him and he was looking after him till his death and performed his funeral ceremony in the year 2013. In the year 2013 the legal successors of late Bauri Das approached the other legal successors of late Raghu Das for partition. All of them agreed upon such partition and accordingly the defendant No.1 transferred the Indira Abas dwelling house to the legal successors of said late Bauri Das". So far as Schedule B property is concerned it was stated by P.W.1 ( Plaintiff ) that the said properties are their ancestral cultivable landed properties. He himself and the defendants are in joint possession over it. The said landed properties is recorded in the name of three sons of late Raghu Nahak namely Indra Das, Late Bauri Das and Late Bhaskar Das. He has also mentioned that the ancestral Gharabari land and cultivable landed properties have not yet been

partitioned by metes and bounds amongst them So he approached the defendants for partitioned but they did not agree. So he has filed this suit. On perusal of the plaint as well as the evidence of P.W.1 it reveals lthat he claimed partition of Schedule A & B property claiming full interest over Schedule A property and  $2/3^{\text{rd}}$  interest over Schedule B property. On perusal of the R.O.R marked as Ext.1 it reveals that the same stands recorded in the name of Raghu Nahak. This being the position each son of Raghu Nahak is entitled for  $1/3^{\text{rd}}$  interest over the said property. Although plaintiff took the plea that the descendants of Bauri Das was transferred the Indira Abas of defendant No.1 which fell in the share of Indra Das vide a registered partition deed No.1574, he could not produce the document proving the same. Similarly although Indra Das had no son, all his daughters like a son are entitled to have share out of the ancestral property. Considering the aforesaid fact I am of the opinion that all the 3 branches of Raghu Das are entitled to get equal  $1/3^{\text{rd}}$  share each out of the property of Raghu Das. Accordingly Defendant No.2, 3, 4 and 5 are entitled for  $1/3^{\text{rd}}$  share jointly and  $1/15^{\text{th}}$  share each out of the schedule A property. Defendant No.7 to 11 are entitled for  $1/3^{\text{rd}}$  share jointly and  $1/15^{\text{th}}$  share individually out of Schedule A property. The plaintiff and defendant No.12 and 13 are entitled for  $1/3^{\text{rd}}$  share jointly and  $1/9^{\text{th}}$  share individually out of the schedule A property. So far as Schedule B property is concerned it consists of three plots bearing No.212, 229 and 231 under Khata No. 9 of Mouza Kiajhari. On perusal of the said ROR marked as Ext.2 it reveals that all the said properties are Chaka land which can not

be partitioned as per Section.34 of the Odisha 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..... So as those properties are Chaka land the same can not be partitioned by mete and bounds, However each branch of descendants of late Raghu Das is having equal interest over the suit property. Hence it is ordered.

### **Order**

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

The three sons of Raghu Das are entitled to get equal 1/3<sup>rd</sup> share each out of the suit property. Accordingly Defendant No.2 to 5 are entitled for 1/3<sup>rd</sup> share jointly and 1/12 share each out of the schedule A property. Defendant No. 6 to 11 are entitled for 1/3<sup>rd</sup> share jointly and 1/18<sup>th</sup> share individually out of Schedule A property. Likewise the plaintiff and defendant No.12 and 13 are entitled for 1/3<sup>rd</sup> share jointly and 1/9<sup>th</sup> share individually out of the schedule A property.

So far as the Schedule -B properties are concerned these properties are Chaka land so the same can not be partitioned by mete and bounds, However each branch of descendants of late Raghu Das is having equal interest over the suit property.

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 27<sup>th</sup> day of January,2014.

Sr. Civil Judge, Banpur.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1                      Bangali Das

List of documents proved on behalf of the Plaintiffs :-

Ext.1                      Certified copy of ROR No.337.  
Ext. 2                      ROR of Khata No.9

Sr. Civil Judge, Banpur.