

IN THE COURT OF THE SENIOR CIVIL JUDGE BANPUR.

PRESENT:-

Sri Satya Ranjan Pradhan,
Senior Civil Judge, Banpur.

C.S. No 203/93 of 2014/2012

Sakuntala Patra, aged about 65 years,
W/o Ghanasyam Patra.
Vill: Mahitama, Po: Korada,
P.S:Nuagaon, Dist: Nayagarh.

... Plaintiff.

-Versus-

1. Ramachandra Subudhi, aged about 62 years, S/o late Raghunath Subudhi
2. Jogendra Subudhi, aged about 58 years, S/o late Raghunath Subudhi
3. Sarala Subudhi, aged about 59 years, D/o late Raghunath Subudhi,
All are of Vill: Talasahi, Po/P.S: Banpur, Dist: Khordha.
4. Maheswar Subudhi, aged about 57 years, S/o Late Raghunath Subudhi.
5. Madan Mohan Subudhi, aged about 54 years, S/o Late Raghunath
Subudhi Sl. No. 4 & 5 are of Vill: Bazar sahi, Po/P.S: Banpur, Dist:
Khordha.
6. Basanti Subudhi, aged about 60 years, W/o Pranath Subudhi.
Vill/Po:Polosara (Malisahi), Dist: Ganjam.

.... Defendants.

Counsel for Plaintiffs ... Sri A.K.Pattnaik, Advocate
and associates.

Counsel for defendants ... None.

Date of Exparte Argument – 24.12.2014.

Date of Exparte Judgment – 27.12.2014.

EXPARTE JUDGMENT

1. This is a suit for declaration, permanent injunction, and
other consequential reliefs.
2. The case of the plaintiff, as per the plaint is that:-

She along with the defendants are the legal heirs of one Sebati Dei and Raghunath Subudhi. Sebati Dei who is the mother of both the parties died on 05.09.2012. Her husband Raghunath Subudhi had died prior to her on 25.09.1999. After their death the defendants and the plaintiff being the successors, succeeded their properties but the defendant Nos. 1,2 & 5 were not allowing the present plaintiff to come to her maternal house. On 10.04.2012 the plaintiff was informed by the wife of defendant No.4, that the defendant No.s 1,2 & 5 had changed the ownership of the residential house and other properties to their name omitting the name of all the sisters and defendant No.4. After making inquiry she was confirmed about such illegal activities of the defendants. After coming to know about such facts she asked for her share but the defendants did not allow to come to her house and refused to give any share. Rather threatened to kill her. Now it is claimed by the plaintiff that the defendants are trying to alienate some of the joint family properties to outsiders and also want to make some construction over the suit property by which the nature and character of the suit land will be changed. Citing the aforesaid facts the plaintiff prayed to declare that she has got 1/7th share over the schedule A & B property, to declare the entry in the ROR bearing Khata No. 131/172 to be void to permanently injunct the defendants from selling, destroying or changing the nature and character of the suit property and also to deliver the possession of the suit property to her and other defendants.

3. Being summoned the defendant Nos.1,2,3,4, 5 7 6 had appeared but subsequently 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 she has got 1/7th share out of the schedule A & B property, the entry made in R.O.R. Of Khata No.131/172 is not correct and that the defendants are trying to sale, destroy or to change the nature and character of the suit property.

5. The plaintiff examined herself as P.W.1 and proved some documents marked on her behalf as Ext.1 to 4.

6. Here in the suit to substantiate her claim the plaintiff examined herself as P.W.1 during her examination in chief, she stated that she along with the defendants are the legal heirs of Sebati Dei, who died on 5.9.2012 and before her the father of the parties died on 25.09.1999. After death of their parents defendant Nos. 1,2,3 and 5 did not allow her to go to their parental house. On 10.04.2012 the wife of defendant No.4 informed her that the residential house and other properties were recorded amongst in the name of defendant Nos. 1,2,3 and 5 omitting the name of the sister and defendant No.4. After inquiry she confirmed about the mischievous act of the defendant Nos. 1,2 & 5. Further she could know that defendant No.1,2,3 and 5 had applied for correction of ROR vide Mutation case No. 261/2009. In the said mutation case with the help of the Revenue Inspector, the genealogy was wrongly reflected omitting the the name of the daughters and defendant No.4. Accordingly the defendant Nos. 1,3 and

5 could able to properties situates in Hal Khata No.171/172 under plot No.147 in their name. After knowing about the said occurrence she approached the local gentries for settlement of the dispute but the defendants did not pay any heed to it. On the other hand defendant No.5 wanted to make some illegal construction over it. In support of her claim she produced the certified copy of the RORs of the suit land, the certified copy of the mutation case vide which the entry in ROR bearing Khata No.171/172 pertaining to Plot No.147 was recorded in the name of defendant Nos. 1,2 and 5 and the voter list. Although the plaintiff alleged the aforesaid facts and claimed herself one of the legal heirs of Sebati Dei along with all the defendants, the defendants did not appear and object such claim. Accordingly, all such claims as made by the plaintiff are accepted as it is. From the said ROR and mutation case record it reveals that originally the suit plot No.147 under Mouza Bhagabati Patana was recorded in the name of Sebati Dei but defendant Nos. 1,2 and 5 by instituting a mutation case had corrected the ROR in their name. The mutation record reveals that the name of the plaintiff, defendant No.4 & 5 to 7 were not mentioned in the said genealogy although they are the legal heirs of Sebati Dei. Similarly the property under Khata No.410/14 the R.O.R of which marked vide Ext.4 stands recorded in the name of Sebati Dei. Considering the claim made by the plaintiff which remained unchallenged I am of the view that she being one of the legal heirs of Sebati Dei has equal interest over the suit property, so she is entitled to 1/7th share over the suit property along with all the defendants.

So far as second prayer of the plaintiff as mentioned in the plaint is concerned, as revealed from the R.O.R marked as Ext.2 the suit Plot No.147 under Hal Khata No.131/172 was recorded in the names of defendant No.1,2 & 5 basing upon the mutation case No.261 dated 7.3.09. The genealogy in the said mutation case was not correctly reflected for which such wrong recording was made. It is settled preposition of law that the entry in the R.O.R does not confer or extinguish the title of a person. This wrong recording does not dis-entitle the plaintiff , defendant Nos. 3, 4 or 6 from the property. Considering the submissions of the plaintiff & her entry in the said R.O.R is found not to be correct hence void and the names of all the legal heirs be recorded in the corrected ROR by the revenue authority.

The third prayer of the plaintiff is to permanently injunct the defendants to sale, destroy or to change the nature of the property and not to enter into the share of the property of the plaintiff. So far as sale of the property is concerned such as order can not be passed prohibiting the defendants permanently as it would hamper their interest as they are also having equal interest over the property. So far as prohibiting from entering into the share of the plaintiff property is concerned no such order also can not be passed as the properties are yet to be partitioned by metes and bounds. Till it is partitioned by metes and bounds every co-sharer has equal right over every inch of the joint family property. Similarly it is the prayer of the plaintiff to permanently prohibit the defendants from

destroying or changing the nature of the property but it is not clearly established by the plaintiff as to how the defendants are changing or destroying the property. Hence no relief in this regard can be given.

The last prayer of the plaintiff is to give delivery of possession of property to the plaintiff through civil court. In this regard it can be said that as the property is not partitioned by metes and bounds, such relief can not be passed in favour of the plaintiff. Hence it is ordered.

Order

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

The plaintiff and defendants are entitled to have 1/7th interest each over the suit property. The entry in R.O.R pertaining to Hal Khata No.131/172 and Plot No.147 be corrected by the Revenue Authority on proper presentation by the plaintiff.

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 27th day of December,2014.

Sr. Civil Judge, Banpur.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1 Sankuntala Patra

List of documents proved on behalf of the Plaintiffs :-

Ext.1 Certified copy of mutation Case No. 26/09
Ext. 2 Voter list.
Ext. 3 Khata No. 128
Ext. 4 Khata No.410/2014

Sr. Civil Judge, Banpur.