

**IN THE COURT OF THE CIVIL JUDGE (J. D.)
BHUBANESWAR, DISTRICT- KHURDA.**

Present : **Ms. Sujata Priyambada Swain,
Civil Judge(Jr.Divn.),
Bhubaneswar, Dist-Khurda.**

C.S. No. 530/2010

Dillip Kumar Patra, Aged about 38 yrs,
S/o- Krupasindhu Patra,
Resident of Kunja Lane Grand Road, Puri,
Dist-Puri, At present plot no.16/8,
Chintamaniswar Fishery Lane,
Bhubaneswar,Dist-Khurda.

..... Plaintiff

Versus

1. Ratnakara Behera, Aged about 80 yrs,
S/o-Late Nath Behera.
2. Loknath Behera @ Loka, aged about 45 yrs.
3. Krushna Chandra Behera, aged about 42 yrs,
Sl no.2 and 3 are son of Ratnakar Behera,
All are resident of Vill-Baragada,
PO-Brit Colony, Dist-Khurda.

..... Defendants

Counsel for the plaintiff : M/s. S. N. Das
& Associates, BBSR

Counsel for the defendants : M/s. A. K. Mohanty
& Associates, BBSR

Date of hearing of argument : **25.03.14**

Date of delivery of judgment : **29.03.14**

J U D G E M E N T

1. The plaintiff has filed the present suit for a declaration that he has a right of way over "B" schedule property and the defendants have no right to cause any sort of obstruction over "B" schedule property, to restrain the defendants from obstructing any part of "B" schedule property such as to affect the existence of 13 feet width road

and for mandatory injunction to remove obstruction if any over "B" schedule property and other reliefs.

2. The plaint averments in brief are as follows:

Schedule "A" of the suit property constitutes Hal mutation khata no.1494/932, plot no.473 of area Ac 0.063 decimals of Mouza-Baragada corresponding to khata no.1494/640 plot no.473. The "B" schedule property constitutes an area of 15 feet X 50 feet of plot no.581 (P) and 582 (P) under khata no.1133 of Mouza-Baragada. The "C" suit schedule property constitutes a sketch map in separate sheet. The schedule "A" of the suit land was purchased by the plaintiff from Minilata Das vide RSD No.7793 dtd.15.12.01. The defendant no.3 was the mediator for the said purchase and was also one of the witness to the sale deed. During sale of the "A" schedule land to the plaintiff the defendant no.3 had shown the land described in "B" schedule as the approach road from main road to "A" schedule land and at that time "B" schedule land was in the shape of a road. Defendant no.3 had apprised the plaintiff that "B" schedule land belongs to their family and they had left "B" schedule land for the plaintiff's approach to the main road from "A" schedule land. Defendant no.3 had also shown the documents of "B" schedule land to the plaintiff at the time of alienation and it was found that "B" schedule land is the ancestral property of the defendants. After purchase of "A" schedule land the plaintiff completed his residential building by using "B" schedule land as his access. The plaintiff completed ground floor and has drawn electricity connection; the plaintiff used to let out the ground floor to different tenants and has completed the first floor construction of his building over "A" schedule land. Since, the date of purchase on 15.12.2001, the defendant never obstructed the use of "B" schedule land as road from the house of the plaintiff. As per 1992 settlement ROR khata no.1133 plot 581 of area Ac 0.011 decimals and plot no.582 of area of Ac 0.086 decimals stands recorded in the name of defendant no.1.

The said land is joint family ancestral property of the defendants. In October 2010 the defendants denied the right of the plaintiff to use “B” schedule land and demanded huge money for the plaintiff’s enjoyment of “B” schedule land. On 16.11.10 the defendant tried to obstruct “B” schedule land by stacking sands etc ; they threatened to raise permanent construction over “B” schedule land. Thus, the cause of action for the suit arose on 16.11.10. Therefore, the suit may be decreed.

3. On the other hand, the defendants have filed their WS in which it is submitted that the suit is not maintainable, and there is no cause of action. It is denied that defendant no.3 was a mediator in sale of land to the plaintiff and admitted that defendant no.3 was a witness to the sale deed. It is asserted that “B” schedule land is the ancestral property of the defendants. It is denied that during the sale of “A” schedule land to the plaintiff the defendant no.3 has shown the land described in “B” schedule land as approach road to the main road. It is denied that the plaintiff has electric connection through “B” schedule land and is utilizing “B” schedule land for his egress and ingress. It is denied that since 15.12.01 the defendants never obstructed the use of “B” schedule land as road. It is asserted that between the land of the plaintiffs and defendants on one side and the main road on the other side an intervening plot no.583 belonging to another person exists. It is denied that the plaintiff has created a right of way through the land of the defendants. There is no such road as “B” schedule land as the defendants have surrounded their land i.e., plot no.581 and 482 under khata no.1133 with a boundary wall since long. The plaintiff has filed a forged BDA plan and no such plan has been approved by the BDA . Therefore, the suit may be dismissed.

4. Taking the rival contentions of the parties and pleadings into consideration the following issues have been framed for adjudication.

Issues

- i) Whether the suit is maintainable?
- ii) Whether there is any cause of action to file the suit?
- iii) Whether the plaintiff is entitled to a relief of declaration that he has right of passage through “B” schedule land and the defendants have no right to obstruct him?
- iv) Whether the plaintiff is entitled to a relief of injunction against the defendants from obstructing “B” schedule property so as to affect the existence of 13 feet width road over it?
- v) Whether the plaintiff is entitled to a relief of mandatory direction to the defendants to remove obstruction if any over “B” schedule land during pendency of the suit?
- vi) To what other relief (relief’s) is the plaintiff entitled?

5. In order to substantiate his case the plaintiff has examined two witnesses and has proved four numbers of documents on his behalf. On the other hand the defendants have examined one witness and have proved one document on their behalf.

6. **Findings**

For the sake of convenience issue no.(iii), (iv) and (v) shall be taken up for consideration together as the issues are interrelated and the facts are interwoven.

Issue no. (iii), (iv) and (v):

The plaintiff has claimed for declaration of his right of way over "B" schedule land and issue no.(iv) and (v) are based on the findings of issue no.(iii).

I) An evaluation of the oral evidences adduced reveals the following:

PW 1 who is the plaintiff reiterates the plaintiff averments concerning his purchase of "A" schedule land, defendant no.3 being a mediator in the said sale and the road existing over plot no.581 (p) and 582 (p) at the time of inspection of the "A" schedule land. PW 1 states that defendant no.3 had apprised him that his family had allowed the vendor of the plaintiff, Minilata Das to use the "B" schedule land for her ingress and egress and on the initiative of defendant no.3, he (PW 1) purchased land. PW 1 reiterates the plaintiff averments concerning completion of ground floor, taking electric connection, inducting tenants on ground floor and completion of first floor. PW 1 states that he has been enjoying the suit road since the date of his purchase i.e., 15.12.01 and prior to that his vendor has been enjoying the suit road. He has no alternative road except the suit road. PW 1 reiterates the plaintiff averments concerning resistance of the defendants on Oct'2010 and the cause of action dated.16.11.10.

PW 1 proves the certified copy of RSD no.7793 as Ext.1 (marked with objection); the certified copy of mutation ROR bearing khata no.1494/932 of Mouza-Baragada as Ext.2; the rent receipts in respect of the suit land as Ext.3. At a later stage Ext.4, that is, ROR of khata no.1133 of Mouza-Bhubaneswar Sahar, Unit-35, Bargada has been marked as Ext.4 (with objection) on behalf of the plaintiff.

PW 2 states that he knows both the parties and has seen the suit land which is a road measuring 15 feet X 50 feet. The suit land is leading to the house of the plaintiff from the canal road. PW 2 states that he is a Civil Contractor by profession; in March 2003 on the request of the plaintiff he had given the lay out plan of the plaintiff's

land and had started construction of ground floor over the land of the plaintiff.

DW 1 who is the defendant no.3 states that he is looking after the case on behalf of the defendant no.1 and the defendant no.2. The plaintiff had purchased the piece of land to the east of their ancestral plot no.581 and 582. The plaintiff, after purchase of land has constructed his house with gate towards south. At no point of time there existed any road over any portion of the defendant's plot. The land of one Rudrakanta Patasahni exists between the land of the defendants and the road. DW 1 admits having signed the sale deed of the plaintiff as a witness.

II) A critical evaluation of various statements and admissions of the witnesses during cross examination reveal as follows:

In Para 8 of his evidence PW 1 admits that in page 6 of Ext.1 there is reference to a sketch map, but no sketch map is available in Ext.1. In Para 9 of his evidence PW 1 admits that though schedule "C" of the plaint refers to a sketch map, no sketch map is attached to the plaint. In Para 9 of his evidence PW 1 admits that he cannot state if any road exists from his land to the public road in the village map. In Para 10 of his evidence PW 1 states that he cannot state how much areas of plots 581 and 582 respectively constitute the suit road; he denies knowing the dimensions of plot no.582 and 581 respectively. In Para 10 of his evidence PW 1 also admits that in order to approach the public road he has to cross the plots 581, 582 and the land of Abani Patasahni. In Para 12 of his evidence PW 1 admits that he cannot state the exact measurement of the suit plots 581 and 582 for the purpose of specification of the suit road – such that the exact starting point of the suit road from the boundary of the suit plots can be known. In Para 10 of his evidence of PW 1 admits that plot no.581 and 582 exist to the west of his house and in Para 15 of his evidence PW 1 admits that a gate exists to south of his house. In Para 17 of his evidence PW 1

admits that he has got the plan of his house approved by BDA and has not submitted documents to establish that he has access from his house to the public road. PW 2 who is allegedly a Civil Contractor denies knowing the khata number or plot number of the disputed lands and denies knowing the boundary plot numbers of the suit land.

DW 1 states during cross-examination that a two storied building of the plaintiff exists on the suit land. He denies any electric poles existing between the canal road and the house of the plaintiff stating that the electric poles exist along the canal road ; DW 1 states that the house of the plaintiff exists to east of the canal road. DW 1 admits that the suit land exists to the east of the canal road and states that no electric wires have gone over plot nos.581 and 582. In Para 13 of his evidence, DW 1 states that certain persons have contributed land for road to the south of the plaintiff's land. In Para 13 of his evidence DW 1 admits that he was a witness in respect of RSD executed by Minilata Das. In Para 18 of his evidence he states that he has boundary around his cultivable lands since last 15 years.

III) An evaluation of the documents proved reveal the following:

Ext.1 is the certified copy of RSD No.7793 dtd.15.12.01, the vendor is Minilata Das; the vendee is Dillip Kumar Patra, the plaintiff. The land sold constitutes an area of Ac 0.063 decimals of Sabik plot no.473 khata No.542 of Mouza-Bargarh corresponding to Hal Khata no.1494/640 plot no.473. In the boundary descriptions there is reference to plot no.582 to the west. In page 6 there is reference to red color sketch map attached to the sale deed but, no sketch map forms part of the certified copy of sale deed filed vide Ext.1.

Ext.2 is the certified copy of ROR of Khata no.1494/932 of Mouza-Bhubaneswar,Sahar Unit-35, Baragada. The recorded owner is the present plaintiff. The land sold constitutes an area of Ac 0.063 decimals of plot no.473 of status Gharbari. In the remarks column of

Ext.2 there is reference to mutation order and conversion U/s.8(A) of OLR Act.

Ext.3 is the certified copy of rent receipts in respect of khata no.1494/932 in the name of the plaintiff.

Ext.4 is the certified copy of ROR of Khata no.1133 of Mouza-Bhubaneswar Sahar, Unit-35, Baragada. The said khata consists of the schedule "B" suit plots i.e., plots no.581 and 582. The status of the both the plots are stated to be Sarada-2.

Ext.A is the certified copy of case record in the Court of OSD, (ODA Act), BDA, Bhubaneswar UAP Case No.131/11; the name of the present plaintiff is stated to be the OP and direction for fresh notice to the OP has been made.

Ext.B is the certified copy of local inquiry report of Amin in enforcement Misc. Case No.37/08 ; the name of the concerned owner is stated to be Dillip Kumar Patra (the plaintiff); the concerned plot no is stated to be 473 of Mouza-Bargarh. In column no .4 relating to availability of road it is stated that there is no road.

IV) After a careful evaluation of the available evidences and documents on records and submissions of counsels the following is revealed:

The claim of the plaintiff is that at the initiative of the defendant no.3 he purchased the schedule "A" land and the defendant no.3 had given him the impression that road existed to his purchased land over the land of the defendants. The defendant no.3 as DW 1, has denied any such impression by him to the plaintiff during sale of land of the plaintiff. In such a case the burden of proof is on the plaintiff to establish that based on the impression given by defendant no.3 concerning existence of road over plots no.581 and 582 he purchased the schedule "A" land. However, except the assertions and evidence of the plaintiff no other evidence has been put forth to establish the claim of the plaintiff that he was misled by defendant no.3. Even if for the

sake of argument it is accepted that the defendant no.3 had misled the plaintiff concerning existence of road resulting in the plaintiff purchasing the suit schedule "A" land – such a circumstance would act as estoppel against the defendant no.3 and not the other defendants. Vide Ext.4 the recorded owner of the schedule "B" suit plot is **Ratnakar Behera** i.e., the defendant no.1. If Ratnakara Behera would have led the defendant to act on the basis of certain assertions the principle of estoppel would have applied to Ratnakara Behera and others claiming under him including the defendant no.3, who is son of Ratnakara Behera.

- V) The plaintiff has claimed that he has constructed his two storied building by utilizing the road existing over plot of the defendants; but the plaintiff is completely silent about existence of land of any other person between his purchased land and the main road except the plots of the defendants. But as already discussed the plaintiff has admitted as, PW 1 in his evidence that besides the lands of the defendants land of one Abani Patasahni exists between his schedule "A" land and the main road. So the question arises as to why the plaintiff has not made any claim concerning road over the land of Abani; a question also arises as to why the plaintiff has remained silent about existence of land of any other person between his land and the main road. So it seems that the plaintiff has not come out with clean hands.

Further, the plaintiff has claimed approval of BDA plan for construction of his house; but the documents vide Ext.B reveal that there is no road to the land of the plaintiff.

- VI) The plaintiff has focused on the point that defendant no.3 had led him to purchase the suit land on the basis of giving an impression that road existed over the land of the defendants to schedule A land; and the defendant no.3 is a witness to the RSD vide Ext.1. A question arises as to why no sketch map is available in the RSD vide Ext.1, although the recitals of the RSD refers to a sketch map. This also indicates that the

plaintiff has not come out with clean hands, as Ext 1 has been proved by the plaintiff.

The plaintiff claims that he has no other access to the suit land except the land of the defendants. But a question arises as to why the plaintiff has admitted that he has a gate to the south of his boundary; in this regard it is pertinent to mention that as per admission of the plaintiff the land of the defendants exists to west of his purchased land.

VII) Suppose for the sake of argument it is accepted that the plaintiff has the right of way over plot no.581 and 582 of the defendants; a question would arise as to what is the specific dimension of the passage claimed as road by the plaintiff in respect of the said plots ; and how much area from which plot would go to form the said passage. The plaintiff has claimed an area of 15 feet X 50 feet from plot no.581 and 582 in schedule "B" of the plaint. However, it is not specified as to how much area with what dimension from plot no.581 and how much area with what dimension from 582 contribute to the road. Although schedule "C" of the plaint refers to a sketch map, no sketch map is available with the plaint and the plaintiff has admitted that no sketch map is attached to the plaint. The plaintiff has denied knowing - to which direction of plot no.581, plot 582 exists. It is also pertinent to mention that in some portions of the plaint the suit passage is stated to be of 13 feet width and in certain other portions of the plaint the suit passage is stated to be 15 feet in width; for example in the prayer it is stated to be 13 feet and in the schedule of the plaint is stated to be 15 feet . From the evidence of PW 1 it is clear that the plaintiff is not himself clear about the dimension of the suit land. Admittedly, the suit land forms portions of the said two plots.

VIII) It is clear from the evidence of the plaintiff that he is not clear as to the dimension of the suit passage. So even if for the sake of argument the right of passage of the plaintiff is accepted the same cannot be

executed as the suit land in respect of which such right of passage is claimed is not specified. Thus, taking into consideration that the plaintiff has not come out with clean hands ; the suit passage is not specified; the admissions of the plaintiff indicates the possibility of road to the south - issue no.(iii) is answered in negative.

III) As issue no.(iv) and (v) are based upon issue no. (iii)the same are also answer in negative.

Issue no.(i) (ii) and (vi)

As already discussed the suit land is not specified , therefore, the suit is not maintainable, and the plaintiff has no cause of action to file the suit. The plaintiff is not entitled to any other relief.

Order

The suit be and the same is dismissed on contest against the defendants, but under the circumstance without any cost.

Advocate's fee be assessed at the contested scale.

**Civil Judge (Jr. Divn.)
Bhubaneswar.**

The judgment is dictated, corrected and pronounced by me in the open Court today i.e. on the 29th Day of March , 2014 under my seal and signature.

**Civil Judge(Jr.Divn.)
Bhubaneswar.**

List of witnesses examined on behalf of the plaintiff:

P.W.1 Dillip Kumar Patra

P.W.2 Basudev Badajena

List of witnesses examined on behalf of the defendants:

D.W.1 Ratnakar Behera

List of documents marked as exhibits on behalf of the plaintiff:

Ext.1 Certified Copy of RSD No.7793/01.

Ext.2 Certified copy of mutation ROR bearing khata no.1494/932 of
Mouza-Baragada.

Ext.3 Certified copy of rent receipt in respect of suit land.

Ext.4 Certified copy of ROR of Khata no.1133 of Mouza-
Bhubaneswar Sahar, Unit-35, Baragada.

List of documents marked as exhibits on behalf of the defendant:

Ext.A Certified copy of UPA Case No.135/11.

Ext.B Certified copy of inquiry report by Amin in Misc. Case No.37/08.

**Civil Judge(Jr.Divn.)
Bhubaneswar.**