

**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. 08/2010

Ajaya Kumar Kulia, aged about 45 yrs,
S/o-Bansidhar Kulia, At/PO-Panchagaon,
PS-Airfield, Bhubaneswar, Dist-Khurda.

..... Plaintiff

- Versus -

Binaya Kumar Nanda, aged about 53 yrs,
S/o-Late Lingaraj Nanda,
At present Kapilaprasad,
PO-Bhubaneswar-2, Dist-Khurda,
At present residing at Savitri Colony,
Mausima Chhak, Rameswar Patna,
Po-Bhubaneswar-2, PS-Lingaraj,
Bhubaneswar, Dist-Khurda.

..... Defendant

Counsel for the plaintiff	: M/s. S. N. Das & Associates, BBSR
Counsel for the defendant	:M/s. K.K. Panda & Associates, BBSR
Date of hearing of argument	: <u>18.03.14</u>
Date of delivery of judgment	: <u>27.03.14</u>

J U D G E M E N T

1. The plaintiff has filed the present suit for permanent injunction and other reliefs against the defendant.
2. The plaint averments in brief are as follows:
The suit land constitutes mutation khata no.544/505 plot no.467/2732 of area Ac 0.070 decimal corresponding to revenue khata no.150 plot no.467, an area of Ac 0.070 decimal out of Ac 0.303 ½ decimals. The suit land was recorded in the name of one Jayakrushna

Pradhan, who died leaving behind Ram Chandra Pradhan and others as his legal heirs. Rama Chandra Pradhan and others transferred the suit land in favour of the present plaintiff, vide RSD no.6259 dtd. 8.12.98. Pursuance to such sale, delivery of possession was given to the plaintiff. The plaintiff has been enjoying the suit land by encircling the same with a boundary wall and leaving a passage for ingress and egress to the main road. The plaintiff has not erected any permanent structure over the suit land except temporary construction though he has got his building plan approved by the BDA . The plaintiff has mutated the suit land in his name and obtained mutation ROR. The plaintiff has been paying land revenue regularly and has been in continuous possession since the date of his purchase. On 3.1.10 the defendant without any reasonable cause tried to interfere in the peaceful possession of the plaintiff and has damaged a portion of the suit land. Defendant also threatened to disposes the plaintiff from the suit land. The cause of action for the suit arose on 3.1.10 when the defendant tried to interfere in the peaceful possession of the plaintiff. Therefore, the suit may be decreed.

3. On the other hand, the defendant has filed his written statement in which it is submitted that the plaintiff has no right, title, interest, over the suit land. Dispute relating to title exists, and therefore the suit for permanent injunction simpliciter is not maintainable . The sketch map attached to the RSD no.6259 dtd.8.12.98 is not in accordance with the concerned settlement map. As per the settlement map plot no.467/1827 is situated between revenue plots 464 and 467/2210 but in the sketch map attached to the RSD the revenue plot no.467/1827 has not been shown at all. The land alleged to have been sold in the sale deed in favour of the plaintiff pertains to lands covered under plot no.467/2210. Settlement plot no.467/2210 has been rightly recorded in the name of the defendant based on his purchase; contending that the said recording has been wrongly made the vendors of the defendant -

Ram Chandra Pradhan, Dukhi Bewa, Bhramar Pradhan, Suresh Pradhan and Bandita Pradhan have filed a Revision Case in the Court of Commissioner of Settlement, Orissa, BBSR; the petitioners did not pursue the matter. During pendency of the revision case Rama Chandra Pradhan and others sold the suit land of area Ac 0.070 decimals in favour of the present plaintiff basing upon a sketch map prepared not in accordance with the revenue map. Vide RSD no.4963 dtd.5.7.02, Bhramara Pradhan, Rama Chandra Pradhan and others have sold Ac 0.050 decimals out of Plot no.467/1827 in favour of Smt. Nirmala Barik; the concerned sale deed reveals that in the sketch map plot no.467/1827 exists in between plot no.464 and the defendant's plot no.467/2210. In the RSD No.6259 dtd.8.12.98, Ajaya Kumar Kalia is shown as purchaser, but the plaintiff is contending himself as Ajaya Kumar Kulia. The plaintiff cannot claim a portion of the defendant's land bearing plot no.467/2210 based on a wrong boundary and sketch map attached thereto. Even if any building plan has been sanctioned by the BDA the said plan would be valid for three years and therefore, as no building has been constructed; the plan is automatically treated as cancelled. It is denied that the defendant tried to interfere in the peaceful possession of the plaintiff on dtd.3.1.10. It is asserted that after the death of the original recorded tenant Jaya Krushna Pradhan, there was an amicable partition between his two sons namely, Shyam Sundar Pradhan and Rama Chandra Pradhan in respect of sabik plot no.19 of area ac 0.900 decimals. Shyam Sundar Pradhan sold an area of Ac 0.160 decimals to the defendant vide RSD No.174 dated 9.1.81 with the consent of the other co-sharer Rama Chandra Pradhan. Subsequently, Shyamsundar Pradhan sold Ac 0.040 decimals out of Plot no.19 in favour of the defendant for a valuable consideration vide RSD No.411 dated.12.1.82. The two patches of land sold in favour of defendant being adjacent to each other, formed a compact area and the defendant remained in peaceful possession of Ac 0.200

decimals of land by raising boundary. During settlement operation the area was increased to Ac 0.205 decimals as plot no.467/2210 under khata no.323 as per ROR published in the year 1989. In the village map the publication of the ROR and plot no.467/2210 is correctly depicted. Under the circumstances the suit may be dismissed.

4. Taking the pleadings of the parties 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 permanent injunction restraining the defendant and his agents from interfering with the peaceful possession of the plaintiff?
- iv) Whether the suit is barred by the principles of res judicata?
 - v) To what other relief (relief's) is the plaintiff entitled?

In order to substantiate his case the plaintiff has examined two witnesses and has proved eleven numbers of documents on his behalf. On the other hand the defendant has examined one witness and has proved eight numbers of documents to contradict the plaintiff.

5 Findings

Issue no.(i) and (iii):

For the sake of convenience issue nos.(i) and (iii) shall be taken up together for consideration first as the issues are interrelated and the evidences are interwoven.

Issue No.(i) and (iii):

- I) The defendant has raised the claim that the present suit for injunction simplicitor is not maintainable on the ground that dispute relating to title exists. Therefore, it has to be determined whether suit for injunction simplicitor is maintainable or dispute relating to title exists in respect of the suit land – and issue no.(iii) is based on such determination.

II) An evaluation of the oral evidences adduced reveal the following:

PW 1 who is the plaintiff reiterates the plaint averments concerning the suit land; his purchase of the suit land from Rama Chandra Pradhan and others; delivery of possession to him and encircling of a boundary wall; mutation of the suit land in his favour; approval of his building plan by BDA; cause of action dated 31.10.09. PW 1 proves the RSD no.6259 dated.8.12.98 as Ext.1; mutation ROR of Khata no.544/505 of Mouza-Bhimpur as Ext.2 (marked with objection); rent receipts in respect of the suit land as Ext.3 to 3/f (marked with objection); the approval letter issued by BDA as Ext.4 (marked with objection); the original plan approved by BDA as Ext.5 (marked with objection).During cross examination in Para 12 PW 1 has proved the concerned village map as Ext.A.

PW 2 states that he knows the parties and has seen the suit land. The plaintiff is the owner of the suit land and had constructed a boundary wall around it in the year 1998 and is in a possession of the same.

DW 1 who is the defendant reiterates the averments in the WS mentioning Jaya Krushna Pradhan being the original recorded tenant; amicable partition between Rama Chandra Pradhan and Shyamsundar Pradhan , the sons of Jaya Krushna Pradhan , in respect of Sabik plot no.19 of area Ac 0.900 decimals; sale of Ac 0.160 decimals by Shyamsundar Pradhan in favour of the defendant and subsequent sale of Ac 0.40 decimals by Shyamsundar Pradhan in favour of the defendant; the defendant possessing his purchased land as a compact area and increase of the area to Ac 0.205 decimals from Ac 0.200 decimals during settlement operation; recording of Khata No.323 plot no.467/2210 in the name of the defendant; filing of revision case by Rama Chandra Pradhan and others concerned wrong recording of ROR in the name of defendant; the sketch map attached to the sale deed of the plaintiff being not in conformity with the revenue map ;

the sale deed in favour of one Nirmala Barik showing plot no.467/1827 to be in between plot 464 and 2210.

DW 1 proves certified copy of the RSD no.174 dated.9.1.81 as Ext.B; certified copy of the RSD no.411 dated.12.1.82 as Ext.C; certified copy of khata no.323 of Mouza-Bhubaneswar Sahar, Unit-22, Bhimpur as Ext.D; the rent receipts in respect of Khahta no.323 as Ext.E to E/b; the certified copy of RSD no.4936 dated.5.7.02 along with sketch map as Ext.F.

III) A critical evaluation of the documentary evidences in the light of the oral evidences reveal the following:

Ext.1 is the RSD no.6259 dated 8.12.98 ; the vendors are Rama Chandra Pradhan, Kalu Charan Pradhan, Dukhi Bewa, Bhramarbar Pradhan, Suresh Pradhan; the vendee is Ajaya Kumar Kalia, the plaintiff. The land sold constitutes an area of Ac 0.070 decimals out of Ac 0.303 and ½ decimals of plot no.467 khata no.150 of Mouza-Bhubaneswar Sahar, Unit 22, Bhimpur. It is pertinent to mention that the vendors vide Ext.1 are Rama Chandra Pradhan and his son, wife and two sons of Shyamsundar Pradhan. As per the averments in the WS Rama Chandra Pradhan and Shyam Sundar Pradhan are the two sons of Jaya Krushana Pradhan, who is admittedly, the original recorded tenant. It is relevant to critically examined the boundary of the land sold vide Ext.1 because the defendant has claimed that the boundary description of the land sold vide Ext.1 is wrong and the land claimed by the plaintiffs is actually in possession of the defendant based on purchase by the defendant. The boundary of the land sold vide Ext.1 is :North- Govt. road, South-Sub plot two of vendors,East-twenty feet road, West-Plot no.2210 of the defendant.

But the sketch map submitted vide Ext.1 is different from the boundary description vide Ext.1. A careful evaluation of the sketch map reveals that: to North of the land sold is plot no.466; to South is plot no.1827 ; to East is a 20 feet road and to west is plot no.2210.

A comparison of the sketch map and the boundary description of the land sold vide Ext.1 reveals that the eastern and western boundaries tally , but instead of sub plot no two(as per boundary description) plot no.1827 is shown to be the land to the south in the sketch map; and instead of road(as per boundary descriptions) portions of a plot no.466 are shown to the north in the sketch map. Thus, the northern and southern boundary as shown in the sketch map and the boundary descriptions do not tally. However such inconsistency cannot establish that the sale deed is invalid. Sometimes, there is incomplete representation of facts or typographical mistake; though the possibility of mis-representation by the vendors cannot be ruled out.

Ext.2 is the Khata no.544/505 of Mouza- Unit-22, Bhubaneswar; the recorded owner is Ajaya Kumar Kulia; the said khata consists of the single plot no.467/2732; in the remarks column there is reference to mutation from the original khata no.150.

Ext.A is a map of sheet no.15, Bhubaneswar Sahar Unit-22, Bhimpur. The said khata reveals the location of plot no.467 from which the plaintiff has claimed to have purchased land ; to the west of the said plot is plot no.2210 and to the west of plot no.2210 is plot no.1827 and to further west is plot no.464 which is a larger plot. Dotted lines exist between plot 464 and plot 1827. Plot 466 exists to the north of plot 467 and plots 996 and 997 exist to the east of plot no.467.

Ext.B is a certified copy of the RSD no.174 dated.9.1.81. The vendor is Shyamsundar Pradhan, the vendee is the present defendant. The land sold constitutes an area of Ac 0.160 decimals from Ac 0.450 decimals which is specified to be constituting half share of the vendor out of plot no.19 khata no.80 of Mouza-Kapilprasad. There is reference to oral partition between Shyamsundar Pradhan and his brother Rama Chandra Pradhan. The Name of Rama Chandra Pradhan is mentioned as the person giving consent. Thus, Ext.B reveals a partition between the sons of Jaya Krushna Pradhan i.e. Rama Chandra Pradhan and

Shyamsundar Pradhan. The land sold to the defendant vide Ext.B is stated to be from the south-eastern portion of the share of the vendor (i.e. Ac 0.450 decimals out of Ac 0.900 decimals). Ext.B also reveals that Rama Chandra Pradhan has admitted the partition.

Ext.C is the certified copy of RSD no.41 dated.12.1.82 ; the vendor is Shyamsundar Pradhan and the vendee is the defendant. The land sold is an area of Ac 0.040 decimals out of Ac 0.450 decimals, that is the share of the vendor from a total area of Ac 0.900 decimals of plot no.19 khata no.80 of Mouza-Kapilprasad. In the said deed there is no reference to Rama Chandra Pradhan giving his consent as in the case of Ext B. However, the recitals of the said deed refer to a mutual partition between the vendors and his co-sharers and the vendor getting his share from the south. The boundary of the land sold is described as follows: South- vendee , East-Vendee, North-Rest land of the vendor, West-Govt. Anabadi land.

Ext.D is the ROR of khata no.323 of Mouza-Bhubaneswar Sahar, Unit-22. The said khata consists of plot no.467/2210 of area Ac 0.205 decimals. The recorded owner is Binay Kumar Nanda, the defendant.

Ext.E to E/b are rent receipts paid in the name of Binay Kumar Nanda in respect of khata no.323.

Ext.F is the certified copy of RSD No.4936 dated.5.7.02. The sketch map attached to the said deed is claimed by the defendant to be inconsistent with the sketch map vide Ext.1. In the said sketch map plot no.2210 is to West of plot no.467 and plot 1872 is to West of southern half of plot 2210 and plot 464 is to West of plot 1872. It is pertinent to mention that vide Ext 1 and Ext A there is reference to plot 1827 and not 1872 as mentioned vide Ext F. Thus Ext F is not consistent with the claim of the defendant concerning the relative locations of plots including plot 1827 - as plot 1872 and not plot 1827 is mentioned in the sketch map of Ext F.

IV) A critical evaluation of the statements of the witnesses and admissions made during cross-examination reveal as follows: PW 1 the plaintiff has admitted that he has no claim in respect of plot no.467/2210 which belongs to the defendant. In Para 14 of his evidence PW 1 admits that vide Ext.1 there is reference to Govt. road in north, but the same is not reflected in the sketch map attached to the sale deed. PW 1 admits that vide Ext.1 sub plot two exists to the south as per boundary description and the same is not reflected in the sketch map attached to the sale deed. In para 15 PW 1 admits that plot no.1827 is to east of plot no.2210 in the sketch map vide Ext.1; in para 12 of his evidence PW 1 admits that as per Ext.A west of plot 2210 is plot 1827 and to west of 1827 is plot 464. Thus, PW 1 admits that the sketch map vide Ext.1 is not in accordance with Ext.A. However, it has to be kept in mind that though Ext.A is admitted by PW 1, PW 1 is not an expert on maps.

DW 1 who is the defendant has admitted in para 12 of his evidence that he cannot not state if he is in possession in accordance with the land purchased vide Ext.B; he admits that all the four boundaries have not been described in Ext.B. In para 13 of his evidence DW 1 remains silent as to whether he was in possession in accordance with the description vide Ext.B and states that he is in possession as per demarcation and possession given. In para 14 of his evidence DW 1 states that Govt. land exists to the north of the land purchased by him vide Ext.B; in this regard it is pertinent to mention that vide Ext.B the land to the north of the land sold to the defendant is land of the vendor and not Govt. land as is stated by DW 1, the defendant. In para 14 of his evidence DW 1 states that probably the property of railway existed to the south when he took possession; however, the recitals of Ext.B reveal that Bhaskar pradhan and Alekha Pradhan are the land owners to the south of the land sold vide Ext.B . In para 17 of his evidence DW 1 states that vide Ext.C residual land of the vendor exists to the

west of his land. DW 1 denies knowing if any order of restrain was passed in respect of sale deeds vide Ext.B and C. In para 17 DW 1 states that he is in possession in accordance the delivery of possession given. In para 22 of his evidence DW 1 has admitted that plot no.467 was a separate plot during settlement. DW 1 has avoided to answer as to whether he purchased from plot no.467 and later answered that he has not purchased form plot no.467. In para 22 DW 1 also states that his claim is in respect of plot no.2210. Thus DW 1 has admitted that he has not purchased any land from plot 467 which was a separate plot during settlement; this admission is relevant in the light of the consideration that the plaintiff's purchased land is a part of plot 467 and the mutation khata in favour of the plaintiff has been prepared out of the original khata 150, plot 467. In Para 25 of his evidence DW 1 states that he has obtained certified copy of consolidation Revision case which was filed for rectification of map and the order was passed in 2002. A question arises as to why DW 1 has not filed the concerned order.

V) A careful evaluation of the available evidences and documents on records and the submissions of counsels reveals the following:

The claim of the defendant is that a wrong sketch map has been given in the sale deed executed in favour of the plaintiff and the plaintiff has claimed a portion of the defendant's plot i.e., plot no.467/2210 of area Ac 0. 205 decimals as proved vide Ext.D. The claim of the defendant is that he had purchased the said plots from Shyamsundar Pradhan, the son of the original recorded owner and has proved the RSDs vide Ext.B and Ext.C. Thus, the claim of the defendant is that his land i.e, plot no.467/2210 corresponds to Sabik khata no.80 Sabik plot no.19 from which Shyamsundar Pradhan sold land to him. However, a careful evaluation of Ext.B and Ext.C reveal that the land sold to the defendant vide Ext.B and C were from Mouza-Kapilprasad and not Mouza-Bhimpur. The ROR vide Ext.D

reveals the land in the name of the defendant from Mouza- Bhimpur. Further, the lands sold vide Ext.B and C constitute an area of Ac 0.200 decimals in toto while the area recorded in the name of the defendant vide Ext.D is Ac 0.205 decimals. Further, Ext.B and Ext.C refer to partition between Ram Chandra and Shyam Sundar. As Rama Chandra is '*manjurdata*' vide Ext.B- oral partition between Ram Chanda and Shyam Sundar in respect of Sabik Khata 80 plot 19 is proved. In this respect it is relevant to mention that the genealogy as claimed by the defendant is that Rama Chandra and Shyam Sundar are the two sons of Jaykrushna Pradhan. The defendant has not submitted any document to establish that sabik plot 19 corresponds to suit land or plot no.467 of which the suit land was a part. Further, vide Ext.1 Ram Chandra Pradhan and the heirs of Shyam Sundar Pradhan have sold land to the plaintiff. So the question arises as to why Rama Chandra Pradhan and the heirs of Shyam Sundar Pradhan together sold land to the plaintiff when there is reference to the partition vide Ext.B and C. Vide Ext.B Rama Chandra Pradhan, by virtue of having consented to the deed, has admitted partition of sabik plot no.19; so a possible conclusion is that sabik plot no.19 had been partitioned and there was no partition in respect of plot no.467 out of which a portion was sold to the plaintiff vide Ext.1. Further, Ext.A is in respect of sheet no.15 of Bhubaneswar Sahar, Unit-22, Bhimpur; and the land sold to the defendant vide Ext.B and Ext.C are in respect of Mouza-Kapilprasad and not Mouza-Bhimpur. Ext.A reveals that Kapilprasad is Unit no.23 which exists to the south of Unit-22, Bhimpur sheet no.15. Thus, it seems that while the defendant has purchased portions of land from Mouza-Kapilprasad vide Ext.B and C, he has claimed the said land to be corresponding to lands of Mouza-Bhimpur as reflected in the ROR vide Ext D . Thus, the defendant has tried to create a confusion between the land purchased vide Ext.B and C and land recorded in his

name vide Ext.D. It is clearly established that the defendant has not come out with clean hands.

VI) Ext.1 reveals that the defendant is the western side boundary owner of the purchased land of the plaintiff. Thus, it seems a possibility that the defendant has land to the west of the plaintiff's purchased land' and has also purchased land from Mouza-Kapilprasad which exists to the south of plot no.467 from which the plaintiff purchased land. It also seems that the plaintiff purchased his land from Mouza-Bhimpur and the defendant purchased his land vide Ext.B and C from Mouza-Kapilprasad from the same family i.e, the heirs of Jaya Krushna Pradhan. However a question arises as to why the defendant has not proved any sale deed of Mouza-Bhimpur in respect of the land recorded in his name vide Ext D i.e the land claimed by him in the WS. It seems that taking advantage of his being described as a boundary owner in respect of the purchased land of the plaintiff vide Ext.1 and taking advantage of his purchase of land from Mouza-Kapilprasad which is adjacent to the suit Mouza from the same family as the plaintiff's vendor- the defendant has tried to create a confusion and claimed that dispute relating to title exists and therefore, a suit for permanent injunction is not maintainable.

VII) A very vital question in this case is whether the claim for injunction simplicitor is maintainable in the present case or dispute relating to title exists. As already discussed the sketch map vide Ext.1 and the boundary description vide Ext.1 do not tally in respect of the northern and southern boundaries. There is reference to sub plot no. two to south in the boundary description which is not mentioned in the sketch map. There is also reference to a Govt. road to the north in the boundary description which is not mentioned in the sketch map. Such inconsistency might be on account of mistake, mis-representation or incomplete representation of facts. However, it has not be kept in mind that the plaintiff has purchased the land sold vide Ext.1 for

consideration from the heirs of Jayakrushna Pradhan (including Rama Chandra and heirs of Shyamsundar) . Thus the heirs of both the branches i.e. branch of Rama Chandra Pradhan and the branch of Shyam Sundar are vendors vide Ext.1. The portion of such larger plot purchased by the plaintiffs has been mutated and if the plaintiff has no title in respect of the land mutated in his favour, the mutation order is wrong the burden of proof is on the defendant to establish that such mutation order is wrong. The mutation cannot be said to be wrong on the basis that the northern and southern boundary as described in Ext.1 do not tally with the sketch map. The defendants plot existed at the time of purchase by the plaintiff vide Ext.1. The defendant has admitted that he has not purchased from plot no.467 and plot no.467 was a different plot during settlement . As per Ext.A settlement map was published in 1989. After formation of the settlement plot no.467 the plaintiff has purchased a portion of the said plot in the year 1998. The defendant has admitted that he has not purchased from any portion of plot no.467, and claimed that plot 2210 belongs to him. Perusal of Ext.D in respect of defendants plot no.467/2210 reveals that there is no reference to any mutation in the said ROR. Taking the afore mentioned discussions and admissions of the defendant into consideration it seems that the defendant has no claim in respect of plot no.467 out of which the plaintiff purchased a portion vide Ext.1 and obtained mutation ROR. The defendants plot vide Ext.D is a different land; and the defendant has failed to prove any sale deed in respect of the land recorded in his name vide Ext D though the defendant claims to have purchased the same. Therefore, from the available materials it cannot be said that the land of the plaintiff forms a portion of the defendants land and dispute relating to title exists. Further, as already discussed the defendant has not come out with clean hands and has attempted to create a confusion between the lands purchased vide Ext.B and C and the land recorded in his name

vide Ext.D – taking advantage of the fact that the vendors vide Ext.B and C belong to the same family as the vendor of the plaintiff.

VIII) It is pertinent to mention that the defendant has hammered on the inconsistencies concerning relative locations of plot 464, 1827 and 2210. The basis on which the defendant claims that the relative location of plots vide sketch map of Ext 1 are wrong – are Ext A and Ext F ; but as discussed sketch map of Ext F does not reveal existence of plot 1827 as claimed by the defendant; rather Ext F reveals plot 1872. Nevertheless. Plot 2210 and 464 have no nexus with plot no.467 – as discussed the defendant has admitted that he has not purchased any portion from plot no.467.

IX) The defendant has claimed that the Ac 0.070 decimals of land purchased by the plaintiff actually forms portions of his land. However, the basis on which the defendant has made such a claim has been proved to be false and misleading. The defendant has based his contention on the claim that he purchased his land vide Ext.B and C and obtained concerned ROR vide Ext.D; and the Ac 0.070 decimals purchased by the plaintiff forms portions of his land. However, as discussed Ext.B and Ext. C – the RSDs proved by the defendant in support of his contention do not relate to the suit Mouza-Bhimpur. Rather, the said RSDs are in respect of the neighbouring mouza of the suit mouza i.e., Kapilprasad (Unit 23, Bhubaneswar Sahar as per Ext.A while Bhimpur is Unit 22 of BBSR as per Ext.A). As the defendant claims that the Ac 0.070 decimals of land purchased by the plaintiff forms portions of his land, the burden of proof is on the defendant to establish that the land sold to the plaintiff is a part of the defendants plot. The plaintiff has purchased his land from plot no.467. The defendant has not clarified from which plot he purchased the lands recorded in his name and belonging to suit Mouza-Bhimpur vide Ext.D – admitting during cross-examination that he has not purchased any land from plot no.467. In this regard it is relevant to mention the

demeanor of the defendant who was examined as DW 1 ; in para 22 of the cross examination of DW 1 it is stated that the witness avoided to answer whether he has purchased from plot no.467 and then admitted that he has not purchased from plot no.467. It is also pertinent to mention that the defendant remained silent as to whether he was in possession of north eastern portion of Ac 0.900 decimals and stated that he is in possession in accordance with delivery of possession given to him. Again in para 19 he has stated that he has not verified whether the description of land sold is in accordance with delivery of possession in respect of land sold vide Ext.B. In para 15 the defendant has stated that he is in possession in accordance with land purchased vide Ext.C. Thus the defendant has claimed possession on the basis of land purchased vide Ext.B and C asserting that he is in possession in accordance with delivery of possession given to him.

In order to establish that the Ac 0.070 decimals of land purchased by the plaintiff is part of the defendants plot vide Ext.D it is incumbent upon the defendant to first establish the identity of the land from which he has purchased in respect of Mouza -Bhimpur. But as already discussed the defendant has not submitted any sale deed in his favour concerning Mouza-Bhimpur. No pleading or evidence to the effect that there has been any wrong configuration of map during settlement leading to overlapping of lands purchased by the defendant and land purchased by the plaintiff has been put forth. It is not known as to the date on which the defendant purchased the lands recorded in his name vide Ext.D; it is also not known whether the purchase was made prior to settlement operation. Certain, shadows, shroud the manner in which plot no.467/2210 vide Ext.D came to be recorded in the defendant's name; especially in the light of circumstances, that no concerned RSD has been submitted; plot 2210 and not plot 467/2210 exists vide Ext.A and Ext.1; there is no reference to mutation in the ROR vide Ext.D. Nevertheless, as the

defendant has admitted that he has not purchased any land from plot 467 and as it is proved that the defendant has not purchased any land from plot 467 in view of Section 21 of the Indian Evidence Act it can be concluded that the ROR vide Ext.D is not in respect of the plot created from plot 467.

X) The defendant has proved Ext.A to establish that the relative position of plots vide Ext.A the revenue map of Bhimpur Mouza-do not tally with the relative possession of plots as shown in the sketch map vide Ext.1, the RSD in favour of the plaintiff. Further, it is clear that the boundary description of the land sold vide Ext.1 does not tally with the sketch map of Ext.1. Despite such inconsistencies which may be on account of mistake or misrepresentation by the vendors there is no ambiguity concerning the khata no, the mouza, the plot no. and the area in respect of the land purchased by the plaintiff vide Ext.1. The plaintiff has proved his purchase; the title of the plaintiff's vendor is admitted; the plaintiff has proved the mutation ROR in his favour and the approved plan of the BDA in his favour. Thus, the plaintiff has proved his title in respect of Ac 0.070 decimals of land purchase from plot no.467 and the; defendant has failed to prove any dispute concerning title as he has failed to establish that he has any claim in respect of plot 467.

XI) As the plaintiff has purchased the suit land for consideration vide Ext.1 and mutation ROR has been obtained by him and a building plan has been approved by the BDA – it seems that the plaintiff has title and possession in respect of the suit land . As the plaintiff claims attempt on part of the defendant to encroach upon his land there is possibility of breach of obligation existing in favour of the plaintiff arising out of the suit land by the defendant unless an order of injunction is passed. Accordingly, Issue no.(iii) is answered. As discussed the defendant has failed to establish that dispute concerning

title exist; so the suit for injunction simplicitor is maintainable ; accordingly Issue no.(i) is answered.

Issued no.(ii), (iv) and (v) :

In view of the aforesaid findings as the plaintiff claims attempt of the defendant to encroach upon his land the plaintiff has a cause of action to file the suit. Concerning Issue No.(iv) no evidence has been put forth to establish that the suit is barred by the principles of res judicata. In this regard in the WS there is reference to a revision case in the Court of Commissioner of settlement, but no documents in that regard have been filed. Accordingly issue number (iv) is answered in negative. Under the circumstances, the plaintiff is not entitled to any other relief except the relief of permanent injunction as determined under issue No.(iii). Accordingly issue numbers (ii), (iv) and (vi) are answered.

Order

The suit be and the same is decreed on contest against the defendant, but under the circumstances without any cost. Accordingly, the defendant is permanently restrained from interfering with the peaceful possession of the plaintiff in respect of plot No.467/2732 of area Ac 0.070 decimals, under mutation khata number 544/505 of Mouza-Bhimpur.

Advocate's fee be assessed at the contested scale.

**Civil Judge Junior Division
Bhubaneswar**

The judgment is dictated, corrected and pronounced by me in the open Court today i.e., on the day of 27th Day of March , 2014 under my seal and signature.

**Civil Judge Junior Division
Bhubaneswar.**

List of witnesses examined on behalf of the plaintiff:

P.W.1 Ajaya Kumar Kulia.

P.W.2 Ashok Kumar Swain.

**List of witnesses examined on behalf of the
defendants:**

D.W.1 Binay Kumar Nanda.

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

Ext.1 RSD No.6259, Dtd.8.12.98.

Ext.2 Mutation Khata No.544/505 of Mouza-
Bhimpur.

Ext.3 to 3/f Rent receipts (7 in numbers) in respect of
said land.

Ext.4 Plan approval letter issued by BDA.

Ext.5 Original Plan approved by BDA.

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

Ext.A Concerned village Map.

Ext.B Certified copy of RSD No.174 dtd.9.01.81.

Ext.C Certified copy of RSD No.411 dtd.12.01.82.

Ext.D Certified copy of Khatian bearing no.323 of Mouza-
Bhubaneswar.

Ext.E to E/b Rent receipts of Khata no.323

Ext.F Certified copy of RSD No.4936 dtd.5.7.02.

**Civil Judge Junior Division
Bhubaneswar.**