

IN THE COURT OF CIVIL JUDGE(SR. DIVN.), BHUBANESWAR

Present : **Sri Sitikantha Samal**
Civil Judge(Sr. Divn.)
Bhubaneswar.

C.S No.804/2008

1. Champa Dei, aged about 75 years,
W/o late Dhuleswar Samantaray
2. Prafulla Samantaray, aged about 53 years
S/o late Dhuleswar Samantaray
3. Bichitra Samantaray, aged about 42 years,
S/o Late Dhuleswar Samantaray
4. Kabiraj Samantaray, aged about 38 years
S/o late Dhuleswar Samantaray,
All are residents of Vill/Po-Jharpada,
PS-Laxmisagar, Dist-Khurda.

..... Plaintiffs

- Versus -

1. Nayana Dei, aged about 60 years,
W/o late Kedar Samantaray
2. Subash Samantaray, aged about 25 years
S/o late Kedar Samantaray
3. Krushna Chandra Samantaray, aged 62 years,
S/o late Lingaraj Samantaray
4. Laxmidhar Samantaray, aged about 55 years,
S/o late Lingaraj Samantaray
5. Srinivas Samantaray, aged 52 years,
S/o late Lingaraj Samantaray
6. Sulochana Dei, aged about 75 years,

- W/o late Mayadhar Samantaray
7. Basudeb Samantaray, aged about 65 years,
S/o late Mayadhar Samantaray
 8. Brundaban Samantaray, aged 60 years,
S/o late Mayadhar Samantaray
 9. Prakash Samantaray, aged 43 years,
S/o late Mayadhar Samantaray
 10. Chaitanya Samantaray, aged 54 years
S/o late Mayadhar Samantaray
Sl. No. 1 to 10 are residents of village-Jharpada,
Po-Jharpada, Ps-Laxmisagar, Bhubaneswar, Khurda.
 11. Bimala Swain, aged about 55 years,
D/o late Dhuleswar Samantaray
W/o Purna Chandra Swain, resident of
Suabari, Po-Kalyanpur, PO/PS-Pipili, Dist-Puri.
 12. Kamala Champati, aged about 49 years,
D/o late Dhuleswar Samantaray
W/o Mahendra Champati, resident of
Village-Kapil Prasad, Po-Sundarapada,
P.S-Air field, Bhubaneswar, Dist-Khurda.
 13. Nirmala Jena, aged about 45 years
W/o Arjuna Jena, D/o late Dhuleswar Samantaray
Resident of Sisupal, Po-Bhubaneswar,
P.S-Lingaraj, Dist-Khurda.
 14. Indumati Dakua, aged about 67 years,
W/o Goura Charan Dakua
 15. Kanakalata Sahoo, aged about 56 years,
W/o Bhagirathi Sahoo
 16. Kasturi Sahoo, aged about 48 years,
W/o Sekhar Sahoo
 17. Prasanna Kumar Panda, aged about 51 years
S/o Biswanath Panda

18. Urmila Pradhan, aged about 50 years
W/o Rama Chandra Pradhan
 19. Snehamayee Samantaray, aged about 45 years
W/o Subash Chandra Biswal
 20. Nrusingha Charan Nayak, aged about 61 years,
S/o late Mani Nayak
 21. Laxmipriya Samantaray, aged about 55 years,
D/o late Mayadhar Samantaray
All are resident of Vill/Po-Jharapada,
P.S-Laxmisagar, Dist-Khurda.
 22. M/s Pradhan Builders Pvt. Ltd., represented through
its Director Biswanath Pradhan, aged
about 41 years, S/o late Bairagi Pradhan,
Plot No. 99, Jail Road, Jharpada,
Bhubaneswar, PS-Laxmisagar, Dist-Khurda.
 23. M/s Narayan Agencies and Estate (P) Ltd,
situated office at Bapuji Nagar, P.S-Capital,
Bhubaneswar, Dist-Khurda, represented through
its Director Sri Dilip Kumar Patra.
- Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s Jagannath Das & Associates
For the deft.no.1 to 5 : M/s R.K.Nayak & Associates
For the deft.no.7 to 10 : M/s A.Satapathy & Associates

DATE OF ARGUMENT : 12.08.2014

DATE OF FINDINGS : 27.08.2014

J U D G E M E N T

The plaintiff has filed the suit for partition, permanent injunction and other consequential reliefs including cost.

- 2.** The case of the plaintiff in brief is that the the suit B schedule property is the ancestral property of plaintiffs and deft.no. 1 to 13 and deft.no. 18, 19 & 21 which stood recorded jointly in the names of Kedar, Krushna, Laxmidhar and Srinibas, S/o Lingaraj Samantaray, Mayadhar, S/o Jogendra Samantaray, Jagu @ Jagannath Samantaray and Dhuleswar Samantaray, S/o Gajendra Samantaray. The plaintiffs are coming under the branch of Dhuleswar Samantaray, the deft.no.1 to 5 are coming under the branch of Lingaraj Samantaray and the deft.no.6 to 10 are coming under the branch of Jagu Samantaray and accordingly, each branch is entitled for 1/3rd share in the suit B schedule property. Though the suit property is jointly recorded in the names of the aforesaid three branches, but they are living in separate mess since long and in that score, in order to meet their legal necessity, they have already alienated some portion of the suit plot and now Ac3.487 decimals is present which is to be partitioned amongst the parties. Due to non-cooperation of the defendants, when the plaintiffs have requested the defendants for partition of the suit

property, the defendants did not pay any heed to their requests. Hence, finding no other alternative, the plaintiffs have constrained to file the present suit for partition to get their share.

- 3.** The deft.no.1 to 5 appeared and filed a joint W.S challenging the suit on the grounds of maintainability and cause of action. They have also taken plea that some of the successors of the three branches i.e. Gajendra Samantaray, Lingaraj Samantaray and Jagu Samantaray have sold some properties out of the suit B schedule properties to different purchasers and the plaintiffs have not made the aforesaid purchasers as parties in the suit. Hence, the suit is bad for non-joinder of these necessary parties. It is averred by these defendants that the genealogy furnished by the plaintiffs in the schedule A of the plaint is not correct and they have also not mentioned that who is the common ancestor of the recorded owners of the suit B property. As per the case of the deft.no.1 to 5, one Sanatan was the common ancestor who died long since living behind his three sons namely Kanduri, Souri and Bhagabat and hence, each son of Sanatan had 1/3rd share over his entire estate. Out of the above three sons, Bhagabat died leaving behind his son Madhu and said Madhu died without any legal heirs. So the 1/3rd interest of Bhagabat devolved upon the other two branches i.e. Kanduri and Souri and thus, they entitled

for $\frac{1}{2}$ share each. Kanduri died leaving behind his only son Natabar and Natabar was succeeded by his son Lingaraj and after death of Lingaraj, being his legal heirs, the deft.no.1 to 5 are entitled for $\frac{1}{2}$ share in the suit property. Similarly another son of Sanatan, Souri who has $\frac{1}{2}$ share died leaving behind his three sons Jagannath, Panu and Gajendra. Panu succeeded by his daughter Rasa, but Rasa died without successor. So Jagannath and Gajendra are entitled to get $\frac{1}{4}$ th share each. Jagannath survived by his son Mayadhar after whose death, the deft.no.6 to 10 are his legal heirs and they are entitled for $\frac{1}{4}$ th share. Likewise after death of Gajendra, he succeeded by his son Dhuleswar and after Dhuleswar, the plaintiffs being his legal heirs are entitled for $\frac{1}{4}$ th share. Hence, according to these defendants the plaintiffs are not entitled for $\frac{1}{3}$ rd share as per their submission. It is the further case of these defendants that Dhuleswar and the other defendants as per the prior partition of the suit property have been living in separate mess and property and not only they are possessing different patches of land as their own but also they sold some portion thereof to some outsiders without any objection. Accordingly the plaintiffs have sold their entire share and at present they have no share in the suit property. Similarly the deft.no.6 to 10 have also sold a major portion of their share.

Taking advantage of the joint recording of the ROR, the plaintiffs have filed the present suit claiming 1/3rd share in the suit property whereas they are only entitled for 1/4th share.

The deft.no.7 to 10 appeared and filed their W.S jointly challenging the suit not only on the ground of its maintainability and cause of action but also they challenged the suit on the point of valuation. They have vehemently opposed and strongly denied the pleadings made by the plaintiffs in the plaint. They also pleaded that the plaintiffs and other defendants alienated some portions of the suit land and trying to take more share from the suit plot.

The deft.no.6 and deft.no. 11 to 23 have been set exparte.

Submitting the above, the defendants have prayed to dismiss the suit.

- 4.** On the basis of the aforesaid rival pleadings of the parties, the following issues have been framed for consideration.

ISSUES

- (i) Is the suit maintainable ?
- (ii) Whether there is any cause of action to file the suit ?
- (iii) Whether the suit is bad for non-joinder of necessary party ?

(iv) Whether the plaintiffs are entitled for a decree of partition of the suit B schedule property having 1/3rd share therein ?

(v) Whether there was a prior partition in respect of the suit B schedule property ?

(vi) Whether the plaintiffs are entitled for a decree of permanent injunction ?

(vii) To what other reliefs, the parties are entitled ?

5. In support of their case, besides adducing the evidence of plaintiff no.2 who is referred to as P.W.1, the plaintiff have also adduced the evidence deft.no.10 who is referred to as P.W.2 hereinafter. The plaintiff has exhibited various documents vide Ext.1 to 10 in support of their plea. On the other hand, the defendants have adduced only the evidence of deft.no.5 who is referred to as D.W.1 hereinafter. Besides they have exhibited some documents vide Ext.A to Ext.Z in support of their plea. All the oral and documentary evidences adduced on behalf of the parties have been reflected in detail at the foot of this judgment.

FINDINGS

6. Issue No. (iii), (iv) & (v):- Since these three issues are inter-related

and decide the fate of this suit, these are taken together for consideration. Before going to the matters of dispute, let us reiterate the admitted facts of this case. Now it remains admitted that the plaintiffs and the deft.no.11 to 13 are the successors of Dhuleswar, the deft.no.1 to 5 are the successors of Lingaraj and the deft.no.6 to 10 and deft. No. 18, 19 & 21 are the successors of Mayadhar Samantaray. It also remains admitted that Natabar is the father of Lingaraj, Mayadhar is the son of Jagannath and Dhuleswar is the son of Gajendra Samantaray. The case of the plaintiffs is that, Natabar, Jagannath and Gajendra are three branches and have 1/3rd share each. On the other hand, the case of the deft.no.1 to 5 is that one Sanatan Samantaray was the common ancestor who had three sons namely Kanduri, Souri and Bhagabat. Since the branch of Bhagabat got extinct, the two sons of Sanatan Samantaray namely Kanduri and Souri had half share each and after death of Souri, his two sons Jagannath and Gajendra @ Mardagaji had 1/4th share each and accordingly, the deft.no.1 to 5 who represents the branch of Natabar have half share in the suit property. Gajendra died leaving behind his son Dhuleswar and the plaintiffs along with deft.no.11 to 13 being the successors of Dhuleswar, they are entitled to 1/4th share of Gajendra and accordingly, the deft.no.6 to 10 and 18, 19 & 21 who

represents the branch of Jagannath through his son Mayadhar are also entitled to 1/4th share. From the case of the parties, it is found that even though the branches of Lingaraj, Mayadhar and Dhuleswar remains admitted but so far as their common ancestor i.e. Sanatan Samantaray is the matter of dispute in this suit. So far as the settlement ROR of the year 1989 in respect of suit Khata No. 155 & 935 are concerned, it stands recorded in the name of Kedar, Krushna Chandra, Laxmidhar, Srinibas, Sons of Lingaraj Samantaray, Mayadhar Samantaray, S/o Jagu Samantaray, Dhuleswar Samantaray, S/o Gajendra Samantaray as evident from the certified copies of the said RORs which are admitted in evidence as Ext.1 so also as Ext.A, & Ext.5 respectively. So far as the suit Khata No. 762 is concerned, the same stands recorded in the name of Lingaraj, S/o Natabar Samantaray, Mayadhar, S/o Jagu Samantaray and Dhuli, S/o Gajendra Samantaray in the Settlement ROR of the year 1989 as evident from Ext.6. The aforesaid recording in the names of the recorded owners are not in dispute. Basing upon such recordings, the plaintiffs claim is that since those RORs stand in the names of three separate branches jointly, each branch is entitled to 1/3rd share and accordingly, the plaintiffs are also entitled to 1/3rd share in the said suit Khatas. The learned counsel for the deft.no.1 to 5 urged that even though the

RORs of 1989 in respect of the suit properties reflect three branches but Jagu & Gajendra being the branch of Souri Samantaray, they are entitled to 1/4th share each in the suit property and Lingaraj branch being the branch of Kanduri who is the brother of Souri is entitled to half share in the suit property. In order to substantiate his case, he relied upon the Ext.B which is the certified copy of the ROR of the year 1962 settlement in respect of Khata No. 514 which stands recorded in the names of Lingaraj, S/o Natabar Samantaray, Mayadhar, S/o Jagu Samantaray and Dhuleswar, S/o Gajendra Samantaray. In order to further co-relate, he relied upon the Ext.C, the Settlement ROR of the year 1930 in respect of Khata No. 563 which reveals that Natabar is the son of Kanduri Samantaray, Jagannath is the son of Souri Samantaray and Manika, Widow of Bhagabat Samantaray and Ext.D, the ROR of 1930 in respect of Khata No. 177 which stands recorded in the name of Natabar, S/o Kanduri Samantaray, Jagannath, S/o Souri Samantaray. By this Ext.B, C and D, the deft.no.1 to 5 tried to prove that Lingaraj is the son of Natabar and Natabar Samantaray is the son of Kanduri Samantaray. Similarly, they also tried to prove and establish that Jagannath is the son of Souri Samantaray and there was one Bhagabat Samantaray. At this juncture, the learned counsel for deft.no.1 to 5 submitted that the deft.no.1 to 5 in

absence of any cogent oral evidence so far as the genealogy is concerned are able to prove and establish the genealogy given by these defendants up to Kanduri, Souri and Bhagabat. The learned counsel for the plaintiffs on the other hand, submitted that the mere establishing the genealogy of the branch of Lingaraj up to his grandfather Kanduri and Jagannath, S/o Souri and Bhagabat do not establish itself that Kanduri, Souri and Bhagabat are three brothers and are the sons of Sanatan Samantaray. He submitted that while proving an old and ancient genealogy, the burden rests on the person who bases his case of the said genealogy and he has to prove every links of the said genealogy. In support of her submission, he relied upon a decision of our Hon'ble Apex Court reported in AIR 1983 SC page-684 (State of Bihar Vrs. Sri Radhakrishna Singh). In the said decision, the Hon'ble Apex Court formulated the following tests which must be adopted while accepting the genealogy of the families.

“ (a) the genealogy of the families concerned must fall within the four corners of Section-32(5) or Section 13 of the Evidence Act.

(b) They must not be hit by the doctrine of post litem motam.

(c) The genealogy or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held

by a long course of decisions to be inadmissible.

(d) where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved.

When a case of a party is based on a genealogy consisting of links, it is incumbent on the party to prove every link thereof and even if one link is found to be missing then in the eye of law the genealogy cannot be said to have been fully proved”.

Add to it, the learned counsel for the plaintiffs submitted that the D.W.1 who is the deft.no.5 in his cross-examination at para-14, 16 and 19 time and again admitted that the genealogy given in the plaint is correct and the RORs of 1989 are also correct. So far as this submission is concerned, the RORs in respect of the suit property is not matter of dispute in this case and even the genealogy given in the plaint is also not disputed. But the said genealogy given in the plaint is a part of the genealogy given by the deft.no.1 to 5. So such admission of the deft. No. 5 time and again during his cross-examination is of no help to the plaintiffs' case. Rather the Court is to scrutinize the documentary so also the oral evidences available in the case record to reach at conclusion

whether Sanatan Samantaray is the common ancestor of the parties or not. The witnesses examined in this case are of the 5th generation of alleged Sanatan Samantaray and they have not adduced any clinching oral evidence either to prove or to disprove the genealogy put forth by the deft.no.1 to 5. The learned counsel for the deft.no.1 to 5 draws the attention of this Court that in para-3 of his cross-examination, the P.W.2 has specifically admitted that the brother of Souri Samantaray is Kanduri Samantaray and placed much reliance on this stray admission of the P.W.2. None of the witnesses has stated that he has got special means of knowledge about Sanatan Samantaray. The Ext. A, B, C and D, the certified copies of the RORs prepared at different times starting from the year 1930 prove to the extent of the branches of Natabar, S/o Kanduri Samantaray, Jagannath, S/o Souri Samantaray and Manika W/o Bhagabat Samantaray. Those documents specially the Ext. C and D failed to establish or show Gajendra or even Gajendra @ Mardagaji is the son of Souri Samantaray. This link is being very vital and if such a link would have been established, then it can be proved that Jagannath and Gajendra are the sons of Souri. So the stray admission of P.W.2 that Souri and Kanduri are two brothers, in absence of the link that Gajendra is the son of Souri Samantaray, it cannot be held that Gajendra and Jagannath are

two brothers. On the other hand, the learned counsel for the plaintiffs relied upon the objection filed by these deft.no.1 to 5 in FAO No. 44/2011 arising out of this suit and the certified copy of which is admitted as Ext.3. The D.W.1 has also in his cross-examination at para-22 admitted the fact of filing of such objection. The Ext.3 reveals that at para-4 the deft.no. 1 to 5 have admitted to have 1/3rd share. Many other registered deeds have been filed and exhibited from both the sides in this suit in which the parties are dealing with the properties including some of the suit properties. But on a careful scrutiny of the said documents, it is found that nowhere any of the executants has admitted his share in the document except the Ext. P, the regd. Sale deed dt. 30.03.1987 executed by Mayadhar Samantaray wherein he admitted that he has got 1/3rd share. Mayadhar Samantaray is none else but the son of Jagannath Samantaray. Since it is a document at an undisputed point of time, i.e. in the year 1987 which is prior to the settlement of 1989 and that Mayadhar Samantaray died prior to the institution of this suit, it can be taken into consideration. Keeping in view of the decision of the Hon'ble Apex Court noted supra, when there is no direct or even cogent evidence to complete the link up to Sanatan Samantaray even to complete the link that Jagannath and Gajendra @ Mardagaji are the sons of Sourji, in view of the

recording of the suit land in the settlement of 1989, this Court is of the view that the branch of Lingaraj, Mayadhar and Dhuleswar are three separate branches.

The next question comes up whether there is a prior partition of the suit land or not. The deft.no.1 to 5 have taken the specific plea of prior partition of the suit land. From the very outset, the learned counsel for the plaintiffs submitted that the burden to establish the plea of previous partition lies on the party who advances that plea and relied upon a decision of our own Hon'ble High Court reported in 1978(l) CWR page-32 Dukhi Dibya Vrs. Landi Dibya. Here in this case, it remains admitted that the parties are separate in mess. But the Ext. 1, 5 & 6 which are the RORs in respect of the suit Khatas show that the properties covered under the said Khatas have been jointly recorded and there is absolutely no remark as to possession in the remarks column of suit Khata No. 935 and 762 which are admitted in evidence as Ext.5 & 6 respectively. So far as the suit Khata No. 155 is concerned, the certified copies of ROR of which admitted in evidence as Ext.1, except suit plot no. 511, 514 and 514/2714, there is no remark of note of possession in the remarks column of the said ROR Of 1989. The remarks column of the aforesaid three plots reveals that separate Khatas have been prepared in pursuance to the mutation

cases. Similarly the Ext.B, the ROR of 1962 settlement does not reveal any separate note of possession in the remarks column. The learned counsel for the deft.no.1 to 5 gave much emphasis on the transfers made by the recorded owners or their successors and draws the attention of this Court to the registered transfer deeds which have been admitted in evidence and marked as Exhibits. Without going to unnecessary details, on the careful scrutiny of those deeds, it is found that at different times the recorded owners have transferred some portions of the suit plots either as per the 1962 settlement or the settlement of the year 1989 reciting therein that they are transferring the land as per the amicable partition. But in none of those documents, it has been mentioned as to the allotments of the other branches. It may be stated here that the properties covered under the Ext.B i.e. the certified copy of the ROR of 1962 corresponds to the present suit properties under Khata No. 155. The learned counsel for the plaintiffs gave emphasis on the Ext.10 i.e. the regd.sale deed dt. 18.10.1968 jointly executed by Lingaraj, Mayadhar and Dhuleswar in favour of one Bichitrananda Nayak in respect of plot no. 429 under Khata No. 514 (Ext.B), in which it is admitted by them that the said land is joint land. This document no doubt clinches the matter as all the three branches had admitted their jointness in the property in the

year 1968. On the other hand, when the burden is on the deft.no. 1 to 5, who have taken the plea of prior partition, have neither pleaded when the said partition took place and in what manner and what are the respective allotments of the branches of the recorded owners nor adduced evidence to that effect. A mere plea that there was a prior partition or the bare recitals in the deeds that as per amicable partition, they are transferring the lands covered under the deeds can not substantiate the plea of prior partition. The learned counsels for the deft.no. 1 to 5 relied upon a decision of our Hon'ble High Court reported in 1974(2) CWR 1021 Raghav Jagatsingh Vrs. Sanei Dalei where their Lordships have been pleased to hold that when witnesses come forward to speak about separate possession, separate dealing and separate messing, their evidence can not be thrown out merely because they do not say to have witnessed to actual partition. Here in this case only one witness has been examined from the side of the defendant who is none else but the deft.no.5 and was aged about 53 years on the date of his examination. Though in his examination in chief he has just stated that there was a prior partition but he has not whispered how & when that partition took place and what are the specific allotments. Even he has not whispered about their specific allotments in the suit properties. Rather in para-16 of his cross-

examination, he has categorically admitted that he can not say any thing about mutual partition between the share holders. When there is no document to show the partition, when the deeds executed by the recorded owners or their successors do not disclose in a convincing manner as to the partition and their respective allotments, when the witness D.W.1 specifically admitted that he can not say anything about the mutual partition and even where there is no pleading as to the manner and time of partition and specially when there is no mention of separate note of possession in the ROR, in view of the joint recording in Ext.1, 5 and 6 in the year 1989, it can be safely held that the suit property has not yet been partitioned by metes and bounds and are still joint.

The learned counsel for the deft.no.1 to 5 raised another point during course of argument that the Ext.1 is the certified copy of the ROR in respect of suit Khata No. 155 so also the Ext.A is also the certified copy of the ROR in respect of suit khata no. 155 and there are discrepancies in between the two as regards to the area of plot no. 551, 514 and the plot no. 2290 though finds place in Ext. A but it does not find place in Ext.1. As per Ext.A, plot no. 511 measures Ac0.552 decimals whereas as per Ext.1 the said plot 511 measures Ac0.516 decimals with a remark of a mutation case bearing no. 7268/1997 and mutation Khata No.

928/621. Similarly as per Ext.A plot no. 514 measures Ac0.223 decimals whereas as per Ext.1, it measures Ac0.97 decimals with remark of mutation case no. 4167/91 and mutation case no. 1525/93. As per Ext.A, plot no. 2290 measures Ac0.112 decimals with remark "Dhuleswar Samantaray pakhe kharid sutre dakhal Niranjana Panda" whereas the said plot does not find place in Ext.1. On perusal of the Ext.U, it is found that it is the certified copy of the mutated ROR in the name of Urmila Pradhan, the deft.no.18 bearing plot no. 512/3329 measuring Ac0.036 decimals under mutation khata no. 928/621 which is consonance with the Ext.1 and A. So far as the suit plot no. 514 is concerned, the Ext.S and Ext.V which stand in the name of Prasanna Kumar Panda, the deft.no.17 and Nrusingha Charan Nayak, the deft.no.20 respectively correlates the mutation case number and mutated khata number reflected against suit plot no. 514 in Ext.1. On careful perusal of the sale deeds filed by the parties, Ext.U relates to Ext.P executed by Mayadhar Samantaray, Ext.S relates to Ext.7 executed by Dhuleswar Samantaray on 17.06.1991 in which the deft.no.2 to 5 have given their consent and Ext.V relates to Ext.H the regd.sale deed dt. 21.11.1992 executed by Dhuleswar Samantaray. Similarly in the remarks column against plot no. 514/2714 of Ext.A & 1, it has been mentioned that Dhuleswar Samantaray pakhe kharid sutre

dakhal Indumati Dakua, (deft.no.14) which relates to Ext.T. The plot no. 2290 which is not reflected in Ext.1 but reflected in Ext.A with remarks Dhuleswar Samantaray pakhe kharid sutre dakhal Niranjan Panda. So considering the aforesaid transactions and mutations thereon, it is found that really there is no discrepancy in between Ext.A and Ext.1, as explained above. The Ext.Q also shows that Sulochana, the deft.no.6 who is the wife of Mayadhar has gifted Ac0.054 decimals from suit plot no 512 under khata no. 155 to her daughter Snehamayi, the deft.no.19. Ext.8 reveals that Dhuleswar Samantaray sold Ac0.095 decimals out of suit plot no. 514 from Khata No. 155 to Kanakalata Sahoo, the deft.no.15 and Kasturi Sahoo, the deft.no.16 by RSD dt. 17.11.1995. So it may be stated here that from the suit khata no. 155, the parties have already transferred portions of land as stated above. So far as the General Power of Attorneys are concerned, it has no bearing in this suit for partition and hence, needs no elaboration.

From the above discussion, it is found that all the persons interested in this suit have been made as parties even though separated mutated Khatas have been prepared in respect of the transferee-parties. So the suit is not bad for non-joinder of necessary parties.

As discussed and held above, the branch of Lingaraj,

Mayadhar and Dhuleswar are three separate branches and the plaintiffs along with deft.no.11 to 13 together entitled to 1/3rd share, the deft.no.1 to 5 together are entitled to 1/3rd share and the deft.no. 6 to 10 and deft.no.18, 19 and 21 together entitled to 1/3rd share in the suit B schedule property subject to the transfers made by their respective branches and the transferee defendants are entitled to the extent of the share of their respective vendors. These issues are answered accordingly.

7. Issue No. (vi) :- In view of of aforesaid findings in the foregoing issues, since the suit properties are still joint and the parties are in joint possession, no relief of permanent injunction can be granted. This issue is answered against the plaintiffs.

8. Issue No.(i), (ii) & (vii) :- In view of findings in issues no.(iii) to (v), the suit is maintainable so also there is cause of action to file this suit. So far as the other relief is concerned, since this is a suit for partition, the plaintiffs are not entitled for any other reliefs including the costs. These issues are answered accordingly.

Hence, it is ordered :

ORDER

The suit be and the same is hereby preliminarily decreed in part as against the deft.no.1 to 5, deft.no.7 to 10 and exparte against deft.no.6 and deft.no.11 to 23, under the circumstances

without cost. It is hereby declared that the plaintiffs and the deft.no.11 to 13 together are entitled to 1/3rd share, the deft.no.1 to 5 together entitled to 1/3rd share and the deft.no. 6 to 10 and deft.no.18, 19 and 23 together entitled to 1/3rd share and the transfers made by the respective branches shall be adjusted in the 1/3rd share of the respective branches and the transferee defendants are entitled to the extent of the share of their respective vendors. The parties are directed to effect an amicable partition amongst themselves within a period of two months hence, failing which any of the party to the suit is at liberty to get his/her share allotted in a final decree proceeding through the process of the Court and in that event, the Civil Court Commissioner is directed to make adjustment so far as the interest of the transferee defendants are concerned and to take in to consideration the possession of the parties as far as possible and practicable while effecting such partition. So far as the relief of permanent injunction is concerned, the suit is dismissed.

Advocate's fees be assessed at the contested scale.

Civil Judge(Sr.Divn.)

Bhubaneswar.

The judgment is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 27th day of August, 2014 under my seal and signature below.

Civil Judge(Sr.Divn.)

Bhubaneswar.

List of witnesses examined for the plaintiffs:

P.W.1 Prafulla Kumar Samantaray
P.W.2 Chaitanya Samantaray

List of witnesses examined from the side of defendant:

D.W.1 Srinibas Samantaray

List of documents exhibited on behalf of the plaintiff:

Ext.1 Certified copy of ROR under Khata No. 155
Ext.2 Certified copy of petition for stay in FAP No. 44/11
Ext.3 Certified copy of objection in FAO 44/11
Ext.4 Certified copy of Power of Attorney dt. 18.04.07
Ext.5 Certified copy of ROR in Khata No.935
Ext.6 Certified copy of ROR in Khata No. 762
Ext.7 Certified copy of RSD No. 8411

- Ext.8 Certified copy of RSD No. 7148
- Ext.9 Certified copy of RSD No. 1793 dt. 17.02.82
- Ext.10 Memo dt. 07.03.11 in I.A 586/10

List of documents exhibited on behalf of the defendants:

- Ext.A Certified copy of Hal ROR of Khata No. 155
- Ext.B Certified copy of 1962 settlement ROR of Khata No. 514.
- Ext.C Certified copy of ROR of Khata No. 563
- Ext.D Certified copy of ROR of Khata No. 177
- Ext.E Certified copy of RSD No. 4611 dt.21.7.75.
- Ext.F Certified copy of RSD No. 5064 dt. 17.11.55.
- Ext.G Certified copy of RSD No. 422 dt. 17.06.91
- Ext.H Certified copy of RSD 7955 dt. 21.11.92.
- Ext.J Certified copy of RSD No. 4744 dt. 20.08.73.
- Ext.K Certified copy of RSD No. 6868 dt. 10.08.53.
- Ext.L Certified copy of GPA No. 13162 dt. 29.08.08
- Ext.M Certified copy of GPA No. 5121 dt. 07.04.08
- Ext.N Certified copy of GPA No. 12415 dt. 13.08.08
- Ext.P Certified copy of RSD No. 3357 dt. 30.03.1987
- Ext.Q Certified copy of RSD No. 4526 dt. 16.05.90.
- Ext.R Certified copy of RSD No. 1794 dt. 18.02.1983.
- Ext.S Certified copy of ROR of Khata No. 928/106

Ext.T	Certified copy of ROR of Khata No. 928/2543
Ext.U	Certified copy of ROR of Khata No. 928/621
Ext.V	Certified copy of ROR of Khata No. 928/209
Ext.W	Certified copy of ROR of Khata No. 155
Ext.Y	Certified copy of ROR of Khata No. 928/3192
Ext.Z	Certified copy of ROR of Khata No. 928/581.

Civil Judge(Sr.Dlvn.)

Bhubaneswar.