

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANPUR.

Present:

Sri Satya Ranjan Pradhan, LL.B.,
Senior Civil Judge, Banpur.

Civil Suit No 100/209 of 2014/2008

Dolagobinda Maharana, aged about 67 years,
S/o Late Agadhu Moharana, Vill: Ankula, Po: Ankulachati,
P.S:Balugaon, Dist: Khurda.

..... Plaintiff.

-Versus-

1. Jayanta Kumar Sena, aged about 38 years, S/o Late Batakrisna Sena.
 2. Laxmipriya Sena, aged about 70 years, W/o Late Batakrisna Sena.
- Both are of Vill: Ankula, Po: Ankulachati, P.S: Balugaon, Dist: Khurda.

.....Defendants

Counsel for the plaintiff ...

Sri G.S.Saranghi, Advocate
& his Associates.

Counsel for the defendants

Sri S.K.Lenka, Advocate
& his associates.

Date of Argument – 19.09.2014

Date of Judgment – 25.09.2014

J U D G M E N T.

1. This is a suit filed by the plaintiff for demarcation and permanent injunction.

2. The case of the plaintiff as per the plaint is that:

On 02.03.1981 he had purchased the suit land from one Krushnamohan Jena vide R.S.D No. 350. After purchase of the suit land he is possessing it by constructing a residential house over it. He has also covered the suit plot with ridge and green fence. The defendants are his eastern and southern side neighbours. Plot No.264 with an area of Ac.0.009 decimals under Khata No.44 which situates to the southern side of the suit plot belongs to defendant No.1. Whereas the land of

defendant No.2 bearing Plot No.274, Khata No.44 with an area of Ac.1.360 decimals situates to the eastern side of the suit plot. The Kisam of the suit land is Gharabari in nature and is about two feet higher from the land of the defendants. The claim of the plaintiff is that the defendants are rich, influential and rowdy elements of the locality whereas he is an illiterate and old person. Taking advantage of his position the defendants are creating disturbances over the suit property with an intention to grab it. On 18.10.2008 the defendants threatened the plaintiff to dispossess him from the suit land and cut down the trees which situates over it. Having no option left the plaintiff has filed the suit for demarcation and permanent injunction.

3. The defendants being summoned appeared in the suit and filed their written statement to the effect that the averments mentioned by the plaintiff in his plaint are false and baseless. However they admitted the fact that their plot bearing No,264 and 274 situates on the southern and eastern side of the suit plot. They denied the fact that at any point of time they had tried to encroach upon the suit land or threatened the plaintiff to dispossess him from his lawful possession. Rather it is their claim that the plaintiff is trying to encroach upon their land by causing hurt and criminal intimidation for which they had lodged a written report at Balugaon P.S. Moreover to short out the boundary dispute the defendants had applied to the Tahasildar Banpur for demarcation of the land vide demarcation case No.20/2007. Citing the aforesaid facts the defendants prayed to dismiss the suit of the plaintiff.

4. On the above pleadings of the parties the following issues were settled.

1) Whether the suit is maintainable ?

- 2) Whether the plaintiff is entitled for a decree of demarcation and permanent injunction against the defendants
- 3) Whether the plaintiff is entitled for any other relief?

5. In order to substantiate his case the plaintiff has examined only three witnesses including himself as P.W.3 and proved certain documents in his favour. On the other hand the defendants examined four witnesses and produced certain documents.

F I N D I N G S.

6. Issue No.2 :-

This being the most important issue is taken first for discussion.

This suit was filed by the plaintiff for a decree of demarcation and permanent injunction. As revealed from the rival pleadings of both parties the plaintiff is the owner in possession of the suit Plot No.263 under Khata No.64 in Mouza Ankula. To substantiate the same he has produced the consolidation ROR which stands recorded in his name along with the R.S.D bearing No.350 dated 2.3.1981 vide which he had purchased it from Krushna Mohan Jena. The witnesses examined on his behalf namely Sachidananda Maharana and Rabindranath Satrusalya have also deposed about the possession of the plaintiff over the suit plot. From the aforesaid documents as well as the statement of witnesses it is clear that the plaintiff is the owner in possession of the suit plot. The aforesaid fact is/ was also not challenged by the defendants. They never agitate the point that the plaintiff is not the owner in possession of the suit plot. As revealed from the rival pleadings and statement of the witnesses there exist a boundary dispute between both the parties. The plaintiff claims that the defendants who are his eastern & southern side

neighbours are attempting to encroach upon his land and are threatening him to dispossess. On the other hand defendants claim that it is the plaintiff who is using criminal force to acquire their land. For the aforesaid dispute both parties have filed criminal case against each other. To resolve this dispute of boundary and as it is a suit for demarcation, on the application of the plaintiff a Survey knowing Amin commissioner was deputed to demarcate, identify and to fix as correct boundary line of the suit land. Being deputed by the court the S.A commissioner had been to the suit plot on 12.10.2010 for the aforesaid purpose. After his arrival he had issued notice to both the parties to appear vide Ext.2 and both the parties also remained present there. In support of this fact the Amin commissioner had obtained their respective signature and LTI on Ext.2. Thereafter he demarcated the suit Plot and fixed the boundary lines. In this regard he had produced the report thereof along with the sketch map produced and marked as Ext.3 & 3/a respectively. After submission of his report as the plaintiff had raised objection on the correctness of the demarcation the said Amin commissioner was noticed and examined as court witness No.1. While being examined as C.W.1 he produced the aforesaid documents marked as Ext.2,3 & 3/a along with notice received from the court as Ext.1. Although this witness was examined as court witness No.1. neither the plaintiff nor the defendants choose to cross examine him on the fact of demarcation so made by him and on his report and sketch map, for which the said report was accepted as it is. Both the sides to the suit also did not produce any rebuttal evidence to that effect. That means no substantial evidence was produced to prove that Ext.3 and 3/a are not correct. So at this juncture it can be said that the said

report and sketch map prepared by Amin Commissioner is correct and accepted by both the parties.

So far as encroachment by the defendants are concerned the plaintiff alleges that they are trying to encroach upon his land . The witness P.W.2 in para-11 of his cross examination has stated that he had seen the defendants trying to damage the fence of the plaintiff. Similarly no question was asked to the plaintiff during his cross examination on his allegation of damaging the fence or encroachment by the defendants except a suggestion that defendants had lodged a report against his attempt of encroachment upon their land. Moreover defendant No.2 while being examined as D.W.4 had admitted to the suggestion given by the counsel for the plaintiff to the effect that they had amalgamated the land of plaintiff with theirs by damaging the fence of the plaintiff. So considering the aforesaid facts I am of the view that the plaintiff is entitled for a decree of permanent injunction for restraining the defendants from entering into the suit land as demarcated by the Amin Commissioner and disturbing his peaceful possession, changing the nature & character of the suit property.

7. Issue No.1 & 3:-

So far as maintainability is concerned the defendants did not raise any point during the hearing of the suit as to how the suit is not maintainable. So the suit is maintainable. After going through the pleadings of both parties and the evidence led by them I am of the view that the plaintiff is not entitled to any other relief except the reliefs claimed in the plaint.

O R D E R.

The suit be and the same is decreed on contest against the defendants but in the circumstances without cost.

The suit land is demarcated and boundary line has been fixed as per the report and sketch map prepared by Amin Commissioner. Both parties are directed to obey the said demarcation & boundary line fixed by the Amin Commissioner. The relevant portion of the report of the Amin commissioner and sketch map be formed the part of the decree.

The defendants are hereby permanently injuncted from entering into the suit land as demarcated by the Amin commissioner and interfering in the peaceful possession of the plaintiff. They are also permanently injuncted from causing damage to the suit land thereby changing its nature and character.

Advocate's fee is at the contested scale.

Senior Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 25th day of September, 2014.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1 Sachidananda Moharana
P.W.2 Rabindranath Satrusally
P.W.3 Dolagovind Maharana

List of witness examined on behalf of defendants :-

D.W.1 Rabindranath Rautray.
D.W.2 Smt. Kabita Sena.
D.W.3 Madhusmita Sena
D.W.4 Laxmipriya Sena

List of witness examined on behalf of the Court.

C.W.1 Darpanarayana Jena.

List of documents admitted into evidence by the Plaintiff:-

Ext-1 Writ issued by the court.
Ext.2 Spot notice issued to defendants.
Ext.3 Demarcation report of P.W.1.
Ext. 3/a Demarcation sketch map by P.W.1.
Ext. 4 R.O.R. Bearing No.64 of Mouza Ankula.
Ext.5 Sale deed bearing No.362 dt. 02.03.1981.

List of documents admitted into evidence by defendants :-

Nil

Senior Civil Judge, Banpur.