

HEADINGS OF DECISION IN CIVIL SUITS

**IN THE COURT OF 1ST. ADDL. SENIOR CIVIL JUDGE,
BHUBANESWAR
DISTRICT-KHURDA.**

**PRESENT:- *Pranab Kumar Routray, LL.M.,
1st. Addl. Senior Civil Judge,
Bhubaneswar.***

Civil Suit No. 1398/2010

Smt. Santilata Sahoo, aged about 59 years,
W/o-Maguni Sahoo, and D/o- Late Dama Sahoo,
resident of Godagopinath Prasad,
P.O- Rasulgarh, P.S.-Mancheswar, Bhubaneswar,
Dist-Khurda.

..... Plaintiff.

-Versus-

1. Smt. Mamata Sahoo, aged about 40 years,
D/o-Abar Sahoo, W/o-Sridhar Sahoo,
of Vill-Kumbhar Basta, P/s-Dist-Khurda.
2. Smt. Sameeta Sahoo, aged about 40 years,
D/o-Abar Sahoo, W/o-Chaitanya Sahoo,
Village Apatasahi, P.O.-Prataprudrapur,
P.S.-Balipatna, Dist-Khurda.
3. Subash Chandra Sahoo, aged about 44 years,
S/o-Abar Sahoo,
4. Santosh Chandra Sahoo, aged about 36 years,
S/o- Abar Sahoo,

Sl. No. 3 to 4 are of vill-Godagopinathpradsad,
P.o-Rasulgarh, P.S.-Mancheswar, Dist-Khurda.

..... Defendants.

5. Smt. Chitramani Sahoo, aged about 64 years,
D/o-Late Dama Sahoo, W/o-Alekh Bihari Sahoo,
Vill/P.O/P.S.-Badagada, Bhubaneswar,
Dist-Khurda.

..... Proforma Defendants.

COUNSEL APPEARED

For the Plaintiff : Sri Purna Chandra Mishra &
Associates

For the Defendants : Sri Susanta Kumar Dash &
Associates

DATE OF ARGUMENT ; 09-04-2014

DATE OF JUDGMENT ; 21-04-2014

JUDGMENT

This is a suit for declaration claiming 50% share over the suit land, declaration of order passed by learned Commissioner, Consolidation and Settlement, Odisha and order passed by Tahasildar, Bhubaneswar are void and illegal and not binding to the Plaintiff and for permanent injunction with cost.

2. The case of the Plaintiff in short is that she and the defendants are governed under Mitakshar school of Hindu Law. The genealogy appended in the Schedule A of the plaint says that the common ancestor was one Dinabandhu Sahoo who died leaving behind Gopi, Jogi and Pankaj of whom Gopi died issueless in jointness, Jogi died leaving behind his only son Dama and Pankaj

died leaving behind his only son Chemai. Dama died leaving behind his legal heirs and successors namely Sabitri as his wife, three daughters namely Suryamani, Chitramani (Proforma Defendant No.5) and Santilata (Plaintiff). Suryamani died issueless, Sabitri is also dead. Defendants 1 to 4 represent the branch of Pankaj. It is the case of the Plaintiff that in 1962 Settlement R.O.R. Under Khata No.38 of Mouza Gadagopinathprasad four plots stood recorded in the name of one Giridhari Sahoo and other co-sharers but respective possession of the parties was reflected against each plot and accordingly names of Chemai Sahoo and Dama Sahoo were jointly reflected against two nos of plot bearing No.491 & 491/984 (suit plots). While both of them were in peaceful possession they died leaving behind their respective legal heirs and successors described as above. During the preliminary Hal Settlement operation the names of successors of Dama and Chemai were recorded but Chandramani, D/o- Chemai Sahoo had filed a Rent Objection case with prayer to record her name exclusively against both the plots on the basis of a gift deed executed by her father in her favour in 1960. she also claimed that her father Chemai Shao had purchased the suit plots from one Giridhari Sahoo under registered sale deed in 1956. Accordingly, it was directed to record both the plots in name of Chandramani Sahoo. The Settlement Officer suo moto corrected the order passed in the Rent Objection case and directed to record the suit land jointly in the name of Chandramani along with wife

and two daughters of Dama Sahoo namely Sabitri, Santilata and Chitramani and accordingly it was jointly recorded and the parties are in joint possession after death of Chandramani and Sabitri to the knowledge of everyone of the suit mouza as well as public at large. Hal R.O.R. Was finally published in 1988. The Plaintiff and Proforma Defendant No.5 are paying rent and obtaining up to date rent receipts in their favour. While the matter stood thus, Chandramani the Mother of Defendant No.1 to 4 being aggrieved by the final publication of R.O.R preferred a revision before the Commissioner of Settlement, Odisha to record her name exclusively challenging the order passed by the Settlement Officer and the said revision was allowed. Being aggrieved by the order of learned Commissioner of Settlement the Plaintiff and Proforma Defendant no.5 and their mother Sabitri moved Hon'ble High Court of Orissa and Hon'ble High Court directed the parties to approach Civil Court on the ground that the disputed question of fact involved are to be adjudicated effectually by this Court. Thereafter, the present Plaintiff and Proforma Defendant No.5 had also filed revision petition before Hon'ble High Court to review the order but again it was directed to approach the Civil Court. It is the further case of the Plaintiff that when the order of Hon'ble High Court was in force the mother of Defendant No.1 to 4 i.e. Chandramani had managed to record her name exclusively deleting the names of the Plaintiff, the Proforma Defendant No.5 and their mother Sabitri in Mutation Misc. Case No.113/96 behind the back of Plaintiff and

Proforma Defendant No.5 in Bhubaneswar Tahasil. Basing on the aforesaid void mutation order defendants no.1 to 4 are interfering in the peaceful possession of the Plaintiff and are threatening to sale away the suit land. Hence, the suit.

3. Proforma Defendant No.5 filed a separate written statement admitting the case and all the claims of the Plaintiff.

Defendants No.1 to 4 filed a joint written statement challenging the suit on maintainability, cause of action, valuation and also on law of limitation. They also challenged the genealogy. It is claimed that Chemai Sahoo alone had purchased a land measuring Ac.0.128 decimals comprising Ac.0.76 from out of the western side of Plot No.258 and Ac.0.52 in Plot No.263 under Khata No.32 from one Giridhari Sahoo under a registered sale deed in 1956 but the note of possession in remark column of R.O.R. ignoring the sale deed reveals that the statutory authority have not acted in conformity with the provision of law. It is forcefully denied that Dama Sahoo or his legal heirs ever possessed any part of the suit land. It is claimed that Chemai Sahoo gifted the suit land in favour of his youngest daughter Chandramani by registered deed of gift No.830 dt.06.02.1960 and therefore during major settlement operation the successors in interest of Dama were not in possession over the suit land and thus, the Rent Objection case filed by Chandramani was rightly allowed in her favour. It is further claimed that Chandramani is in exclusive possession over

the suit land from the date of execution of the registered deed of gift. The Plaintiff has tried to build castle through the erroneous Amin report and the order passed by the Settlement Officer but learned Commissioner of Settlement was pleased to set aside the order passed by the Settlement officer and the Plaintiff also became unsuccessful in assailing the same before Hon'ble High Court. It is also claimed that the order passed in mutation case recording the name of Chandramani exclusively is not nonest in the eye of law. The defendants denied to have tried to interfere in the possession of the Plaintiff over the suit land or to sell away the suit land because the Plaintiff and Proforma Defendant No.5 are never in possession over the suit land nor have any interest on it. In view of such pleadings it is prayed that the suit is liable to be dismissed.

4. Basing on the aforesaid pleading of the parties the following issues have been settled.

ISSUES

1. Whether the suit is maintainable ?
2. Whether there is cause of action to file the suit?
3. Whether the suit is barred by law of limitation?
4. Whether the Plaintiff and proforma defendant No.5 have 50% share over the suit land?

5. Whether the Plaintiff is entitled for an order of permanent injunction against defendant nos. 1 to 4 restraining them from alienating the suit land to any third party ?
6. To what other relief(s) the Plaintiff is entitled for?

5. In order to prove her case, the Plaintiff has examined three witnesses including herself as P.W.1 and other two witnesses as P.Ws.2 & 3. Besides oral evidence, five documents have been brought into evidence. Ext.1 is the certified copy of R.O.R of 1962 of Khata No.38 of Suit mouza; Ext.2 is certified copy of the order of Rent Objection case No.2839 /82 passed by Asst. Settlement Officer; Ext.3 to 3/g are rent receipts in respect of the suit land; Ext.4 is the certified copy of order passed in Review Petition Case No.66/07 by Hon'ble High Court of Orissa and Ext.5 is the Certified copy of mutation R.O.R. of the suit land.

The proforma defendant No.5 examined herself as D.W.1 .

On the other hand, defendant No.3 has examined himself on behalf of defendant nos.1 to 4 as D.W.2 and one Golakh Jena has also been examined from their side as D.W.3. The documents brought into evidence by defendant nos. 1 to 4 are : Ext.A is the registered sale deed executed by one Giridhari Sahoo

in favour of Chemai Sahoo on 18.01.56; Ext.B is the registered deed of gift executed by Chemai Sahoo in favour of Smt. Chandramani Dei on dt. 06.02.1960; Ext.C is the certified copy of the order-sheets in Objection Case No.2839/82 along with Amin Report and Ext.D are the certified copy of Hal R.O.R. of the suit land. The rent receipt of year 2013-14 in respect of the suit land is marked as Ext.E (with objection) and Ext.F is the Holding Tax receipt.

With the aforesaid materials on record the following issues are to be answered. :

FINDINGS

6. **Issue no.3**

Contesting defendant nos.1 to 4 have taken a plea in written statement that the suit of the plaintiff is barred by law of limitation without specifically stating the grounds and provision of law. The plaintiff challenged the order passed in favour of Chandramani, predecessor in interest of Defendant nos.1 to 4 by recording the suit land in her name. Ultimately the matter went to Hon'ble High Court and Hon'ble High Court observed that the matter involves disputed facts which cannot be adjudicated in writ forum and accordingly directed the parties to approach the Civil Court. The plaintiff has filed the suit thereafter. Therefore, it cannot be said that the suit is barred by law of limitation particularly when the plaintiff claims that she and proforma defendant no.5 have jointly got half share out of the suit land. In

that view of the matter, it cannot be said that the plaintiff's suit is barred by law of limitation and accordingly this issue is answered in negative and in favour of the plaintiff.

7. **Issue nos.4 & 5**

Both these issues being core issues basing on the nature of the dispute and the claim of the plaintiff. The first question comes whether the plaintiff and proforma defendant no.5 have got 50% share out of the suit land. Besides oral evidence, the plaintiff has filed documents in order to substantiate her claim. In para-5 of the plaint the plaintiff has clearly pleaded the recording of the suit land under Khata no.38 of 1962 Settlement R.O.R and in respect of Plot nos.491 and 491/984 joint possession of Chemai Sahoo S/o- Pankaj Sahoo and Dama Sahoo S/o- Jogi Sahoo had been reflected. Contesting defendant nos.1 to 4 have not challenged the said facts in their written statement. As per their written statement, para-7 is the reply to the averments made in para-5 of the plaint, but the facts pleaded in the plaint in that paragraph has not been answered by the defendants and accordingly remained uncontroverted.

Ext.1 is the certified copy of the 1962 Settlement R.O.R in respect of Khata no.38 of Mouza Gadagopinath Prasad covering a total area of Ac.0.760 decimals under four plots. The said Khata stands recorded in the name of Giridhari Sahoo and others including Chemai Sahoo S/o- Pankaj Sahoo and Dama Sahoo S/o-Jogi Sahoo. So far as

Plot no.491 and 491/984 (both ghara bari) are concerned, there has been specific mention of possession of Chemai Sahoo and Dama Sahoo over the same. Thus, Ext.1 not only reflects title of Chemai Sahoo and Dama Sahoo over the properties recorded thereunder but their specific possession over the aforesaid two plots. Ext.D is the certified copy of Hal settlement Khata no.115 of the suit mouza recorded in the name of Chandramani Sahoo, Sabitri Sahoo, Santilata Sahoo and Chitramani Sahoo covering two plots i.e. 229 and 227 with a total area of Ac.0.104 decimals. Ext.2 is the certified copy of the order in Rent Objection case no.2839 alongwith Amin's report. The said report reveals that hal plot no.229 corresponds to plot no.491 and hal plot no.227 corresponds to plot no.491/984 of 1962 R.O.R. So, undoubtedly both the suit plots corresponds to the aforesaid two plots recorded under Khata no.38 of 1962 R.O.R (Ext.1). Both the aforesaid two plots were under the possession of Chemai Sahoo and Dama Sahoo as per Ext.1 besides recording their name in the Tenants Column alongwith others. So, from the aforesaid evidence it is very much clear that in respect of both the plots Chemai Sahoo and Dama Sahoo had joint title and possession and after their death the said properties are to be inherited by their Legal heirs & successors.

8. It is the specific case of Defendant nos.1 to 4 that the suit properties were purchased by Chemai Sahoo, their maternal grand father from Giridhari Sahoo in the year 1956 under a R.S.D marked as Ext.A and Chemai Sahoo in his turn gifted away

the suit land and other properties to their mother Chandramani Dei under a Registered Gift Deed dtd.06-02-1960 marked as Ext.B. On perusal of both the documents it is found that Chemai Sahoo had purchased Ac.0.76 decimals of land from out of plot no.258 and Ac.0.52 decimals of land out of plot no.263 and both the plots were recorded under Khata no.32 of Mouza Godagopinath Prasad. When the contesting defendants claim their exclusive title over the suit land by virtue of the gift deed executed by Chemai Sahoo in favour of their mother after purchasing the same from out of Khata no.32, it is their duty to prove in all probability that vendor Giridhari Sahoo had title over the said properties before he alienated the same to Chemai Sahoo under Ext.A. But unfortunately there is no such evidence on record adduced from their side. Any registered gift deed or sale deed cannot confer title in favour of the donee or the vendee unless the donor or the vendor has title over the same. But in the present case the contesting defendants have miserably failed to prove any connection between the properties acquired under Ext.A and B with that of the suit land or atleast to show that the properties alienated under Exts.A & B correspond to the properties recorded under Khata no.38 of 1962 R.O.R (Ext.1). So, in absence of evidence it cannot be held that the properties acquired by Chandramani Dei under Ext.B is part & parcel of the suit land. In view of this finding of the Court, the recording of the name of Chandramani Dei exclusively in respect of the suit land by virtue of the order passed in the Rent Objection

Case cannot be held to be correct. The Amin's report in the said proceeding also reflects Plot nos.491 and 491/984 of Khata no.38 of 1962 R.O.R as the basis of the suit plots and not any Khata no.32 to be the basis of the suit plots. Further, the mutation order in Mutation Misc. Case no.133 of 1996 passed by Tahasildar, Bhubaneswar exclusively recording the name Chandramani Sahoo in respect of Hal Khata no.115 by deleting the names of Sabitri Sahoo W/o- Dama Sahoo, Shantilata Sahoo & Chitramani Sahoo, both daughters of Dama Sahoo is not correct as has been already held that Chandramani had no exclusive title over the suit land. It is therefore held that the plaintiff and proforma defendant no.5 have jointly got 50% share over the suit land.

9. The next question comes whether the plaintiff is entitled to an order of permanent injunction against defendant nos.1 to 4 restraining them from alienating the suit land in any manner or creating any disturbance in the joint possession of plaintiff and proforma defendant no.5 over the same. As has been already held that the plaintiff and proforma defendant no.5 have jointly got 50% interest over the suit land and Defendant nos.1 to 4 have no exclusive title and possession over the same, hence, they are not entitled to exclusively deal with the suit property in any manner or to create any disturbance in the joint possession of plaintiff and proforma defendant no.5 over the suit property. Unless there has been partition by metes and bounds each co-sharer has got title and possession over the entire property. In that view of the

matter, defendant nos.1 to 4 are liable to be restrained by an order of permanent injunction from alienating the suit land in any manner whatsoever exceeding their share and any specific property or creating any disturbance in the joint possession of the plaintiff and proforma defendant no.5 over the same. Thus, both these issues are answered in the affirmative and in favour of the plaintiff and against defendant nos.1 to 4.

10. **Issue nos.1 & 2**

In view of the discussion and the findings in the foregoing paragraphs under issue nos.4 & 5 the plaintiff has cause of action to file the suit against defendant nos.1 to 4 and for the relief of permanent injunction against them and the suit so filed is maintainable under facts & law. Both these issues are answered in favour of the plaintiff.

11. **Issue no.6**

Except the reliefs as already granted in favour of the plaintiff she is not entitled to any other reliefs except the relief for cost of the litigation.

Hence, it is ordered

ORDER

The suit of the plaintiff is decreed on contest against defendant nos.1 to 4 with cost. It is hereby declared that the plaintiff and proforma defendant no.5 have jointly got 50% share over the suit land as described in Schedule-B of the plaint. It

is hereby further declared that the order passed by the Commissioner, Consolidation and Settlement in Settlement Revision Case no.1965/90 and the order passed by the Tahasildar, Bhubaneswar in Mutation Case no.133 of 1996 are void, illegal and not binding on plaintiff and proforma defendant no.5. Defendant nos.1 to 4 are permanently restrained from alienating the suit land exceeding their share and any specific property or creating any disturbance in the joint possession of the plaintiff and proforma defendant no.5 over the same.

*1st. Addl. Senior Civil Judge,
Bhubaneswar.*

The judgment is typed to my dictation by the Typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today on the 21st day of April, 2014 under my seal and signature.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

List of Witnesses examined for the Plaintiff:

- P.W.1: Smt. Santilata Sahoo
P.W.2: Maguni Sahoo
P.W.3: Sri Kartika Sahoo

List of Witnesses examined for the Defendants :

- D.W.1: Smt. Chitramani Sahoo
D.W.2: Subash Chandra Sahoo
D.W.3: Golekh Jena

List of Documents marked as Exhibits for the Plaintiff:

- Ext.1: Certified copy of the R.O.R finally published in 1962
under Khata no.38 of Mouza Godagopinath Prasad ;
Ext.2: Certified copy of the Objection Case no.2839/82 ;
Ext.3 to
Ext.3/g : Original land revenue rent receipts ;
Ext.4 : Certified copy of the order passed in Review
Petition Case no.66/07 by Hon'ble High Court of
Orissa dtd.20-08-2007 ;
Ext.5: Certified copy of Mutation R.O.R bearing
Mutation Case No.133/1996 relating to Hal
Khata no.115

List of Documents marked as Exhibits for the Defendants :

- Ext.A: Registered sale deed executed by one Giridhari Sahoo
in favour of Chemei sahuo on 18.01.56;
Ext.B: Registered deed of gift executed by Chemei Sahoo in
favour of Smt. Chandramani Dei on dt. 06.02.1960;
Ext.C: Certified copy of the order-sheets in Objection
Case No.2839/82 along with Amin Report ;

Ext.D: Certified copy of Hal R.O.R. of the suit land ;

Ext.E (with objection) : The rent receipt of year 2013-14 in
respect of the suit land ;

Ext.F: Holding tax receipt.

***1st. Addl. Senior Civil Judge,
Bhubaneswar.***

