

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.

Dated this the 31th day of January, 2014

C.S. 20/ 2012

Smt Binodini Pattnaik, aged about 51 years, W/o- Tareswar Pattnaik, at –
Bhajangada, P.O.- Mangalajodi, P.S.- Tangi, Dist- Khordha.

..... Plaintiff.

-Versus-

Chittaranjan Mohanty, aged about 51 years, S/o- Nandakishore Mohanty
of Vill- Tangi Talasahi, P.O./P.S.- Tangi, Dist- Khordha.

.....Defendant

Counsel for Plaintiff ... Sri B. Patra and associates,
Advocates, Khordha

Counsel for defendants ... Sri A.K. Das and associates,
Advocates, Khordha

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Date of Argument – 24.01.2014

Date of Judgment – 31.01.2014
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JUDGMENT

This is a suit for declaration and permanent injunction.

02. The plaintiffs case is that the homestead landed property
(GHARABARI) recored under plot No. 337/1202, khata No. 368/450 of mouza Tangi
measuring Ac. 0.080 decimals (hereinafter referred to be the suit property), is the

exclusive property of the plaintiff. The suit property has been purchased by the plaintiff through registered sale deed No. 935 dated 11.12.1998 and mutated in her name. He has also constructed stone boundary wall over four sides of the suit land after demarcation of the same and in peaceful possession of it. It is the further case of the plaintiff that the defendant who having no manner of right, title, interest and possession over the suit property is now trying to occupy the suit property illegally and forcibly. Pointing out the cause of action, the plaintiff has stated that her residential house is far from the suit land whereas the defendant is a nearby resident to the suit mouza. Taking advantage of her absence, the defendant on 05.02.2012 came to the suit property and demolished the boundary wall and tried to lift away the laterite stone deposited by the plaintiff over the suit property in order to dispossess of the plaintiff from the suit land. The plaintiff reported the matter before the police and apprehending danger to her property filed the present suit.

03. The defendant appeared and submitted his written statement by saying that the suit is not maintainable in the eye of law, barred by limitation and also defective for non-joinder of necessary parties. It is again contended that the suit property is not identifiable. Claiming the entire pleading of the plaintiff to be false and baseless, the defendant has to say that previously the suit property was within government holding and one Bansidhar Sethi, S/o- Khali Sethi of Vill.- Tangi obtained the same on lease by adopting some unfair means and more over the lease is granted in favour of Bansidhar Sethi without following the lease principles. Bansidhar Sethi is a schedule Caste person having its sub caste 'DHOPA'. He

without obtaining any prior permission as required under the provision of OLR Act from the competent authority, alienated the same in favour of one Nabakishore Jena, happens to be the vendor of the plaintiff. Therefore, the register sale deed alleged to be executed by said Bansidhar Sethi in favour of Nabakishore Jena and subsequently in favour of the plaintiff is illegal and the same does not confer any right, title, interest on the vendees. The defendant in the above circumstances desired the plaintiff's case to be dismissed on cost.

04. In view of the rival stands of both the parties as above, the following issues have been settled for a useful adjudication.

I S S U E S.

1. Is the suit maintainable?
2. Has the plaintiff any cause of action to file the present suit against the defendant?
3. Is the suit barred for mis-joinder & non-joinder of necessary parties?
4. Whether the plaintiff has any right, title, interest or possession over the suit land?
5. Whether the plaintiff is entitled for a permanent injunction against the defendants?
6. To what relief the plaintiff is entitled for?

05. In order to prove its case the plaintiff examined two witnesses in all. Out of whom P.W. 1 Smt. Binodini Pattnaik is the plaintiff herself and P.W. 2

Nabakishore Jena is the vendor of the plaintiff, in the sale deed bearing NO. 935 dated 11.12.1998.

Six documents have been relied upon by the plaintiff and admitted as follows.

The Registered sale deed No. 935 dated 11.12.1998, is marked as Ext. 1, Mutation ROR vide Khata No. 368/450 of mouza Tangi as Ext. 2, rent receipts as Ext. 3 & 3/a respectively, permission obtained in Misc. Case No. 99 of 31.12.1996 as Ext. 4, sale deed No. 84 dated 29.01.1997 as Ext. 5 and Demarcation report over the suit property of R.I. Tangi in Misc. Case No. 18 dated 21.05.2012 as Ext. 6.

No witness is examined on behalf of the defendant nor any document has been relied upon or admitted from his side.

FINDINGS.

Issue Nos. 4 & 5.

06. The plaintiff claimed the suit property to be her exclusive property. In order to prove the same she examined herself as P.W. 1 and deposed that she is the owner of the suit property situated in mouza Tangi, which is a GHARABARI land. She has been possessing the same and paying the land revenue each year. She purchased the suit land from Nabakishore Jena (P.W-2) through a registered sale deed bearing No. 935 dated 11.12.1998. She has mutated her name in respect of the suit land. She admitted the registered sale deed No. 935 dated 11.12.1998 as Ext. 1 and the mutation ROR vide khata No. 368/450 as Ext. 2 and rent receipts as

ext-3 and 3/a respectively. During the cross-examination she admitted that Bansidhar Sethi (Vendor to Nabakishroe Jena) belongs to schedule Caste. At this stage the counsel for the defendant again suggested that Bansidhar being a schedule Caste person, he without obtaining permission sold the land to Nabakishore Jena who is a non schedule cast person. Making the above suggestion, the defendant put forwarded his stand as has already been advanced in the written statements. By this way the defendant has to say that that the sale deed executed by Bansidhar in favour of Nabakishore Jena is null and void and accordingly the sale deed executed by Nabakishore Jena to the plaintiff deemed to be voidable one.

07. That being the specific stand of the defendant, it would be wise to travel through the evidence. P.W. 2, Nabakishore Jena is the vender of the plaintiff who had purchased the suit property from the original tenant namely Bansidhar sethi. He corroborates the entire fact and circumstances as adduced by the plaintiff and in addition to the same he admitted his signature on Ext. 1 as Ext. 1/a. He also admitted the permission obtained by Bansidhar Sethi as required as per the OLR Act for transfer of a landed property by a Schedule Cast person in favour of a person who does not belong to schedule case, vide Misc. Case No. 99 dated 31.12.1996 as Ext. 4. He also admitted the sale deed bearing registrtion No. 84/1997 as Ext. 5 with objection and the demarcation report of the R.I. Tangi as Ext. 6. In the cross-examination he stated that the suit land was his purchased land. Out of 120 decimals, he purchased 80 decimals of land towards the western side of the

original plot and the remaining 40 decimals were purchased by one Annapurna Das. So far as the measurement and delivery possession of the land is concern, D.W. 2 satisfactorily answered all the questions without leaving any ambiguity to the case of the plaintiff.

08. Here it may further be mentioned that the suit land was originally belonged to one Bansidhar Sethi. He is a schedule Caste person. He alienated the suit land to Nabakishore Jena who is P.W. 2 in this case. The defendant challenged the sale deed executed by Bansidhar Sethi to Nabakishore Jena on the ground that the said sale deed was executed without obtaining any permission U/s 22 of the OLR Act as discussed above. But in view of the forgoing discussion and after proving of the permission certificate vide Ext-4 by the plaintiff, the claim of the defendant regarding alienation of the suit property by Bansidhar Sethi without any permission appears to be baseless and false. Admittedly, Nabakishore Jena alienated the suit property to the plaintiff Binodini vide sale deed No. 935 dated 11.12.1998, which appears to be not challenged by the defendant and in response to the forgoing discussion, the sale deed No. 935 dated 11.12.1998 appears to be valid and effective one. So this court has no hesitation to accept that all the sale deed executed in respect of the suit land is lawfully executed and effective one. The same confers absolute right, title, interest of the vendees over the property after being transferred by their vendors. So far as the present suit is concerned, the sale deed executed in favour of the plaintiff vide Ext. 1 confers right, title, interest of the plaintiff over her purchased property measuring Ac. 80 decimals. So far as the

question of possession is concern, the plaintiffs case is that she has been in possession of the suit land from the date of purchase and also paying land revenue. Two sheets of land revenue receipts have been admitted by the plaintiff as Ext. 3 & 3/a respectively. The defendant fails to contribute anything to dispute the right, title, interest and possession of the plaintiff over the suit property. Moreover the defendant substantiates his no claim over the suit property at all and as such he is mere a stranger to the suit property.

09. The forgoing discussion clearly established that the plaintiff is the rightful owner of the suit property. The defendant is unable to establish his any interest or possession over the suit property in any manner. Admittedly he has no claim over the suit property and being a stranger having no right to interfere with the peaceful possession of the plaintiff over the suit property and as such he is required to be restrained from the property of the plaintiff from causing any sort of interference.

Issue Nos. 1, 2, 3 & 6.

10. So far as the question of maintainability is concern, the same needs no further discussion as not pressed by the defendant. But so far as the question of relief is concern the plaintiff has sought for the relief of declaration of her right, title and interest over the suit land. But, on perusal of the entire pleading of the plaintiff it is well ascertained the plaintiff specifically stated that the defendants taking advantage of her absence on 05.02.2012 came to the suit land and demolished the boundary wall and trying to lift literate stone from the suit land, what has been

deposited their by the plaintiff. In this way the plaintiff has admitted that her possession has been violated by the defendant. Therefore, her possession is required to be restored. But, no specific prayer for confirmation of possession has been sought for by the plaintiff. Even though the plaintiff has not made a specific prayer for confirmation of her possession over the suit property, it is the opinion of this court that if law and equality demands a particular relief shall be granted as per the provision under order 7 rule 7 CPC. Therefore, the plaintiff is also entitle for relief of confirmation of possession over the suit property. Hence it is order.

O R D E R.

The suit of the plaintiff be and the same is decreed on contest against the defendant, but in the circumstances without any cost. The right, title and interest of the plaintiff over the suit land is hereby declared. Her possession over the suit property is hereby confirmed. The defendant is hereby permanently injuncted not to interfere with the peaceful possession of the plaintiff over the suit property. Failing of which, the plaintiff is at liberty to take the appropriate recourse of law against the defendant.

Advocate's fee is at contested Scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 31th day of January, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1 Binodini Pattnaik.

P.W. 2 Nabakishore Jena.

List of witnesses examined on behalf of Defendant. :-

Nil.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1 Regd. Sale deed No. 935 dt. 11.12.1998.

Ext. 1/a Signature of P.W. 1 on Ext. 1.

Ext. 2 Mutation ROR vide Khata No. 368/450 of mouza Tangi.

Ext. 3 & 3/a Rent Receipts.

Ext. 4 Permission obtained by B. Sethi in Misc. No. 99 dt- 31.12.96.

Ext. 5 Sale deed No. 84 dt- 29.01.1997.

Ext. 6 Demarcation report of R.I. Tangi in Misc. No. 18 dt- 21.05.12.

List of documents admitted on behalf of Defendant :-

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Sr. Civil Judge, Khurda.