

## IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA

PRESENT :-

Sri Raj Kishore Lenka  
Senior Civil Judge, Khurda.**Dated this the 22<sup>nd</sup> day of March, 2014****C.S. 254/ 2010**Sauda Naik @ Bewa, aged about 55 years, W/o- Late Bansidhar Naik,  
of Vill.- Nijigarh Kuhudi, P.O.- Kuhudi, P.S.- Tangi, Dist- Khordha.

..... Plaintiff.

-Versus-

Deba Naik, aged about 48 years, S/o- Late Pandab Naik of Vill./P.O.-  
Kuhudi, P.S.- Tangi, Dist- Khordha.

.....Defendant

Counsel for Plaintiff

...

Sri A.K. Das and associates,  
Advocates, Khordha

Counsel for defendant

...

Sri N. Dash, Advocates, Khordha

.....  
Date of Argument – 19.03.2014Date of Judgment – 22.03.2014  
.....**JUDGMENT**

This is a suit for declaration and permanent injunction.

02. The plaintiff's case is that she is the owner in exclusive possession of  
a land measuring Ac. 0.11 decimals of mouza Nijigarh Kuhudi recorded under  
mutation khata NO. 570/331, under plot No. 1444/2299 (hereinafter called as suit

land/property), after purchasing it from the recorded owners of the land by virtue of a sale deed. The plaintiff's specific case is that originally the land measuring Ac. 0.43 decimals stands recorded in the name of one Nila Naik. He died living behind his two sons namely Udayanath Naik and Karuni Naik. While Udayanath and Karuni were in possession of the said property of their father, both for their legal necessity sold and transferred measuring Ac.0.011 decimals (suit land) out of total Ac. 0.43 decimals in favour of the plaintiff for a consideration amount of Rs. 17,622/- by executing a sale deed bearing No. 993 dt. 28.12.2007. After purchase of the suit land the plaintiff started possessing the same by constructing her own house. But on 14.07.2010, the defendant with his henchmen reached at spot and claimed some portions of the suit land to be their own. The plaintiff has to say that she had already constructed her house up to the roof level and in exclusive possession of the same. The defendant has no manner of right, title, interest and possession over the suit property and only to disturb the plaintiff from the suit land creating all sorts of illegal and unlawful acts by claiming the suit land to be his own. The plaintiff mentioning the cause of action to be Dt. 14.07.2010, filed the suit seeking relief of declaration of her right, title, interest and permanent injunction against the defendant by restraining him from doing any sort of mischief over the peaceful possession of the plaintiff over the suit along with cost.

03. The defendant after effecting his appearance filed his written statement. As it is observed by the court, the written statement has not been prepared with minimum care and caution. Therefore the same is highly suffering

from obscurity and self contradictory facts. However, it is regathered by the court that the defendant firstly controverted the suit to be not maintainable in the eye of law. The defendant denied the other facts of the plaintiff except accepting that the plaintiff has purchased Ac. 0.11 decimals out of total Ac. 0.043 decimals of land from the legal heirs of Nila Naik. The specific case of the defendant is that he has also purchased Ac. 0.22 decimals of land out of the same vendors of the plaintiff and has been enjoying the said property, which is adjoining to the land of the plaintiff. There was one roomed house over the suit property, which had been enjoyed by late Nila Naik during his life time. After purchasing the same, the plaintiff had constructed her house by encroaching the land of the defendant. The defendant further contended that the plaintiff has come to the court with misconceived and misleading facts by seeking relief of declaration and injunction which is not tenable in the eye of law and liable to be dismissed.

04. After going through the rival pleadings of both the parties the following issues have been settled for proper adjudication of the case.

### **I S S U E S.**

1. Is the suit maintainable?
2. Whether the plaintiff has got her right, title, interest and possession over the suit property?
3. Whether the defendant has been interfering with the peaceful possession of the plaintiff over the suit property?

4. Whether the plaintiff is entitled for declaration of her right, title and interest over the suit property?
5. Whether the defendant be liable to be injuncted permanently from doing any sort of mischief over the suit property which is in peaceful possession of the plaintiff?
6. To what other reliefs, the plaintiff is entitled for?

05. In order to prove its case three witnesses have been examined on behalf of the plaintiff, out of whom P.W. 1 & 2 are the independent witness of the locality. P.W. 3 is the plaintiff herself. On the other hand the defendant examined himself as D.W-1.

During evidence three documents have been exhibited on behalf of the plaintiff. The registered sale deed bearing No. 993/ 28.12.2007 is marked as Ext. 1, Mutation ROR under khata No. 570/331 of mouza Nijigarh Kuhudi as Ext. 2 and one rent receipt as Ext. 3.

### FINDINGS.

#### **Issue Nos. 2 & 3.**

06. The above issues being inter related to each other and the most vital issues to the entire case, are taken up together first for consideration.

If the whole case of the defendant will be taken into consideration, it would not be possible to visualize whether he is admitting or disputing the right, title and interest of the plaintiff over the suit property. In the written statement he admitted that the suit property has been purchased by the plaintiff. The defendant

himself is examined as D.W. 1 and he in the cross-examination has stated that the plaintiff has purchased her land around 4 years back and constructed her pucca house over it. The purchased land of the plaintiff has been demarcated by stone. The plaintiff on the other hand relied upon the sale deed in respect of the suit property vide document No. 993 dated 28.12.2007, which has been marked as Ext. 1. Subsequently the said land was mutated in her name vide Ext. 2. Both the documents have been proved before the court without any objection from the side of the defendant. Similarly, the right, title, interest and possession of the plaintiff over the suit land has not been disputed by the defendant in his evidence. The defendant in his examination in chief has not also uttered a single word regarding the right, title, interest or possession of the plaintiff over her purchased land/ suit land. Rather the defendant has stated that the plaintiff attempted to enter into his (defendant) land and creating disturbance over it. From the aforesaid evidence and the documents relied upon by the plaintiff, it is well established that plaintiff is the owner in possession of the suit land measuring Ac. 0.11 decimals and she has also constructed her house over the suit land.

07. It is also became clear from the evidence as well as the pleading from both the side that defendant is the adjacent land owner to the suit land. The plaintiff's further case is that the defendant has been creating trouble over her peaceful possession of the suit land. To that effect P.W. 3, the plaintiff herself is the only witness, who has stated that in the year 2010, the defendant created disturbances with her peaceful possession over the suit property and also illegally

obstructed her from raising construction. During cross-examination in para – 9 she has again stated that the defendant did not allow her to construct her house over the suit land and causing disturbances and also threatened her. However she managed to complete her house over the suit property. The defendant has not disputed the said fact and even a suggestion has not been put to the plaintiff by controverting the said fact as deposed by the plaintiff herself. Rather to the utter surprise of the court, the defendant suggested to the plaintiff (P.W-3) that the suit land is in possession of defendant and that the plaintiff has been constructed her house over the land of the defendant. To which the defendant opposed and took possession of the same. The said suggestion has en-lighted the plea of the plaintiff to the effect that the defendant has been claiming the suit property to be his own. While the defendant neither in the written statement nor even in his evidence in chief has claimed his possession over the suit property, his subsequent claim over the suit land during the hearing of the suit is not tenable at all. It is worthwhile to mention that the claim of the defendant over the suit land is out of his pleading and might have been put forwarded during evidence with a confusion. But in this way he established his ill intention and ultimately the plaintiff succeeded to prove that the defendant is trying to disturb her peaceful possession over the suit property.

08. Similarly, if the evidence in chief of defendant No. 1 is taken into consideration he presented another story by saying that the plaintiff has been trying to encroach his land. Such a new fact has been advanced for the first time before the court by the defendant by manifesting his malafide intention as claimed by the

plaintiff in her case. As such, it is the clear perception of this court that the plaintiff has fairly proved the case that the defendant has been interfering with her peaceful possession of the suit land.

**Issue Nos. 4, 5 and 6.**

09. The forgoing discussion is enough to hold that the defendant is owing an ill intention and challenging the right, title and interest and possession of the plaintiff over the suit land without any basis. All the stories of the defendant being self contradictory in nature as well as out of pleading is not acceptable. On the other hand the plaintiff has succeeded to prove that her possession over the suit property has been disturbed by the defendant and there is all reasonable apprehension of further interference by the defendant over her peaceful possession and as such she is entitled for the relief of declaration and permanent injunction. Even though confirmation of possession has not been sought for in the relief cause, but in view of the aforesaid stand of the defendant the plaintiff is also entitled for the relief of confirmation of her possession. Hence it is order.

**Issue Nos.1**

10. So far as the question of maintainability is concerned, the same has not been pressed by the defendant and as such the same needs no further discussion.

**ORDER**

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

