

HEADING OF DECISION IN THE ORIGINAL SUIT.
DIST: KHORDHA.
IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.

Dated this the 8th day of May, 2014

C.S. 292/ 2009

Damodar Rath, aged about 74 yrs, S/o- Late Baidyanath Rath,
Vill./P.O.- Rameswar, P.S.- Nirakarpur, Dist- Khordha
at present- Nabakalebar Road, P.S.- Kumbharpada, P.O./Dist- Puri.

..... Plaintiff.

-Versus-

Lalit Mohan Rath, aged about 58 yrs, S/o- Late Baidyanath Rath
of Vill./P.O.- Rameswar, P.S.- Jankia, Dist- Khordha.

..... Defendant.

Counsel for Plaintiff ... Sri N. Singhsamanta and associates
Advocates, Khordha

Counsel for defendant ... Sri A.K. Dash and associates,
Advocates, Khordha

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Date of Argument – 29.04.2014

Date of Judgment – 08.05.2014
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JUDGMENT

The plaintiff by instituting the present suit, sought for the relief of partition and for declaration of the sale deed executed by his deceased father Baidyanath Rath in favour of the defendant to be null and void and not binding on him.

02. The plaintiff and defendant are natural brothers being sons of Late Baidyanath Rath. The case of the plaintiff is that their homestead property as depicted in the plaint as suit schedule property, recorded in the name of their deceased father under khata No. 191, plot No. 136/905, measuring Ac. 0.052 decimals and plot No. 93, measuring Ac. 0.054 decimals, total measuring Ac. 0.106 decimals at mouza Jagatpur (hereinafter mentioned to be the suit property). In the remark column of the ROR, it has been mentioned that Lingaraj Rath, S/o- Ananta Rath has a right to use the well available in the suit plot No-93. The said Lingaraj Rath is the paternal uncle of the parties and he is dead now. He has two sons namely Sashi Bhusana and Patita Pabana. They have dug a well on their own plot after partition and now they are not using the water from the suit plot No. 93. Both Sashi Bhusana and Patita Pabana being serving in different places, they have been residing outside with their family members. The specific case of the plaintiff is that he was working in the Police Department and after his retirement, he established at Puri and has been residing with his family members there. His further case is that in order to meet his financial crisis, he proposed the defendant to purchase his half interest over the suit property at the market price, but the defendant did not

agree with his suggestion. The plaintiff also approached the defendant for partition, which has also been turned down by the defendant. It is again contended by the plaintiff that he subsequently came to know that the defendant had already obtained a sale deed in his favour in respect of the suit property being executed by their father. It is also averred by the plaintiff that the document, wherein the land has been alienated has been obtained fraudulently from their father on 12.10.1979, without payment of any consideration amount. Even their father had no knowledge or idea about execution of such sale deed. Their father had no legal necessity to sale the suit property. The plaintiff has again averred that the cause of action arose on 16.09.2009, when the defendant refused to effect partition of the suit property. The plaintiff specifically contended that the sale deed is not a genuine document and as such the same is not binding on him and for which the alleged sale deed is liable to be declared by the court to be null and void and not binding on him. On that event, the suit property remains open for partition having his half share in it.

03. The defendant after receiving the notice appeared before the court and submitted his written statement on 22.01.2011 and after amendment of the plaint, the defendant also submitted his additional written statement on 06.07.2013. The above defendant in his written statements has challenged the maintainability of the suit on the question of cause of action, limitation, *locus standi* of the plaintiff to file the suit, non-joinder of necessary parties as well as

for misconceived and misleading facts. The defendant has to say that the facts, that averred by the plaintiff is all baseless and false. Their father late Baidyanath Rath was the real owner of the suit property. In the year 1979, in order to repay the family debt, he desired to sale the suit property. By that time, the defendant opted to purchase the suit property in order to refrain the outsiders to acquire the suit property and accordingly on 12.10.1979, their father executed the sale deed in favour of the defendant for a consideration amount of Rs. 3000/- and delivered possession of the same to him. The defendant after purchase remains in possession after causing mutation of the suit property in his name. The defendant has been paying land revenue to the state regularly. The sale deed in question was a conscious act of their father who after receiving a good consideration amount sold away the suit property and after purchase the defendant effected his possession and still in peaceful enjoyment of the suit property without any hindrances from anybody else. It is again contended by the defendant that the said fact was very much within the knowledge of the plaintiff. Therefore, the case of the plaintiff is not tenable in the eye of law and liable to be rejected with cost.

04. Taking into account of the factual disputes between the parties and for an useful and proper adjudication, the following issues have been settled.

I S S U E S.

1. Whether the suit is maintainable?

2. Whether the plaintiff has any cause of action to institute this suit?
3. Whether the suit is bad for non-joinder of necessary parties?
4. Whether the sale deed dt. 12.10.1979 is valid and genuine one?
5. Whether the defendant is in exclusive possession over the suit property having his right, title and interest after purchasing the suit property vide registered sale deed dt. 12.10.1979?
6. Whether the suit property is partible by metes and bounds?
7. Whether the plaintiff is entitled for a decree of partition against the defendant over the suit land?
8. Whether the defendant can be permanently restrained from coming over the suit properties?
9. What relief, if any, the plaintiff is entitled to?

05. In order to prove his case, the plaintiff only examined himself as P.W. 1. Being the solitary witness for his own case, he relied upon the certified copy of the ROR in respect of the suit property recorded under khata No. 191, which has been marked as Ext. 1 and the certified copy of the partition deed executed among his father and other co-sharers vide documents No. 2304 dt. 21.06.1951 as Ext. 2.

Similarly, two witnesses have been examined on behalf of the defendant. Out of him D.W. 1 Chandra Sekhar Rath is the son of defendant and D.W. 2 is the defendant himself. Three documents have been exhibited on behalf of the defendants. The certified copy of the ROR in khata No. 296/135

(Mutation ROR) in respect of the suit property is marked as Ext. A, the registered sale deed No. 2293 dt. 12.10.1979 as Ext. B and the rent receipt dt. 17.08.2010 as Ext. C.

FINDINGS.

Issue Nos. 4 & 5.

06. Both the issues are being pivotal issues are taken up together for consideration.

The plaintiff challenged the sale deed executed by their father in favour of defendant Lalit Mohan Rath on the specific ground that the same has been obtained fraudulently without paying any consideration amount to the vendor. However, before assessing the evidence of both the parties on the particular aspect of the case, it would good enough to surface the relevant pleadings of both the parties on this subject.

If the entire pleading of the plaintiff be scrutinized, one will find the tone down approach of the plaintiff about the nature of the suit property. The plaint is silent whether the suit property is their ancestral property or acquired out of joint family nucleus or self acquired of their father. Therefore, only one course is open to the court to assume the suit property to be the exclusive property of their father. But, during the course of hearing, for the first time the plaintiff submitted the certified copy of one registered deed of partition, in order to prove that the suit property along with other properties have been acquired by their father on partition and as such the same is their ancestral

property. In this way the plaintiff tried to establish that the suit property is the ancestral property of all the parties and their father alone cannot sale the undivided interest of the other co-sharers over the suit property.

There is no doubt that the said fact is completely out of pleading as described earlier. Similarly, the original deed of partition has not also been produced before the court nor the plaintiff has taken any step or adopted the due procedure of law to prove the secondary evidence such as the certified copy of the deed of partition (Ext. 2) in place of the original one. Even, for the sake of discussion, if it is accepted that the suit property is the ancestral property of their father, the same will go to give rise of another question for determination. Let's now come to the evidence of the parties for adjudication of the entire relevant question as cropped up in the forgoing discussion.

07. The plaintiff is examined as P.W. 1. He in his evidence in chief has deposed that the defendant with a malafide intention has fraudulently obtained a sale deed from his father without his (plaintiff's) knowledge and consent and without payment of any consideration amount. The sale deed has never been acted upon in spite of existence of the same from 12.10.1997. The suit property is in joint possession of both, himself and the defendant. In the cross-examination he has stated that his father was the 'KARTA' of the family till his death. He again admitted that he does not have any knowledge about execution of any sale deed by his father in favour of the defendant pertaining to the suit property and as such he is unable to say in which circumstances,

the sale deed (Ext-A) was executed by his father. He again admitted that he has never raised any objection on alienation of the said land before any forum.

08. The above admitted statement of P.W. 1, who is the sole witness of his own case goes to establish that the plaintiff owes absolutely no knowledge about the suit property nor about alienation of the same and even he has absolutely no knowledge as to how, when and which circumstances the sale deed was executed by his father in favour of the defendant. Therefore, he declared himself not to be the right person to say whether the sale deed was executed by adopting due procedure or by exercising fraud as he has admitted that the execution is completely out of his knowledge. More particularly, while the plaintiff has been claiming that no consideration amount was paid, the same appears to be a statement without any substances. The manner of fraud also appears to have been remained unproved. Let's now come to the ROR relating to the suit property, which has been recorded in the name of the deceased father of both plaintiff and defendant under khata No. 191 of mouza Jagatpur. It is also the right place to have a look into the Ext. B, which is the disputed sale deed and produced on behalf of the defendant. The same has been executed in the year 1979, around 30 years back from filing of the present suit. The same has been duly admitted by D.W. 2, who is the vendor of this case. Ext. B, reveals that the vendor, who is the father of both the parties, for his financial need alienated the suit property in favour of his son, who is the defendant in this case for a consideration amount of Rs. 1,000/-. The vendor is

dead now. The sale deed and the mutation of the suit property in favour of the defendant basing on such sale transaction at no point of time was challenged by the plaintiff in any other forum and being a 30 years old document and not challenged at any forum, it is now not the prerogative of the plaintiff to say that consideration amount was not paid to his father and the sale deed was executed fraudulently. The father of the plaintiff being the KARTA of the family got ample scope and power to alienate his property for his or for the legal necessity of his family. Even if it is accepted that the property is a coparcenary property, law does not put any embargo or prohibited the KARTA of the family to alienate the coparcenary property for the sake of legal necessity. But here, since the plaintiff has challenged the sale deed only on the ground of fraud and non-payment of consideration amount, it is his legal obligation to establish the said fact. But, no evidence to that effect has been adduced except a bare statement in the pleading as well as in the evidence in chief, but ultimately he in his cross-examination admitted that he has no knowledge about the reason or object of execution of the sale deed vide Ext-B. Another surprising fact is that the registration number of the sale deed do not find place either in the plaint or in the evidence in chief of the plaintiff.

10. Lets now come to another aspect of the case. The plaintiff in his evidence in chief again admitted that the ROR under khata No. 191 (Ext. 1) consisting upon 8 plots, but, in the present case he has sought for partition for two plots as because the remaining six plots have already been alienated by

the defendant and their father. Since, he was staying outside, he does not have any personal knowledge about the date of sale of the above six plots, but he came to know from his father that to meet his legal necessity, the land in other six plots have been alienated. He again stated that he came to know about the same around 30 years back from his father. He has not challenged the said alienation of the remaining six plots in any forum. This is a very crucial admission by the plaintiff himself. If the plaintiff has to say that their entire property, which has been recorded in eight plots under khata No. 191, has been acquired by his father as a coparcener and subsequently allotted to him on partition, he got a subsisting interest over it. But, his father and brothers have sold away six plots without the knowledge and consent of the plaintiff. The plaintiff further admitted that he has not challenged such alienation as his father has stated that he alienated the other properties to meet his legal necessity. This being the admitted position of the plaintiff's case, the statement of the plaintiff in his pleading as well as in his evidence in chief such as, his father Baidyanath Rath was a primary school teacher, besides his salary he was earning from private dues, and as such he had no want for maintaining his family, appears to be completely false and baseless.

Here, it is worthwhile to mention that the suit property is the homestead property of both the parties. The other properties, which have already been alienated by the father of the parties exclude the present suit property. The defendant has taken a plea that when his father intended to sale

the homestead property, which is the suit property in this case, only to refrain the outsider, he himself purchased the suit property from his father only to reside there. The defendant admittedly has been staying over the suit property and he is a cycle mechanic by profession. It is also the admitted case that the plaintiff was serving in Police Department and constructed his house at Puri and has been staying there for last 10 years permanently. Whereas, the defendant claims that the plaintiff has been staying at Puri for last 30 years. Only one infirmity has been appearing in the evidence of defendant No. 2 that he in his written statement has mentioned that he purchased the suit property for a consideration amount of Rs. 3,000/- whereas his evidence in chief and the sale deed reveals that the same was purchased for a consideration amount of Rs. 1,000/-. Appears to be a typographical mistake, no adverse inference can be drawn up over execution of Ext. B. Apart from that Ext. B, reveals that Lingaraj Rath, who was using the well over the suit plot No. 93 has also given his consent on such sale by Baidyanath Rath in favour of the defendant. The same was registered before the Sub-Registrar, Tangi and there is absolutely no infirmities appearing in the sale deed bearing No. 2293 dt. 12.10.1979 (Ext. B) and as such this court without any cogent and concrete evidence cannot accept that the above 30 years old document is executed fraudulently and without paying any consideration amount. Therefore, it is the considered opinion of this court that the sale deed vide Ext. B is a genuine document and fairly executed by the vendor Baidyanath Rath in favour of the defendant and

even though it is accepted that the suit property is the ancestral property of the parties, Baidyanath Rath being the KARTA of their family had the ample scope and authority to alienate the same for his legal necessity which is also apparent itself from the said sale deed.

11. Lets now come to the question of possession. It is clear from the evidence of the plaintiff that he was serving in the Police Department and ultimately established at Puri and staying there for last 10 years. The defendant also adduced evidence to that effect by saying that the suit property has been muted in his favour vide Ext. 1 and he has been paying rent in respect of the suit property as marked as Ext. C. In ordinary course, possession follows title and in view of the assessment of the rebuttal evidence from both the side, it become crustal clear that the plaintiff was not in physical possession of the suit property and he was serving outside and from the very moment of passing over the title and possession of the suit property by the true owner in favour of the defendant, the plaintiff lost his interest whatsoever over the suit property. Taking account of the admitted facts regarding the possession of the defendants and his family members over the suit property, which is a homestead property, no adverse inference can be drawn up by the court in order to introduce the possession of the plaintiff in any manner as no evidence regarding his possession has been substantiate during the course of evidence. On the other hand he admitted that he got the voter I.D. Card and his house at Puri and he has been staying permanently for last 10 years with

his family members. The plaintiff has poorly failed to establish his right, title, interest or possession over the suit property and as such he is not entitled for the relief of declaration in respect of alienation of the suit property by his father in favour of the defendant. The above issues are answered accordingly.

Issue Nos. 6, 7, 8 & 9

12. The above four issues stand over the question of reliefs as sought for by the plaintiff and as such the issues have been taken up together for consideration.

The forgoing discussions clearly establish that the suit property has been transferred to the defendant and become the exclusive and self acquired property of his own. Once, the interest of the plaintiff is terminated by virtue of transfer, he lost his interest over the suit property. Once, his interest has been lost, he cannot claim the suit property to be partible in nature as the same has become the exclusive property of the defendant. Therefore, the suit property is not meant for partition. In view of the above status of the property being the exclusive property of the defendants, the relief for permanent injunction does not arise against the rightful owner of the property as the plaintiff himself appears to be a stranger having his no right, title, interest or possession over the suit property. He is not entitled for any relief sought for thereof. The above issues are answered as above.

Issue Nos. 1, 2 & 3.

10. The above three issues are not pressed by the parties and as such the same needs no further discussion. The plaintiff in view of the forgoing discussion is not entitled for any relief and accordingly it is ordered.

ORDER

The suit of the plaintiff be and the same is dismissed on contest against the defendants, but in the circumstances without any cost.

Advocate's fees are at contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 8th day of May, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1 Damodar Rath.

List of witnesses examined on behalf of Defendant :-

D.W. 1 Chandra Sekhar Rath.

D.W. 2 Lalit Mohan Rath.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1 Certified copy of ROR of under khata No. 191 mouza Jagatpur.

Ext. 2 Certified copy of a registered partitioned deed vide document No. 234 dt. 21.06.1951.

List of documents admitted on behalf of Defendant :-

Ext. A Certified copy of ROR in khata No. 298/135 of mouza Jagatpur.

Ext. B Regd. Sale deed No. 2293 dt. 12.10.1979.

Ext. C Rent receipt dt. 17.08.2010.

Sr. Civil Judge, Khurda.