

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.

Dated this the 21st day of December, 2013

C.S. 387/ 2009

Chittaranjan Patra, aged about 43 years, S/o- Lingaraj Patra of
Vill./P.O.- Pubusahi, P.S./ Dist- Khordha.

..... Plaintiff.

-Versus-

1. Lingaraj Patra, aged about 75 years.
2. Debaraj Patra, aged about 73 years.
3. Kabiraj Patra, aged about 70 years.
4. Brajaraj Patra, aged about 68 years.
Sl. No. 1 to 4 are sons of late Banchhanidhi Patra, of Vill./P.O.-
Pubusahi, P.S./ Dist- Khordha.
5. Chheta Parida, aged about 60 years, W/o- Jagannath Parida of
Vil./P.O.- Parchala, P.S.- Begunia, Dist- Khordha.
6. Dwijaraj Patra, aged about 48 years.
7. Rabiraj Patra, aged about 40 years.
8. Jogiraj Patra, aged about 36 years.
Sl. No. 6 to 8 are sons of Late Bhagabat Patra, of Vill./P.O.-
Pubusahi, P.S./ Dist- Khordha.

9. Ruma Dalei, aged about 57 years, W/o- Manu Dalei of vill./ P.O.- Badaberena, P.S.- Begunia, Dist- Khordha.
10. Pitel Singh, aged about 54 years, W/o- Nabina Singh of Vill.- Bania, P.O.- Kalapathar, P.S.- Baideswar, Dist- Cuttack.
11. Asharani Jagadeva, aged about 51 years, W/o- Dhadu Jagadev of Vill.- Anda, P.O.- Bajpur, P.S./ Dist- Khordha.
12. Usharani Samantaray, aged about 44 years, W/o- Biranchi Samantaray of Vill- Chhatrapada, P.O.- Patna, P.S.- Begunia, Dist- Khordha.
13. Manoranjan Patra, aged about 38 years, S/o- Lingaraj Patra, At/P.O.- Pubusahi, P.S./ Dist- Khordha.
14. Rama Patra, aged about 68 years, W/o- Lingaraj Patra, At/P.O.- Pubusahi, P.S./ Dist- Khordha.
15. Sarojini Chhualsingh, aged about 48 years, W/o- Rusi Chhualsingh of Vill./P.O.- Haja, P.S.- Begunia, Dist- Khordha.
16. Santilata Sundaray, aged about 45 years, W/o- Banambar Sundaray of Vill./P.O.- Gadamanatir, P.S.- Begunia, Dist- Khordha.
17. Satyabati Parida, aged about 40 years, W/o- Ranjan Parida, of Vill./P.O.- Kantabad, P.S.- chandaka, Dist- Khordha.
18. Shiva Prasad Patra, aged about 31 years, S/o- Debaraj Patra of Vill./ P.O.- Pubusahi, Dist- Khordha.

.....Defendants

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

Counsel for defendants ... Sri K.N. Roy and associates,
Advocates, Khordha

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Date of Argument – 18.12.2013

Date of Judgment – 21.12.2013

JUDGMENT

The plaintiff has filed this suit for partition of the property situated at mouza Chandrapur under khata No. 80, total measuring Ac. 0.377 decimals (hereinafter called to be the suit property).

02. The plaintiff's case is that himself and defendant Nos. 1 to 17 are the co-owners of the suit property, which is their ancestral property. Defendant No. 18 is an outsider who has purchased a portion of suit property measuring Ac. 0.063 decimals. It is the specific case of the plaintiff that Banchhanidhi Patra and Bhagabat Patra who are the sons of Raghunath Patra are the recorded tenants to the suit property. Banchhanidhi Patra died living behind four sons and one daughter, who are the defendants' No. 1 to 5 respectively. Similarly, Bhagabat Patra died living behind three sons and four daughters, who are the defendant Nos. 6 to 12 in this case. The plaintiff is the son of the defendant No. 1. It is the further case of the plaintiff that after death of Banchhanidhi Patra and Bhagabat Patra the suit property devolved upon their legal successors and they are still in joint possession over the suit land as the suit property has not yet been partitioned by metes and bounds. It is again contended by the plaintiff that he is serving at Bhubaneswar in a private firm and for his own convenience he has been residing at Khordha with his family members. Defendant No. 13, who is addicted to drug sitting idle at home. In the mean time his father (D-1) at the instigation of defendant No. 13 alienated a

portion of the suit property measuring Ac. 0.063 decimals to defendant No. 18 through a registered sale deed dated 29.07.2013, in order to deprive him from his legitimate share. The plaintiff has to say that such execution of sale deed by defendant No. 1 in respect of defendant No. 18 is illegal, void ab-initio and not binding on the plaintiff. The said property which has been mentioned to be schedule B property is still in joint possession of the plaintiff and defendant No. 1 to 17 as the possession has not yet been delivered to defendant No. 18. The plaintiffs further case is that on the strength of the registered sale deed, the defendant No. 18 came to the suit land on 15.10.2009 and threaten the plaintiff to take forcibly possession of the said land. Initially the fact of alienation of land was not within the knowledge of the plaintiff and after the above incident he made a query about and obtained the copy of the registered sale deed on 29.07.2009. It is further contended by the plaintiff that Banchhanidhi and Bhagabat has equal half share over the entire suit property and accordingly plaintiff, his brothers, sisters, his mother and his father Lingaraj Patra are entitled for their respective share over the suit property. After ascertaining the ill motive of the defendants No-1 and 13, he filed the present suit for partition to curve out his share.

After institution of the suit defendant No. 1 and 13 submitted their joint written statement. Similarly, defendant Nos. 3, 4, 6 to 8, 10 to 12 & 16 filed their separate joint written statement. Whereas the suit against defendant No. 5, 14, 15 & 17 set ex-parte on 03.05.2010 and again the suit against defendant Nos. 1, 2, 9, 13 & 18 set ex-parte on 03.04.2013.

03. The defendants No. 1 & 13 in their written statement have contended that the suit is not maintainable, there is no cause of action, and the fact of the plaintiff is highly misleading. As per the amicable arrangement, the defendant No. 1 was in possession of the schedule B property. The plaintiff although earning a handsome income for his family, is running away from his moral and legal duty to maintain his old parents and as such the defendant No. 1 as the father and KARTA of the family alienated the schedule B property to defendant No. 18 to meet his legal necessity, which is valid and effective one.

The defendant No. 3, 4, 6 to 8, 10 to 12 & 16 submitted their separate written statement by admitting the whole claim of the plaintiff.

04. In view of the rival pleadings of the parties, the following issues have been settled for an useful adjudication.

I S S U E S.

- i) Is the suit maintainable?
- ii) Has the plaintiff any cause of action for filing this suit?
- iii) Is the suit property partible?
- iv) Whether the sale deed executed by defendant No. 1, vide document No. 2526 dt. 25.07.2009 is void, abinitio, ineffective one and also not binding on the plaintiff??
- v) To what relief, if any, the plaintiff is entitled to?

05. In order to prove its case the plaintiff only examined himself as P.W. 1 and he has exhibited the certified copy of the ROR under khata No. 80 of mouza Chandrapur as Ext. 1 (suit property) and the certified copy of the registered sale

deed bearing No. 2625 dated 29.07.2009 as Ext. 2. Similarly, Dwijaraj @ Jhajaraj Patra, defendant No. 6 examined himself as D.W. 1.

FINDINGS.

Issue Nos. iii & v.

06. Plaintiff is the son of the defendant No. 1 and admittedly all the defendants except defendant No-18 are the co-owners having their subsisting interest over the suit property. Defendant No. 1 & 13 even though submitted their written statement by claiming one amicable arrangement of suit property between the co-sharers, the said fact could not be proved before the court as both the defendants at the time of hearing kept themselves away from participating in the proceeding. The contesting defendants have not also challenged the basic fact of the plaintiff. Therefore, it is clear that the entire suit property is in joint possession of both the parties. The plaintiff while demanding partition of the entire suit property by metes and bounds first contended that his father and defendant No. 13 with a malafide intention and to deprive him from the suit property have alienated Ac. 0.063 decimals to defendant No. 18, who is an outsider and as such it is became necessary for the plaintiff to approach the court for partition to curve out his share. He has again challenged the sale deed exhibited by the defendant No. 1 in favour of the defendant No. 18.

Coming to the first question regarding partition, even though the same has not been challenged by the contesting defendants, being a question of law, it is

the obligation of the court to decide whether during lifetime of his father a son can sought for partition over the ancestral property. Admittedly, the suit property is the ancestral property of all the parties except defendant No. 18. At this stage the plaintiff relied upon a judgment reported in AIR 2013 SUPREME COURT 3525. The Hon'ble Apex Court of India in the said judgment held that -

“Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before commencement of Hindu Successor (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. So long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and as such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but, if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.”

In view of the above observation of the Hon'ble Apex Court It is the opinion of this court that the suit property being the ancestral property is partible by metes

and bounds and the plaintiff is entitled to carve out his share from the suit property after effecting partition.

07. Coming to the next question, regarding execution of sale deed by defendant No. 1, it may be noted that the certified copy of the sale deed has been referred to the court by the plaintiff and admitted before the court as Ext-2. Before admitting the certified copy of the sale deed the plaintiff approached the court to call for the original sale deed from the defendant No-18, who is the vendee of the sale deed and custodian of the same. But in spite of the notice of the court the defendant No-18 did not produce the original sale deed nor respond to the notice of the court. Hence the certified copy of the sale deed is admitted before the court without any objection from the defendants. It is now asserted from the said sale deed that Lingaraj (D-1) has alienated Ac.0.063 decimal of land to the defendant No-18. Law is well settled that, a coparcener has no independent right to alienate his undivided interest over a specific property to others. But, it is now well settled in view of several decisions of the Hon'ble Court that alienation of property by a KARTA of a joint Hindu family for his legal necessity would be valid. But, the person claiming such a privilege has to prove that he is the KARTA of the family and for the legal necessity of his family, sold the property. Here the fact is completely different. Firstly, the plaintiff has advanced his case saying that the defendant No-1 connived with defendant No- 13 sold away some property to defendant No-18. The said fact remains unchallenged. Secondly, defendant No-1 is not the KARTA of the joint family as defendants No- 6 to 12 are the legal heirs of another recorded

owners namely Bhagabat Patra, having their separate family. However, in order to deal with the above situation it would be beneficial for the court to invite the reference of the Hon'ble High Court of Orissa reported in '104 (2007) CLT-575 a case between Sukadev Jena – versus- Kuna Rout and others'? In the said judgment the Hon'ble Court have observed that;

“A coparcener may alienate his undivided interest in the joint family property but he cannot alienate his interest in any specific property belonging to co-coparcener for the simple reason that no coparcener can before partition claim any such property as his own and that any such alienation would remain valid only to the extent of the seller's interest in the alienated property. Any sale by one of the coparcener of the undivided interest in the coparcener property without the consent of other coparcener would not be void ab-initio, but would be voidable at the option of others coparcener and therefore a bonafied purchaser has right to seek partition of the coparcenary property for carving out his share”

08. In view of the forgoing discussion, it is the opinion of this court that the entire suit property is partible by metes and bounds and the plaintiff is entitle for 1/7th share out of the specific share Lingaraj Patra over the entire suit property. While deciding the share of Lingaraj Patra it may be noted that the total suit property belongs to Banchhanidhi Patra and Bhagabat Patra, each having 1/2 share over the entire suit property. Out of the half share of Late Banchhanidhi Patra, his five sons namely Lingaraj (D-1), Debaraj(D-2), Kabiraj (D-3), and Brajaraj (D-4) as well as his daughter Chheta Parida (D-5) are entitle for 1/5th share each out of the 1/2

share of Banchhanidhi Patra. Similarly, defendant No. 6 to 12 are entitle for 1/7th share each out of the half share of their father Late Bhagabat Patra over the entire suit property. Accordingly, the plaintiff has 1/7th share out of the 1/5th share of Lingaraj.

09. But, so far as the validity of the sale deed vide document No2625 dated 29.07.2009 is concern, in view of the ratio laid down in the judgment of the Hon'ble High court of orissa reported in '**104 (2007) CLT-575**, the same is only valid up to the share of Lingaraj Patra and voidable to the rest of the properties. Therefore, defendant No. 18 has to curve out his share himself by effecting partition over the suit property or by participating in the partition, if effected between the parties as per the observation of this court in the present case.

Issue Nos. i, ii & v.

10. It is needless to mention that the contesting defendants have not challenged the maintainability of the suit at the time of hearing and as such the same is treated to be not pressed. Hence it is order.

O R D E R.

The suit of the plaintiff be and the same is preliminarily decreed in part on contest against defendant No. 3, 4, 6 to 8, 10 to 12 & 16 while ex-parte against the defendants Nos. 1, 2, 5, 9, 13, 14, 15, 17 & 18 but in the circumstances without any cost. The plaintiff is entitled for his share by effecting partition of the suit property in the manner prescribed as belows-

Plaintiff is entitled for 1/7th share out of the specific share Lingaraj Patra over the entire suit property. While deciding the share of Lingaraj Patra it is to be noted that the total suit property belongs to Banchhanidhi Patra and Bhagabat Patra, each having 1/2 share over the entire suit property. Out of the half share of Late Banchhanidhi Patra, his five sons namely Lingaraj (D-1), Debaraj (D-2), Kabiraj (D-3), and Brajaraj (D-4) as well as his daughter Chheta Parida (D-5) are entitled for 1/5th share each out of the 1/2 share of Banchhanidhi Patra. Similarly, defendant No. 6 to 12 are entitled for 1/7th share each out of the half share of their father Late Bhagabat Patra over the entire suit property. Accordingly, the plaintiff has to carve out his 1/7th share out of the 1/5th share of Lingaraj Patra over the half share of his father Banchhanidhi Patra. Similarly the defendant No-18 is entitled for his share only out of the share of Lingaraj Patra.

Advocate's fee is at the contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 21st day of December, 2013.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Chittaranjan Patra

List of witnesses examined on behalf of Defendant. :-

D.W.1 Dwijaraj @ Jhajaraj Patra.

List of documents admitted on behalf of the Plaintiff :-

Ext.1 Certified copy of the ROR vide document No. 80 of mouza Chandrapur.

Ext. 2 Certified copy of the registered sale deed No. 2625 dt. 29.07.2009.

List of documents admitted on behalf of the Defendants :-

Nil

Sr. Civil Judge, Khurda.