

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA.

PRESENT:-

Sri Raj Kishore Lenka
Senior Civil Judge, Khordha.

Dated this the 25th day of September, 2013

C.S. 403/ 2010

1. Naba Kishore Jena, aged about 68 years,
S/o Late Udayanath Jena.
2. Smt Srimati Dei, aged about 63 years
W/o – Naba Kishore Jena,
Both are of Vill/Po/P.S- Tangi, Dist: Khurda.

..... Plaintiffs.

-Versus-

1. Collector Khordha.
2. Executive Engineer, minor irrigation project, Khordha.
Both are of At/ Po/ PS/ Dist: Khurda.

.....Defendants.

Counsel for Plaintiffs

... Sri Bijay Patra, Advocate and
associates.

Counsel for defendants

... G.P, Khordha.

.....
Date of Argument – 21.09.2013

Date of Judgment – 25.09.2013
.....

JUDGMENT

This is a suit for declaration simplicitor.

02. The plaintiffs case as it reveals from the record is that, plaintiff No. 1 is the husband of Plaintiff No. 2. The plaintiff No. 1 is the owner of the land recorded in Sabik Khata No. 249 plot No. 236/ 929 measuring Ac.0. 200 decimal and plaintiff No. 2 is the owner of land recorded in Sabik Khata No. 493 plot No.0. 236 measuring Ac. 0.476 decimal and another plot bearing No. 227 measuring Ac. 0.370 decimal of mouza-Tangi (hereinafter referred to be suit land). The above 3 plots of the plaintiffs were proposed to be acquired by defendant No. 2 for the purpose of minor irrigation project in the said locality in the name "Mangaljit Minor Irrigation Project, Tangi". The plaintiffs' further case is that defendant No. 2 fraudulently recorded its name over Ac. 0. 117 decimals from plot No-236/ 929 which belongs to the plaintiff No-1 and Ac. 0. 415 decimals from plots No- 236 and 227, which belongs to the plaintiff No. 2. The said portion of the suit land is recorded in the name of "Mangaljit Minor Irrigation Project, Tangi". vide Hal Khata No. 495/ 1, plot No. 929/ 1621, 227/ 1230 and 236/1229 without knowledge of the plaintiffs. Subsequently, the plot No. 236 and 227 were acquired by the state for construction of the National Highway No. 5 (N.H.-5) and compensation money was awarded to the plaintiffs for acquisition of their rest of the suit land. But, since, the defendant No. 2 has already mischievously and fraudulently muted part of the suit land as above in the name of" Mangaljit Minor Irrigation Project, Tangi", the plaintiffs could not able to get the full compensation amount for their entire suit land which belongs to them. It is further contended by the plaintiffs that even though the part of the suit land was recorded in the name of "Mangaljit Minor Irrigation Project, Tangi",

they have been in possession of the same till acquired by the state. On the other hand, the authority of Mangaljit Minor Irrigation Project, Tangi received the compensation amount from the state through defendant No-1 for N.H. – 5. At this stage the plaintiffs have further to say that there is no such “Mangaljit Minor Irrigation Project” existing at Tangi, but defendant No-. 2 illegally and fraudulently received the compensation money from the state by making their name muted in respect of the part of the suit land. The act of defendant No. 2 is highly illegal, intentional and they got muted the part of the suit land by exercising fraud. As a result of the plaintiffs sustained heavy loss. The plaintiffs’ further case is that they requested the defendant No. 2 to repay the compensation amount on 01.08.2010 but, their request was refused by the defendants. Subsequently, the plaintiffs serve pleader notice under Sec. 80 of C.P.C. to defendant No. 1 and after expiry of 2 months, they preferred the present suit.

03. After institution of the present case, due to non-appearance of defendant No. 2 the suit against him set-exparte on 06.07.2011. Defendant No. 1 submitted his written statement by challenging the maintainability of the suit on the ground of limitation and non-joinder of the necessary parties and so also by disputing has the entire facts and pleadings of the plaintiffs.

Defendant No. 1 in its written statement has mentioned that the Minor Irrigation Project against whom the suit has been filed is not made as a party. As a matter of fact the part of the suit land as mentioned by the plaintiffs has been recorded in the name of “Mangaljit Khordha Jalsechana Bibhaga, Tangi”. The

compensation amount has not been received by the irrigation department. The above defendant again contended that the defendant No. 2 has the authority to get the part of the suit land muted in the name of "Mangaljit Minor Irrigation Project" through the Tehasildar, Tangi, without the knowledge of the plaintiffs. The land in question acquired by the N.H., - 5 had already been abated vide abatement case No. 26/97-98 in favour of "Mangaljit Minor Irrigation Project" in the year 1997-98. But, the N.H authority acquired the land after publication of the 3/d notification bearing No-80784 (E) dated 24.07.2002. The defendant again contended that the suit has been filed over a baseless and false claim which is not tenable in the eye of law and liable to be dismissed with cost.

04. Taking into consideration the rival pleadings of the parties to the suit, the following issues have been settled for an useful and effective adjudication.

ISSUES

- i. Is the suit maintainable?
- ii. Is there any cause of action for the plaintiffs to file the suit?
- iii. Is the suit barred by limitation?
- iv. Whether the suit is defective for non-joinder of necessary parties.
- v. Whether the plaintiffs have right, title and interest over the suit properties.?
- vi. Whether the recording of the suit property in the name of "Mangala Minor irrigation project Tangi" is wrong?
- vii. What relief, if any, the plaintiffs are entitled?

05. In order to prove their case the plaintiffs have only examined the plaintiff No. 1 as P.W. 1. On the other hand the defendant No-1 examined none.

During hearing of the suit P.W. 1 admitted the certified copy of the ROR in Khata No. 495/1 of mouza Tangi as Ext. 1, the Certified copy of the ROR in Khata No. 249 of mouza Tangi as Ext. 2, the certified copy of the order sheet of Tehsildar Tangi in L.A. Case No. 1/ 57 of 2003 as Ext. 3, the certified copy of the sketch map as Ext. 4, the certified copy of the ROR in Khata No. 375/ 12 of mouza Tangi as Ext. 5, rent receipt dated 20.03.2010 as Ext. 6, the certified copy of the order of the Tehsildar Tangi dated 19.06.2003 in L.A case No. 1/ 47 of 2003 as Ext. 7, the certified copy of the sketch map as Ext. 8 and the copy of the notice to defendant No. 1 under Sec. 80 of C.P.C. along with postal acknowledgment as Ext.

FINDINGS.

Issue Nos. v & vi

06. The above issues being the most pivotal issues are taken up first for consideration.

The plaintiffs' case is that the entire suit land belongs to Nabakishore Jena (P-1) and Srimati Dei (P-2). Out of which Sabik Khata No. 294, plot No. 236/ 929 measuring Ac.0. 200 decimals stands recorded in the name of the plaintiff No. 1 and the land in Sabik Khata No. 493, plot No-236 measuring Ac. 0. 476 decimal and Plot No. 227 measuring Ac. 310 decimals stands recorded in the name of defendant No. 2. In the above circumstances the plaintiffs claim is that a portion of their suit land was illegally and fraudulently recorded in the name of "Mangaljit Minor

Irrigation Project, Tangi". The plaintiffs have specifically stated that Ac. 0.117 decimals from the plot No. 226/ 929 and Ac. 0.415 decimal from the land of P.W. 2 have been recorded in the name of "Mangaljit Irrigation Project Tangi" vide Hal Khata No. 415/1 in plot No. 929/ 1621, 227/ 1230 and plot No. 236/ 1229. Since, the plaintiffs have taken a plea of fraud against "Mangaljit Irrigation Project", it is their legal obligation to substantiate the said fact before the court of law. Accordingly, the P.W. 1 adduced his evidence by repeating the exact version as reflected in the plaint. The plaintiffs have also referred to the documents as noted above.

07. Lets comes to the land recorded under Khata No. 249 plot No. 236/ 929 measuring Ac. 0.200 decimal and khata No. 493 under Plot No. 236 and 227 measuring Ac. 0.476 and 0.310 decimal respectively. On that score, the plaintiffs have to say that the "Mangaljit Minor Irrigation Project, Tangi" has acquired part of their suit land fraudulently. On that respect, the plaintiff referred Ext. 2, the ROR under Khata No. 249. The same has been recorded in the name of Nabakishore Jena who is the plaintiff No. 1 to be the owner of the plot No. 236/ 929 measuring Ac. 0.083 decimal. In the remark column it has been clearly mentioned that as per the revenue case No. 36/ 97-98, Ac. 0.117 decimals of land has been deducted and included in khata No. 495/1. In this connection Ext. 7 may be referred which is the order sheet of the Tehsildar/ C.A., Tangi in land acquisition case No. 1/47/2003. It reveals from the order dated 02.06.2013 that the land measuring Ac. 0.083 decimal in khata No. 249 stands recorded in the name of plaintiff No. 1. The plaintiffs relied upon the report of the Amin saying that the plot No. 236/ 929 measuring Ac. 0.200

decimals is coming under National Highway, whereas the same has been recorded in the name of "Mangaljit Minor Irrigation Project, Tangi" in Khata No-495/1 measuring Ac.0.117 decimals. The Amin further opined that the entire land measuring Ac. 0.200 decimals is still in the possession of plaintiff No. 1. But, subsequently, the Tehsildar, Tangi who is the competent authority for land acquisition directed to pass award in favour of the "Mangaljit Minor Irrigation Project, Tangi" for the land recorded in his name under Khata No. 495/ 1 plot No. 236/ 929/ 1611 measuring Ac. 0.117 decimal. It may further be noted that the plaintiffs have earlier claimed that his land measuring Ac. 0.117 decimal out of Ac. 0.200 decimal has been fraudulently recorded in the name of "Mangaljit Minor Irrigation Project, Tangi". That being the factual position of the case lets come to the land under Khata No. 493.

08. The Khata No. 493 consisting upon 2 plots which stands recorded in the name of plaintiff No. 2. On that score, the settlement ROR has not been filed in this case. But, the certified copy of Hal Khata No. 375/ 12 reveals that he plaintiff No. 2 is the recorded tenant under Plot No. 236/ 1229 measuring Ac. 0.471 decimal and plot No. 227/ 1230 measuring Ac. 0.291 decimals. The type of the land is "PADIA". The full order sheet, Amin report with sketch map and the order sheet in the land acquisition case No. 1/ 57/ 2003 reveals that as per the abatement case No. 36/ 97-98 the portion of the land from plot No. 236/ 1229 measuring Ac. 0.215 decimals out of total Ac. 0.471 decimals and from plot No. 227/ 1230 measuring Ac. 200 decimals out of total 291 decimals have been recorded in the name of "Mangaljit

Minor Irrigation Project”. However, the Amin report reveals that the total areas in both the plots are in possession of plaintiff No. 2. The above discussion leads to the final conclusion that the pleading of the plaintiff regarding recording of their portion of land in favour of “Mangaljit Minor Irrigation Project” is an admitted fact and there must not be any ambiguity on the facts advance on behalf of the plaintiff. But, the real question under dispute is still waiting for its final destination.

09. The plaintiffs claimed that the portion of the suit land which has been recorded in the name of ‘Mangaljit Irrigation Project’ has been recorded fraudulently. The Ext. 2, 3 and 7 clearly reveals that as per the abatement case No. 36/ 97-98 the portion of the land as discussed above was deducted from the record of right of the plaintiffs and recorded in the name of Mangaljit Minor Irrigation Project. The above documents and revenue records including order sheet and order of the appropriate Revenue Authority go to show that by adopting due legal procedures the land was muted and subsequently acquired and owners of the land were duly compensated. P.W. 1 in his evidence in chief has stated that he cannot say if the state of Orissa has acquired Ac. 2.330 decimals of land from mouza Tangi in Revenue Misc. Case No. 36/97-98 (abatement) for ‘Mangajit Minor Irrigation Project’ and if the land measuring Ac. 0.415 decimals from khata No. 375/ 12 under plot No. 217/ 1230 and 236/ 1229 has been acquired by the state and if Ac. 0.117 decimals of land from khata No. 249 has also been acquired by the state. In this connection it is quite obligatory on the part of the plaintiffs to produce the records relating to the abatement misc. case No. 36/ 97-98 in order to prove the illegality, if any, has been

exercised by the Revenue Department. There is no whisper in the plaint nor in the evidence relating to the manner of fraud exercised by the defendants or any revenue authority for recording of the land of the plaintiffs in favour of the Mangaljit Minor Irrigation Project, Tanbgi,. The whole facts and the documents relied upon by the plaintiffs reveals that the revenue authority while recording the name of 'Mangaljit Minor Irigation Project' in the revenue records committed no mistake or any illegality. Plaintiffs have come to the court without having any substances in their case.

Issue Nos. i, ii, iii, iv and vii.

10. The question of maintainability as a whole is a quite vital issue before this court. The defendant No. 1 firstly contented that the suit is barred by limitation. As per the pleading of the defendant N0-1, the alleged suit land of the plaintiffs were recorded in the name of 'Mangaljit Minor Irrigation Project' in the year 1998 and the N.H. Acquired the land after 3-D notification in the year 2002. P.W. 1 in his cross-examination in para 22 admitted that his land was acquired by the state in the year 2004 for national highway and he receive the compensation in the said year. If the plaintiffs case is accepted they came to know about the recording of their land in favour of 'Mangaljit Minor Irrigation Project, Tangi' in the year 2004. But, It is seen that the present suit was preferred in the year 2010. The delay of filing of the suit after expires of six (06) years remained unexplained. Whereas, the plaintiffs have mentioned the cause of action of the suit to be Dt.01.08.2010 and 02.08.2010, when the defendant No. 2 refused to return the compensation amount to the plaintiffs. It is

needful to mention that the notice was issued after 6 year from the knowledge of the plaintiffs regarding the actual cause of action basing on which the present declaratory suit has been preferred. Therefore the present suit not maintainable being barred by limitation as per the provision under section-56 of the Limitation Act 1963.

11. Another crucial question has been raised regarding non-joinder of necessary party. Collector, Khordha has been made as defendant No. 1 but the surprising fact is that no relief has been claimed from defendant NO. 1. Similarly, on which basis the defendant No. 1 has been cited as a party has not been clarified. In this regard it may be noted that the collector Khordha is the authorized officer for land acquisition for the National Highway of District Khordha. While a fraud has been alleged against the 'Mangaljit Minor Irrigation Project', the defendant No. 1 being the head of the revenue department has also acted upon the revenue records such as Ext. 3 and 7 while determining the right, title and interest of the parties over the land acquired therein in order to provide compensation for acquisition of the land for National Highway. On that basis he is the authority to represent the state. Therefore the plaintiffs have to specify the representing position of the defendant No. 1 to the present suit. But, there is absolutely no specification on which basis the defendant No-1 has been arrayed as a party.

12. Similarly, the executive engineer Minor Irrigation Project, Khordha is made as defendant No. 2. On that score the defendant NO. 1 has to say that the compensation amount has not been received by the said Irrigation Department in

respect of the land recorded in the name of "Mangaljit Minor Irrigation Project", Tangi. In the cross-examination, it is suggested to P.W. 1 that the secretary of Irrigation Department is the proper party and not the executive engineer.

Let's accept that defendant No-.2 is a necessary party but, now the question is whether defendant No- 2 has the authority to represent 'Mangaljit Irrigation Project, Tangi?'. Not a scrap of paper has been produced to show that the 'Mangaljit Minor Irrigation Project' is wholly under the administrative control of defendant No. 2. The minor irrigation project is sponsored by state and as such the secretary to the irrigation department is a necessary party and not the executive engineer. There is also no whisper to the effect that defendant NO. 1 and 2 or both are cited as parties on behalf of the 'Mangaljit Minor Irrigation Project, Tangi.. While advancing the said discussion it is quite important to note that the plaintiffs in the pleading have mentioned that no such 'Mangaljit Minor Irrigation Project is existing at Tangi. But, defendant No-2 illegally and fraudulently received compensation money from authority of N.H. 5. Coming to the first question, the plaintiff No. 1 is in his evidence clearly admitted that the 'Mangaljit irrigation Project' situated at a distance of 1 K.m. far from his house. It should be remember that if defendant No. 2 has received the compensation amount on behalf of 'Mangaljit Irrigation Project', he must not have received the same in his personal capacity for the state. Accordingly, the appropriate authority of 'Minor Irrigation Project' must have been made as a party to the suit. In the present case the 'Mangaljit Irrigation Project' who is a necessary party has not been cited as a party in this case. In the above

circumstances the suit of the plaintiffs is not at all maintainable. The plaintiffs are not entitled for any relief. Hence, it is order.

O R D E R.

The suit of the plaintiffs be and the same is dismissed on contesting against the defendant No. 1 while ex-parte against defendant No. 2 but, in the above circumstances without any cost.

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 25th day of September, 2013.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1 Nabakishore Jena

List of witnesses examined on behalf of Defendants. :-

Nil

List of documents proved on behalf of the Plaintiffs :-

Ext.1 Certified copy of ROR under Khata No. 295 of Mouza Tangi.

Ext-2- Certified copy of ROR under Khata No. 249 of Mouza Tangi.

- Ext-3 Certified copy of order sheet of Tehsildar, Tangi in L.A. Case No. 1/57 of 2003.
- Ext. 4 Certified coy of sketch map.
- Ext. 5 Certified copy of ROR under Khata No. 375/R of mouza Tangi.
- Ext. 6 Rent receipt dated – 20.03.2010.
- Ext. 7 Certified copy of order datd – 19.04.2003 in L.A. Case No. 1/47 of 2003.
- Ext. 8 Certified coy of sketch map.
- Ext. 9 copy of notice U/s 80 C.P.C..

List of witnesses examined on behalf of Defendants :-

Nil

Sr. Civil Judge, Khurda.