

**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, Khordha.*

Dated this the 20th day of June, 2014

C.S. 59/ 2009

Nabaghana Mulia @ Nabakishore Dalei, aged about 75 yrs., S/o- Duryodhan
Mulia, of Vill.- Durgapur, Samil – Bengitangi, P.O.- Gudum,
P.S./Dist- Khordha.

..... Plaintiff.

-Versus-

Pravat Kumar Satpathy, aged about 34 yrs, S/o- Kumuda Chandra
Satapathy, of Vill.- Bada Khemundi Sahi, P.O.- Brahmapur,
P.S.- Baidyanathpur, Dist- Ganjam.

..... Defendant.

Counsel for Plaintiff ... Sri A. K. Pattanaik and Associates
Advocates, Khordha

Counsel for defendant ... Sri B.K. Samantasinghar and
associates, Advocates, Khordha

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Date of conclusion of Argument – 16.05.2014
Date of pronouncement of Judgment – 20.06.2014
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JUDGMENT

The present suit has been instituted by the plaintiff for declaration of
the sale deed bearing No. 2945 dt. 03.10.2008, to be null and void, as executed in

favour of the defendant by a stranger by adopting fraud and impersonation, as well as permanent injunction against the defendant along with other reliefs.

02. The plaintiff's case is that the land recorded under khata No. 126, plot No. 841, measuring Ac. 0.085 decimals and plot No. 842, measuring Ac. 0.160 decimals of mouza Ramagir Prasad, total Ac. 0.245 decimals (hereinafter referred to be the suit land) is the ancestral property of the plaintiff, which has also been recorded in his name in the last settlement operation and he is in peaceful possession of the suit land till date. The defendant initially approached the plaintiff to purchase the suit land which has been refused as the plaintiff was in no need of money. On 15.12.2008, the plaintiff heard that the suit land has been sold to the defendant by some one else identifying himself as Nabaghana Mulia (plaintiff). The plaintiff has further averred that the defendant intentionally by adopting forgery obtained the sale deed in his name. The further case of the plaintiff is that he inquired about the matter and ascertained that such a transaction was taken place by virtue of a sale deed bearing No. 2945 dt. 03.10.2008 and he received the certified copy of such sale deed on 22.12.2008. Thereafter, it came to the knowledge of the plaintiff that Sankar Chhualsingh and one Pradipta Kumar Mohanty were the witness to the sale deed and with the connivance of both the witnesses; the defendant managed himself to execute such a forged sale deed. However, the said sale deed neither conveys any title nor the possession of the suit land to the defendant. The vendor of the sale deed No. 2945/2008 is a stranger and the plaintiff at no point of time has executed any such sale deed and as such the sale deed is a void document without having any legal effect at

all. The plaintiff discloses the cause of action to be on 22.10.2008, when he received the certified copy of the sale deed relating to the suit land and accordingly he filed the suit in time against the defendant.

03. The defendant also appeared and presented his written statement by denying the whole contentions of the plaintiff as well as by raising question on the maintainability and cause of action of the suit. The specific case of the defendant is that the plaintiff has given a false name and address of his own in the cause title of the plaint. The defendant's specific case is that the actual name of the plaintiff is Nabakishore Dalai, S/o- Late Chandramani Dalai of Vill.- Bengitangi. Nabaghana Mulia is another person. Therefore, Nabaghana Mulia and the plaintiff are not the same person. The voter list and other revenue records clearly disclose the name of the plaintiff to be Nabakishore Dalai as well as the name of his other family members. The voter I.D. Card bearing No. OR/09/060/440883 is a document of the real identification of the plaintiff. Therefore, the plaintiff has no *locus standi* to file the suit. The further case of the defendant is that Duryodhan Mulia has no son; he adopted his vendor Nabaghana Mulia as his son. But, the plaintiff is not the son of Duryodhan Mulia. Therefore, the plaintiff is not the owner of the suit land. The defendant has to say that he has purchased the suit land from the real owner without obtaining any fraud, whereas the claim of the plaintiff is completely baseless and false. After such purchase the suit land was delivered to the defendant, who took possession of the same by effecting his right, title, interest over it. On 03.10.2008, the defendant had also purchased other lands in mouza-RamsinghPrasad in different sale deeds. The

plaintiff is not the owner of the suit land and as such he cannot challenge the genuineness of the sale deed and for which the suit of the plaintiff is liable to be dismissed with cost.

04. In view of the above rival pleading of both the parties the following issues have been settled for an useful adjudication of the case.

I S S U E S.

- i. Is the suit maintainable?
- ii. Is there any cause of action for the plaintiff to file the suit against the defendant?
- iii. Whether the the plaintiff has the *locus standi* to file the suit against the defendant
- iv. Whether the name of the plaintiff is Nabaghana Mulia @ Nabakishore Dalai, S/o- Duryodhan Mulia of Vill.- Durgapur, Samil- Bengitangi?
- v. Is the plaintiff all along in possession of the suit land having his right, title and interest over it?
- vi. Whether the sale deed in question, bearing No. 2945 dt. 03.10.2008 is forged one?
- Vii. Whether the plaintiff is entitled to get any other relief?
- Viii. Whether the plaintiff Nabaghana Mulia @ Nabakishore Dalai is the son of Chandramani Dalei and not the son of Duryodhan Mulia?

05. In order to prove its case, four witnesses have been examined on behalf of the plaintiff. Out of whom, P.W. 1 and P.W. 2 are independent witnesses and P.W. 3 is the plaintiff himself. P.W. 4, Rama Kumar Pattanaik is the Record Keeper, Office of the Sub-Registrar, Khordha who has produced the register of the sale deed (Ext. 4) before this court. Four documents have been relied upon and exhibited by the plaintiff in this case. The ROR relating to the suit land is marked as Ext. 1, two rent receipts relating to the suit land as Ext. 2 & 2/a respectively, the certified copy of the registered sale deed No. 2945 dt. 03.10.2008 as Ext. 3 and the Register in Book No. 1, Vol No. 151/2008 as Ext. 4.

Similarly, three witnesses have been examined on behalf of the defendant. Out of whom D.W. 1, Dhaneswar Chhualsingh and D.W. 2 Narahari Bairiganjan are two independent witnesses and D.W. 3 is the defendant himself. The voter list bearing No. 116 of Begunia Assembly Constituency of year 2009 is marked as Ext. A and Voter list bearing No. 68 of Begunia Assembly Constituency of year 1993 as Ext. B, on behalf of the defendant.

FINDINGS.

Issue Nos. IV, V, VI and VIII.

06. The plaintiff has raised the question by saying that he is Nabaghana Mulia @ Nabakishore Dalai and he is the son of Duryodhan Mulia. The suit land is his ancestral property. Now being recorded in his name vide Ext. 1, he is the owner of the suit land. He came to know that somebody has sold the suit land to the defendant by adopting impersonation, whereas the defendant completely challenge the said

contention of the plaintiff by saying that the plaintiff is not Nabaghana Mulia. Rather the name of the plaintiff is Nabakishore Dalai, S/o- Chandramani Dalai.

Since the identity of the plaintiff has been disputed in this case and the plaintiff is claiming himself to be Nabaghana Mulia @ Nabakishore Dalai, the onus reposes on the plaintiff to prove that he is Nabaghana Mulia @ Nabakishore Dalai, who is the owner of the suit land.

The pleading of the plaintiff is clear and specific. He stated that he is Nabaghana Mulia @ Nabakishore Dalai, S/o- Duryodhan Mulia of Village- Durgapur Samil – Bengitangi. This fact find place in the cause title as well as in his pleading and evidence in chief. So far as P.W. 1 and P.W. 2 are concerned, P.W. 1 has stated that plaintiff is the son of Duryodhan Mulia and the suit land is the ancestral land of the plaintiff. The Hal ROR relating to the suit land has been recorded in the name of the plaintiff. He further claims that the plaintiff is his co-villager. But, in the cross-examination he stated that himself and the plaintiff belong to two different villages. He cannot say the name of the wife and son of the plaintiff. He made a surprise disclosure by saying that the plaintiff belongs to the village Nuagaon and he has never seen the father of the plaintiff. He again stated that the plaintiff has filed this case against one Joginath Mallick. P.W. 2 in his examination in chief also stated that he is a co-villager to the plaintiff. The suit land stands recorded in the name of the plaintiff in the Hal ROR, which is the ancestral land of the plaintiff. But in the cross-examination he stated that he can't say the Khata, plot number and area of the suit land. The residential house of the plaintiff is situated at mouza Bengitangi and he has been

stayed there for last 5 years. He has also made a surprise disclosure by saying that the plaintiff has no other names except his present name as “Nabaghana Mulia”. After a thorough assessment of the evidence of both P.W. 1 & 2, it is the opinion of this court that their evidence is suffering from glaring infirmities. They are not the competent witnesses to explain or establish that the plaintiff is also known as Nabaghana Mulia. Rather the evidence of P.W-1 and 2, if considered to be true, the same negative the case of the plaintiff. But so far as the question of the actual name of the plaintiff is concerned, they are not the useful witnesses for the court to receive any absolute inference from their evidence. Therefore, it would be wise enough to visit the evidence of P.W. 3, who is the plaintiff himself and the most valuable witness for his own case.

07. The evidence in chief of the plaintiff is just a reflection of his pleading and as such the same needs no further discussion. But, in the cross-examination the plaintiff (P.W. 3) has admitted that in the voter list his name has been mentioned as Nabakishore Dalei. His wife and sons names have been mentioned as Swarnalata Dalei, Biswambar Dalei, Basanta Kumar Dalei and Bichitra Dalei. He has also stated that he is a voter of village- Bengitangi. Bimbadhar Dalei @ Mallick is his son. Sunanda Dalei is his wife. As per the voter list his name is Nabakishore Dalei. Very surprising fact is that the plaintiff in his cross-examination in para – 20 & 21 has mentioned the name of his family members differently. He has mentioned the name of his wife as Swarnalata, whereas in the further cross-examination dt. 25.07.2013 in para – 21 he has mentioned the name of his wife as Sunanda Dalei. Taking account of

the above admission of the plaintiff with regard to his name, this court turned up to the certified copies of the voters list as relied upon by the defendant and also marked as Ext. A & B respectively. Ext. A reveals that Nabaghan Dalei, the plaintiff is the son of Chandramani Dalei. Smt Swarnalata Dalei is the wife, Bimabdhar and Birakishore are the sons of the plaintiff. Similarly, Ext. B, which is the voters list bearing No. 60 of Begunia Assembly Constituency of ward – Managobindapur, Bengitangi, reveals the name of the plaintiff as Nabakishore Dalei, S/o- Chandramani Dalei in Sl. No. 883. The family members of the plaintiff are the voters as per the Sl. No. 884 to 887, wherein the plaintiffs name has been mentioned to be Nabakishore Dalei in all the serial numbers. The plaintiff has also admitted in his cross-examination that his name in the voters list has been mentioned as Nabakishore Dalei. Not a single scrap of paper has been produced before the court by the plaintiff to prove that he is also known as Nabaghana Mulia. The surprising fact is that Nabaghana Mulia and Nabakishore Dalei are two different names. The undisputed voters list such as Ext. A & B reveals the plaintiff's name as Naba kishore Dalei, S/o- Chandramani Dalei. Therefore, it is now a strange affair for the court to know as to which basis the plaintiff in his pleading as well as in his evidence in chief has mentioned his name as Nabaghana Mulia @ Nabakishore Dalei, S/o- Duryodhan Mulia by completely ignoring the name of his father Chandramani Dalei.

08. While searching for the background of such claim of the plaintiff, this court take a look at the cross-examination of the plaintiff (P.W. 3), what he has stated for the first time and noted down by the court in Para – 22. The plaintiff has stated that

he was adopted by Duryodhan Mulia as his son. At the time of adoption he was aged about 20 years. One deed of adoption was also executed relating to such adoption. He again stated that he has given the deed of adoption to his advocate. Duryodhan Mulia and others have put their signatures and thumb impressions on the said deed. He further stated that Duryodhan Mulia, who has adopted him is his cousin brother.

The aforesaid fact is completely an alien to the case of the plaintiff as the plaint does not provide a slight indication of such a fact. Neither the plaintiff's witnesses nor the evidence in chief of the plaintiff unfold the above fact as mentioned by the plaintiff during his cross-examination. It is further came to the light that on the basis of such adoption the plaintiff claims himself as the son of Duryodhan Mulia. This is not only a fact out of pleading, but also not attempted by the plaintiff to prove the same before the court. But, that part of admission by the plaintiff makes it clear that the actual name of the plaintiff is Nabakishore Dalei, S/o- Chandramani Dalei. If the plaintiff was really interested to prove himself to be the adopted son of Duryodhan Mulia and such an adoption is valid one and by virtue of such adoption he subsequently named as Nabaghana Mulia, he must be fair in his pleading, which is unfortunately did not find place in the case of the plaintiff. After all, the factum of adoption has not been proved by the plaintiff. Rather the above belated statement of the plaintiff goes to prove that he has not come to the court with a fair case in a clean hand. The intention is only known to the plaintiff, but for the court this is an unfair attempt on the part of the plaintiff to make out a case out of nothing. There is absolutely no material to prove that the plaintiff is known or named as Nabaghana

Mulia at any point of time. Rather, it has been well proved that the actual and the only name of the plaintiff is Nabakishore Dalei, who is the natural born son of Chandramani Dalei. He is not the son of any Duryodhan Mulia. _

09. It is true that evidence has also been adduced from the side of the defendant to disprove the case of the plaintiff. Moreover the defendant by providing the voters list and relying upon the admission as made by the plaintiff, enable this court to scrutinize the evidence adduced from the side of the plaintiff and ultimately it is became clear that the claim of the plaintiff regarding his name to be Nabaghana Mulia, S/o- Duryodhan Mulia is completely baseless and false and as such he is not the person who is the recorded tenant of the suit property vide Ext. 1.

10. Now, it is worthwhile to mention that the plaintiff has came to the court for declaration of the sale deed executed in favour of the defendnat to be null and void. No doubt that the plaintiff has successfully proved the sale deed before the court bearing No. 2945 dt. 03.10.2008 by adducing the evidence of the Record Keeper, who produced the original register before the court, which is also marked as Ext. 4. The sale deed reveals that the person, who has alienated the land has mentioned his name to be Nabaghana Mulia aged about 50 years, S/o- Duryodhan Mulia. His photograph has been appearing over the sale deed in the front page. It is also true that the defendant has not produced his vendor before the court as the onus is reposed to the plaintiff to prove him as Nabaghana Mulia and the vendor of the plaintiff as a stranger. It is quite needful to mention that the plaintiff in his cross-examination in para – 24 has stated that he ascertained from the sale deed and the photograph affix

therein that one "Jogia Mulia" has sold the suit land to the defendant. If this is the case of the plaintiff, let's revert back to the pleading as surfaced in the plaint. The plaintiff in his pleading has stated that he obtained the certified copy on 22.12.2008 and after receiving the certified copy he came to know that one forged person has sold the suit land. The certified copy is also made available by the plaintiff to the court and the photograph of the vendor is also clearly appearing on the sale deed. This much of evidence implies that the vendor to the disputed sale deed was well known to the plaintiff prior to filing of the present case, but the plaintiff has not mentioned his name to be Jogia Mulia nor tried to identify the said person.

11. Before and after the institution of the suit the plaintiff gathered too much knowledge about the execution of the disputed sale deed and the circumstances as well as the person who sold the suit land. The defendant in his cross-examining has stated that his vendor is alive. The defendant again admitted that himself and his vendor are the accused persons in the criminal case pending against them. His vendor Nabaghana Mulia is rightly not present in the village. The above evidence prompted this court to trust completely that the plaintiff got an ample knowledge about the vendor to the sale deed vide Ext. 3 and the plaintiff has also filed a criminal case against the vendor to Ext. 3. If the plaintiff is sure that the vendor, who has executed the sale deed in favour of the defendant is not Nabaghana Mulia then a good and sufficient scope was all along available with the plaintiff to prove the same before the court either by producing the relevant documents available in the criminal case or by making the vendor to sale deed No. 2945/08 as a witness to test the viability in the

claim of the defendant as well as the genuineness of the sale deed. But the plaintiff remains silent. The whole fact and circumstances as discussed above clearly indicate that the plaintiff has not come to the court in a clean hand with a fair case. He is unable to prove himself to be Nabaghana Mulia, S/o- Duryodhana Mulia as well as his right, title, interest and possession over the suit land and accordingly he is not entitled for any relief as sought for.

Issue Nos. I, II, III and VII.

12. So far as the question of maintainability is concerned, the said fact has not been pressed by any of the parties and as such the same needs no further discussion. The above discussion is quite elaborate to put focus on the questions relating to the sale deed bearing No. 2945/08 (Ext. 3). The plaintiff has raised the question that he is the owner of the suit land as he is also known as Nabaghana Mulia, but somebody else by using his name as Nabaghana Mulia sold the suit land and as such the sale deed, which is marked as Ext. 3 is a forged document. Needless to say that the plaintiff measurably failed to establish his case before the court and even he fails to substantiate that his name is Nabaghana Mulia and he is the owner of the suit land, whereas the documents and the undisputed position of the case reveals that the name of the plaintiff is Nabakishore Dalei and he is the son of Chandramani Dalei of Village Bengitangi. He has no interest in the suit land in any manner and as such the plaintiff is not entitled for any relief. Hence it is order.

ORDER

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

Advocates fees are at contested scale.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 20th day of June, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of Plaintiffs :-

- P.W. 1 Sridhar Bairiganjan.
P.W. 2 Jayakrushna Khuntia.
P.W. 3 Nabaghana Mulia @ Nabakishore Dalei.
P.W. 4 Rama Krushna Pattanaik.

List of witnesses examined on behalf of Defendants :-

- D.W. 1 Dhaneswar Chhualsingh.
D.W. 2 Narahari Bairiganjan.
D.W. 3 Pravat Kumar Satpathy.

List of documents admitted on behalf of the Plaintiff :-

- Ext. 1 ROR in khata No. 126 of mouza Ramasinghprasad.
Ext. 2 Rent receipts for the year 2008-09 & 2012-13.
Ext. 3 Certified copy of RSD No. 2945 dt. 03.10.2008.
Ext. 4 Register in Book No. 1, Vol No. 151/08.

List of documents admitted on behalf of Defendants :-

- Ext. A Voter List No. 116 of Begunia Assembly constituency, 2009.
Ext. B Voter List No. 60 of Begunia Assembly constituency, 1993.

