

**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 16th day of July, 2014

C.S. 64/ 2006.

1. Baikuntha Nath Sahoo, aged about 58 yrs, S/o- Late Lokanath Sahoo.
2. Sanatan Sahoo, aged about 52 yrs, S/o- Late Lokanath Sahoo.
3. Balakrushna Sahoo, aged about 55 yrs, S/o- Late Lokanath Sahoo.

All are of Vill./P.O./P.S.- Bolagarh, Dist- Khordha.

..... plaintiffs.

-Versus-

1. Naba Kishore Pattanaik, aged about 65 yrs.
2. Braja Kishore Pattanaik, aged about 62 yrs.
Both are sons of Late Gadadhar Pattanaik Both
are of Vill./P.O./P.S.- Bolagarh, Dist- Khordha.
3. Basant Kumar Chhouthury, aged about 62 yrs, S/o- Late Sadhu Charan
Choudhury of Vill.- Trutiapada, P.S./P.S.- Bolagarh, Dist- Khordha.
4. State of Orissa, represented through Collector, Khordha
at/P.O./P.S./Dist- Khordha.

..... Defendants.

Counsel for plaintiffs' ... Sri A. K. Das and Associates
Advocates, Khordha

Counsel for defendants No-1,2 & 3 ... Sri P.K. Senapati and associates,

Counsel for defendants No-4	Advocates, Khordha Ex-Parte
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Date of conclusion of Argument	–	01.07.2014
Date of pronouncement of Judgment	–	16.07.2014

JUDGMENT

This is a suit for declaration of easement right of way and permanent injunction.

02. The case of the plaintiffs is that they have their homestead property under plot No. 1702 and 1703 of mouza Bolagarh, having their residential pucca building over it, which has been described as schedule B property in this case. The front portion of the said homestead is used for commercial purpose, where the plaintiffs have been running different shops and show rooms. The schedule B property is recorded in the name of the plaintiff No. 3 in the current settlement ROR. But the said property was originally purchased by the mother of the plaintiffs from one Arakhita Subudhi and she was in peaceful possession of it as a dominant tenement. The further case of the plaintiffs is that the disputed property is a part and parcel of plot No. 1808 of mouza Trutiapada, which is adjacent to the north of schedule B property of the plaintiffs. The said property has been described as Schedule A property (herein after referred to be suit land) in the plaint. The extend of the suit land is Ac. 0.160 decimals out of total Ac. 0.615 decimals, recorded within Sabik plot No. 495. That was a government waste land lying just to the side of the road approaching to Bolagarh Bazar, recorded in favour of all the 'sarbarakars' of Bolagarh camp

represented by Late Bidyadhar Pattanaik as per the lease case No. 348/1944-45. But the 'sarbarakar' are neither in possession nor occupied it in any manner and as such the same is lying vacant. In the year 1948 the 'sarbarakari' system was abolished and as such the said land was continued to be the government waste land. In 1961-62 settlement operation the same was recorded in favour of Bidyadhar Pattanaik and Natabara Choudhury. The plaintiffs have further to say that the above two recorded tenants have no manner of right and title over it nor they are in possession of it at any point of time. More over after the abolition of 'sarbarakari' system, the claim of the recorded tenants of their right, title and interest over the same, if any, is of no use. It is again contended by the plaintiffs that one Arakhita Subudhi has a private land in plot No. 1260, 1261 & 1262 total measuring Ac. 1.180 decimals. He being the recorded owner of the suit property sold Ac. 0.394 decimals from the east of the above plots to the mother of the plaintiffs namely Duti Dei on 26.02.1997 through a registered sale deed. After such purchase the said land was also dedicated for business and also for their residential purpose. Therefore, the northern portion of their homestead consisting upon five pucca rooms facing towards North are meant for shops including one room used as entrance to the back side residential house and Bari of the plaintiffs. The suit land situates just in front of the above five rooms of the plaintiffs intervening the above homestead of the plaintiff and the road approaching towards Bolagarh Bazar. Now, the plaintiffs have to say that the suit land is lying vacant and used by the plaintiffs as their passage to the road. The plaintiffs have their business in cement, iron rods, asbestos sheet and hardware store. For the said business purpose, different

vehicles such as Trucks, Bullock Carts and other conveyances approach the shops from the road through the suit land and also parking over it. The middle portion of the suit land extends to 27.5 feet in breadth extending from road to the shop rooms is used mainly for passage and the side of such passage is used for the purpose of halting of the vehicle and gathering different materials. The said road is also used by the customers and others having business relations to the plaintiffs. It is the further case of the plaintiff that they have been using the suit land for last 30 years without any hindrances or any obstruction from any quarters. The plaintiffs have no other alternatives to approach the road except the suit land and as such they acquire a right of easement of way over the suit land. It is again contended by the plaintiffs that in the current settlement ROR of 1996 the suit land was recorded in the name of Gadadhar Pattanaik, who happens to be the father of defendant Nos. 1 & 2 and also in the name of Sadhu Choudhury, the father of defendant No. 3. Taking advantage of wrong recording of the above names, the present defendants attempted to raise construction over the suit land by causing obstruction to the passage of the plaintiffs. On 05.03.2006, the defendants attempted to take forcibly possession and as such the plaintiff No. 3 moved a petition U/s- 144 Cr.P.C before the Executive Magistrate, Khordha in Misc. Case No. 105/2006, wherein the Executive Magistrate has passed order to maintain status-quo over the suit property vide his order dt. 07.01.2006. The plaintiffs claim is that the action of the defendants is completely illegal. He has been using the suit land for last 30 years and accrued the right of easement of way over the suit land and such his right over the property shall be declared and the defendants shall

be permanently enjoined not to disturb the peaceful possession of the plaintiffs over the suit land.

03. The defendants N0-1 and 2 submitted their joint written statements and defendant No-3 has also submitted his own. But it is seen that the contents of both the written statements are quite similar. The defendants in their written statements disputed the entire case of the plaintiffs and also by saying the suit to be not maintainable, barred by law of limitation, bad for non-joinder and mis-joinder of parties and for lack of cause of action. The defendants have denied all the basic facts and contentions of the plaintiffs by saying that the pleadings of the plaintiffs and the reliefs sought for therein is based on false, misconceived and wrong facts and by misguiding the court the plaintiffs have tried to establish their right over the suit land, which is not tenable in the eye of law.

The specific case of the above defendants is that they are the absolute owner in possession of the suit land, which was recorded under plot No. 495 as per 1930 settlement operation, corresponding to plot No. 1263/1392 of settlement operation of 1961-62. As per the mutation of year 1944 the suit plot No. 495 was converted to plot No. 495/1497 of '*Stitiban*' status, which can be envisaged from ROR published in 1961-62 measuring Ac. 0.160 decimals. The defendants have to say that they have been using the said plot for various purpose like raising various seasonal crops and storing various materials. Whereas, the plaintiffs, who have a cement business, store their cement bulks in the house of one Chakradhar Mohapatra of Bolagarh Bazar, which is far away from the suit plot. The father of the plaintiffs had

purchased the said Hal plot No. 1603 from Chakradhar Mohapatra in khata No. 995 of type (*kisam*), '*Dokana Ghara*' (Shops) to run his business. Since 1980, they are residing in the house, which situates in a nearby plot and they have been using the house exclusively for residential purpose. It is further contended by the defendants that the building of plot No. 1702 & 1703 is a residential house, but the front portion of the said house, which is facing towards north is never used for commercial purpose like shops and show rooms. The contention of the plaintiffs that they have five rooms in front portion of their residential house is false. There is no road over the suit land and as such the question of using of the same by the plaintiffs does not arise at all. The pleading of the plaintiffs with regards to use of the suit land by them is completely false and baseless and as such the plaintiffs are not entitled for the reliefs as sought for. The defendants have specifically stated that there are roads abutting the house of the plaintiffs to the western and southern side and they have been using the said roads for reaching the main road, which is very close to the residential building of the plaintiffs. Therefore, the question of exercising right of easement by the plaintiffs over the suit land does not arise and for which the suit of the plaintiffs is liable to be dismissed with cost.

04. Before coming to the issues, it may be noted that two sets of issues have been settled by this court. The first issues were settled by this court before commencement of the hearing on 23. 08.2006 and the second issues were settled on 15.04.2011. After going through both the issues it is well ascertained that the second issues were settled after submission of the additional written statement and by

overlooking the first issue dt. 23.08.2006. It is also came to the notice of the court that the issue settled by this court on 23.08.2006 appears to be sufficient, just and proper with regards to deal with the real controversy between the parties which also includes all the issues settled by this court on 15.04.2011. Therefore, for an useful and proper adjudication, this court has taken up the issue dt. 23.08.2006 to be the parameter to adjudicate the matter under dispute in the present case which runs as follows:-

I S S U E S.

- i. Is the suit maintainable in the present form?
 - ii. Is there any cause of action to bring the suit against the defendants?
 - iii. Is the suit bad for mis-joinder and non-joinder of necessary parties?
 - iv. Is the suit barred by law of limitation?
 - v. Whether the plaintiffs are entitled to a decree of right of easement in their favour for using the suit land as passage to the public road on north and also for as the halting place of the conveyance coming to the shops of the plaintiffs in their business concern as well as for other miscellaneous purposes?
 - vi. Whether the plaintiffs are entitled to for a decree of permanent injunction against the defendants restraining from disturbing the rights of the plaintiffs in any manner and from raising any construction and from putting any obstruction over the said suit property in their lawful exercise of right of user in the aforesaid manner?
 - vii. What relief, if any, the plaintiffs are entitled to?
05. In order to prove its case, four witnesses have been examined on behalf of the plaintiffs including the plaintiff No. 1 as P.W. 4. five documents have been relied upon by the plaintiffs, which are as follows :-

The Certified copy of ROR in khata No. 644 of mouza Bolagarh is marked as Ext. 1, Certified copy of ROR in khata No. 172 of mouza Trutiapada as Ext. 2, Certified copy of ROR in khata No. 213 of mouza Trutiapada as Ext. 3, Hal-Sabik information sheet issued by Tahsildar, Khordha as Ext. 4, Hal-Sabik information sheet issued by Tahsildar, Khordha as Ext. 4/a and Certified copy of Regd. Sale deed No. 1378 dt. 21.02.1976 as Ext. 5.

06. Similarly, six witnesses have been examined on behalf of the defendants. As many as 13 documents have been relied upon by the defendants, which are as follows

The Sabik ROR in khata No. 213 of mouza Trutiapada is marked as Ext. A, ten sheets of Rent receipts as Ext. B to B/10 respectively, Sketch map as Ext. C, Certified copy of Regd. Gift deed No. 2696 dt. 10.08.1983 as Ext. D, Village map of mouza Trutiapada Sheet No. 3 as Ext. E, Village map of mouza Trutiapada sheet No. 4 as Ext. F, Hal Village map of mouza Trutiapada sheet No. 4 as Ext. G, RSD No. 1378 dt. 21.07.1976 as Ext. H, Certified copy of Hal ROR in khata No. 172 of mouza Trutiapada as Ext. J, Certified copy of Yadast bearing sl. No. 1808 of mouza Trutiapada as Ext. K, Certified copy of order sheet in Rev. Case No. 685 dt. 30.03.2006 as Ext. L, Certified copy of Sabik ROR in khata No. 418 of mouza Trutiapada as Ext. M, Six numbers of rent receipts as Ext. N to N/5.

07. It is worthwhile to mention that the advocate commissioner, who is deputed by this court to ascertain as to how the plaintiffs are using the suit land has also submitted his report and examined as C.W. 1. He admitted the writ issued to him

to be Ext. I, the notice to the parties as Ext. II, spot notice as Ext. II, his report to be Ext. IV and the sketch map to be Ext. V.

FINDINGS.

Issue Nos. V, VI & VII.

08. The above issues are inter related to each other and being the pivotal issues are taken up first for consideration.

This is not a suit for easement by prescription rather a suit for easement of right to way. This being the basic claim of the plaintiff, the onus lies on him to prove that the suit land, which is described as Schedule A property is the only way for him to access the public road and he has no other alternatives and secondly if other ways are available, the suit land is the nearest and most convenient measure for him to access the public road. The pleading of the plaintiffs with regards to the background of whole case is quite elaborate, but the relevant aspect of his pleading is that they are the owners of the plot No. 1702 & 1703, which is their homestead property described as schedule B property. They are the dominant tenement of schedule B property, which has not also been disputed by the defendants. Their case is that their homestead property situates at mouza Bolagarh. The suit land, which is adjacent to the schedule B property falls in mouza Trutiapada under plot No. 1808 total measuring Ac. 0.160 decimals under Sabik plot No. 495 out of total Ac. 615 decimals. That was a government land. The further case of the plaintiffs is that they have five rooms in front of their homestead plot No. 1703, which are used as shops and show rooms. The other side of plot No. 1703 & 1702 are associated with private plots. The main road falls to

the northern side of their homestead land being intervened by the suit land. There being no alternative, they have been using the suit land to access the public road since last 30 years. One sketch map has been appended in the plaint. Being the part and parcel of the plaint, the same is also taken up for judicial notice, which appears that the suit land falls to the north of plot No. 1703, which is intervening the main road and the homestead plot of the plaintiffs. So far as the plot No. 1702 is concerned the same situates to the south of plot No-1703. Other private plots are located towards the east and west of plot No. 1703. The situation is not same to the plot No. 1702. But, it can be well asserted that the suit land is most convenient, direct and shortest way for the plaintiffs to access the public road towards the north. Whereas, the defendants have their own stand, who have stated that the case of the plaintiffs is misconceived and misleading. He has other alternative ways. But so far as the claim of the plaintiffs that the suit land is government land is concerned, they have failed to adduce sufficient evidence to that effect. More over the ROR relating to the suit land which as been relied upon by the defendants vide Ext-J reveals that the same has been recorded in the name of Gadadhar Pattnaik, father of defendants No-1 and 2 and Sadhucharan Choudhary, father of defendant No-3. Even though the said land was earlier recorded in the name of above tenants as the 'sarbarakar', but after settlement of the name of the above tenants in the Hal settlement operation in '*Stitaban*' status, it cannot be accepted that after abolition of the 'sarbarakar' system the land was vested to the government. Such plea of the plaintiffs in context to Ext-J appears to be irrelevant and not trainable in absence of any cogent and legal evidence.

08. Coming to the question of the right of the plaintiffs over the suit land it would be good enough to visit the evidence adduced by both the parties. P.W. 1 who supports the case of the plaintiff in his cross-examination has narrated the suit matter completely differently. It can be well ascertained from his evidence that he is quite confused about schedule A and B property. For the sake of a prudent judicial appreciation it is desirable for the court to avoid and ignore the technicality to assert the real truth. While answering the questions of the counsel for the defendants he has narrated the schedule A property as if the same is Schedule B property and vice versa. Therefore, this court is unable to discard the whole evidence of P.W. 1 by saying that his evidence regarding Schedule A & B property is completely false and misleading. Apart from that it is the considered opinion of this court that the evidence of P.W. 1 on the above issues is of no use either for the plaintiffs or defendants. P.W. 2 and 3 in their evidence in chief have stated that Schedule B property is the residential building of the plaintiffs, which is used for commercial purpose and facing towards north. The front side rooms of said building are used as shop rooms by the plaintiffs. Schedule A property situates on the north of Schedule B property. Schedule A property is used by the plaintiffs as their only approach to the public road for last 35 40 40 years. In the cross-examination P.W-2 described the boundary of the suit plot No. 1702 & 1703 towards north and south to be Government land, east--house of Sansari Sahoo and west-- house of Kulamani Sahoo. P.W-3 has also stated that the government land situates towards the south of the homestead of the plaintiffs over plot No-1702 and 1703. If the statement of P.W. 2 & 3 be taken into consideration they have stated that

the government land approaching to the north and south of plot No. 1702 & 1703. It is needful to mention that 1703 is adjacent to the suit land and 1702 fells towards the southern of plot No. 1703. The government road is approaching towards the north. Even if it is accepted for a moment that a government road is there towards the south of plot No. 1702, the same does not implies that the said government road in any way accessible to the public road or the main road. It is the duty of the defendants to establish that the plaintiffs by accessing the government road towards south can reach at the public road and the same is quite convenient for them to tough the government road, rather than the suit land. To that effect the cross-examination of the defendant to P.W. 2 and 3 is completely silent.

09. P.W. 4 is the plaintiff No. 1 himself. He has repeated the exact version of his pleading and as such the same needs no further discussion. He had admitted the certified copy of the ROR under khata No. 644 of mouza Bolagarh as Ext. 1, which reveals that the same has been recorded in the name of plaintiff No. 3. Plot No. 1703 & 1702 are mentioned to be homestead land and more specifically the plot No. 1703 has been mentioned as homestead land with a specification to be shops (*Dokana Ghara*). Ext. 1 has not been disputed or challenged by the defendants. The ROR of the suit land is marked as Ext. 2, which has been recorded in the name of Gadadhar Pattanaik and others of mouza Trutiapada, which is also a homestead land. The Sabik ROR with regards to the suit land recorded under khata No. 213 of mouza Trutiapada has also been relied upon and marked as Ext. 3, which reveals that Bidyadhar Pattanaik and Nabaghana Choudhury are the recorded tenants with a status of 'sarbarakar'. However,

in the Hal settlement operation their names have been settled as the recorded tenants of the suit land with '*stitiban*' status of type '*Gharabari*'

P.W. 4 being a very material witness has been cross-examined elaborated. In the cross-examination he has stated that after purchasing the land they have been using a patch of government land as a passage from their house to the main road. He also admitted that he has received one notice from the government for encroachment of the government land, but he has not submitted the same in the present suit. The counsel for the defendant suggested that the government land falls to the eastern and western side of the plot No. 1698, 1699, 1704 & 1705. P.W. 4 also stated that they have no right over schedule A property (suit land). No other useful cross-examination has been made to the plaintiff. After a due analysis of the aforesaid cross-examination it is ascertained that the defendants have failed to establish that there is any other alternative for the plaintiffs to approach the government road without using the suit land to be their way. Even not a suggestion has been given to the above plaintiff by referring any other alternative for them to the government road except the suit land.

10. Lets come to the evidence from the side of the defendants. D.W. 1 has stated that the defendants are in exclusive possession of the suit land. The plaintiffs have their land near the land of defendants. The plaintiffs are not using any portion of land of defendants as their road. The plaintiffs are going to their land over government land situated east and south of their land. D.W. 2 also supported the exact version of D.W. 1. During Cross-examination D.W. 1 has stated that Baikuntha Nath Sahoo was

running a cement go-down earlier and now he is doing nothing. The length of the house of Baikuntha Nath (P-1) may be 20 to 25 cubits extending from north to south and the breadth may be 15 to 16 cubits. They have been staying there. D.W. 1 also admitted that government road situates to the northern side of the suit land. He further admitted that the suit land has been lying vacant for last 10 to 12 years. D.W. 2 has stated certain surprise facts. He has to say that the house of Baikuntha (P-1) is facing towards east. The land of the deity namely '*Kunjabihari Dev*' situates to the southern side of the suit land. He also admitted that the suit land is now lying unused, but the plaintiff have been using the same as parking of their vehicle. They have been using the suit land as their parking area for last 8 to 10 years. D.W. 3 in his evidence in chief has stated that the plaintiffs have constructed their dwelling house over the purchased land just adjacent to the north of the suit land since last 10 to 11 years. His evidence in chief is completely different to the pleading of the defendants and he has to say that the defendants are government servants and posted in different places of Orissa and taking advantage of the same the plaintiffs had open the door of their residential house facing towards north since last 10 years. In the cross-examination he has stated that the defendants are not doing any cultivating over the suit land. The plaintiff Baikuntha has his own house towards the southern side of the suit land. He again admitted that the said plaintiff has purchased his land around 30 years back from one Sanatan Sahoo. After purchase, he constructed his house and staying over it. He also in his cross-examination has stated that 10 to 12 years back there was a public government road towards the south side of the plaintiffs' house, but now the said road has been

encroached by others and houses have been constructed over it. D.W. 4 is the defendant No. 1 himself. Apart from supported his pleading he has stated that the suit property is in their exclusive possession and the plaintiffs are not using the same as their way. He has also admitted several documents to be Ext. A to Ext. G. In the cross-examination he has stated that his grandfather has acquired the suit property only as a 'sarbarakar'. He in his cross-examination also admitted that Nayagarh – Bolagarh main road is approaching towards the northern side of the land of the deity. He again stated that he cannot say if the entrance of the house of the plaintiffs is facing towards north. He has given many confusing answers by saying that the house of the plaintiff is facing towards all four direction and again by reverting back he has stated that he has no knowledge if other house are there adjoining to the east, west and south direction of the plaintiffs house. D.W. 5 is also supported the case of the defendants and admitted several documents, which have been exhibited as Ext. A to Ext. N. He has given a clear admission to the case of the plaintiffs by saying that the plaintiffs are business men. The road approaching towards the north side of the house of the plaintiff is a P.W.D. Road. The said road is approaching from Khordha to Nayagarh. The house of Baidhar Sahoo situates adjoining to the western side of the house of the plaintiff facing towards north. He also admitted that Baidhar Sahoo used the suit plot to reach the northern side P.W.D. road as mentioned above. He again stated that Sansari Sahoo is the eastern side adjoining house owner of the plaintiffs. The '*bagayat*' land of Gopa Sahoo situates adjoining to the east of Mango top of Sansari Sahoo. The land of '*Kunjabihari Dev*' situates adjoining to the east of schedule A land. D.W. 6 adduced

evidence in respect of defendant No. 3. He in his examination chief has stated that the suit land is in exclusive possession of the defendants and never used by anybody of the locality except the defendants. The plaintiffs have not using any portion of the suit land of the defendant situates in mouza Trutiapada. He again stated that the plaintiffs are going to their land over government land situates east and south of their land. But, in the cross-examination he has stated that Bala Krushan Sahoo has filed this suit against Nabaghana Pattanaik and Braja Pattaanaik for a piece of land, which belongs to the defendants, but in possession of the plaintiff Balakrushna for last 10 to 12 years. The plaintiffs are in possession over the suit land by covering it with fence.

11. After due analysis of the evidence adduced from the side of the defendants it came to the light that none of the defendants witnesses have succeeded to establish any alternative way available for the plaintiffs to access the public road from their plot Nos. 1702 & 1703. Particularly the sketch map has not been disputed in this case. The defendants have also relied upon three village maps vide Ext. E, F & G respectively. But, nothing has been attempted from the side of the defendants to establish the existence of any road for the plaintiffs homestead from its eastern and western side to approach the government road. So far as the question of existence of any road towards the southern side of the land is concerned, the village map reveals that no road exists in the Hal village map vide Ext. G from south to the plot of the plaintiffs nor the other two village maps. Apart from that D.W. 1 and 2 have admitted that the government road situates to the northern side of the suit land. D.W. 2 has clearly admitted that the plaintiff has been using the same as parking of his vehicle for

last 8 to 10 years All the other witnesses from the side of the defendants have specifically stated that the suit land is lying vacant, which implies that the claim of the defendants with regards to raising of seasonal crops there and using the same for other purposes to be completely baseless and false. P.W. 3 has also clearly stated that there was a road to the southern side of the homestead of the plaintiff, i.e. after the plot No. 1702, but the said road has already been encroached by the others and houses have been constructed over it. D.W. 4 is the defendant himself. He has stated that there is a vacant place to the eastern side of the house of the plaintiffs over schedule B property, owned by one Sansari Sahoo. He again stated that he does not know if Gopa Sahoo is the eastern side land owner to Sansari Sahoo. He further deposed that Nayagarh – Bolagarh main road approaching towards the northern side of the land of the plaintiffs. He further stated that he cannot say if the entrance of the house of the plaintiffs is facing towards north. His whole evidence in this manner and further more appears to be highly confusing and seems that he got a little knowledge about the suit property and as such he expressed his ignorance about the matter. However, in the last he has admitted that there is no boundary or fence around schedule A plot since last 8 years. So far as D.W. 5 is concerned, he has clearly admitted that one Baidhar Sahoo has been using the suit plot to reach the northern side P..W.D. Road as mentioned above. Which otherwise implies that the suit land has been used for passage by others adjacent land owners to the suit land whose house has been facing towards north in order to access the main road, i.e. Nayagarh – Khordha road. D.W. 6 also clearly

admits that the suit land is in possession of the plaintiff Balakrushna for last 10 to 12 years.

12. At this stage it is now worthwhile to discuss another crucial aspect of the case regarding the evidence of pleader commissioner, who is examined as C.W. 1. He was deputed by this court to make spot verification regarding the manner of possession of the plaintiff over the disputed "A" land (suit land). On 28.08.2006, writ was issued to him and he submitted his report after spot verification. As per his evidence on 08.09.2006 he issued notice to the parties and their respective counsels for spot verification. After service of the notice he proceeded to the suit land along with the parties and their counsels. He further deposed that Schedule B land belongs to the plaintiffs, which is a homestead land and their house over it. Four of the rooms are facing towards the Schedule A land (suit land), which was 50 feet away from the Khordha – Nayagarh road. The said 50 feet area is schedule A land in this suit. One of the rooms over schedule B property was used as a hardware shop and the front of the room is used as verandah and footsteps. The eastern side of the said office rooms is also used as cement go-down. Schedule B land facing wards east, where as the entrance room and the gate as stated earlier are facing towards north. He ascertained from his inspection that the plaintiffs are in possession of the schedule B land in the manner as stated above. The schedule A land is a vacant land deposited with asbestos sheets, three hips of iron rods, weighing machine, one 407 truck, late-rite stone and a '*Baula*' tree is standing there. Both the plaintiffs and defendants claimed to have deposited the said articles but after due inquiry from the witness, he came to know that

the plaintiffs are using the schedule A land for their business purpose accordingly he submitted his report to the court, which is marked as Ext. IV. He has been cross-examined elaborately and he in his cross-examination has stated that he could not ascertain if the southern side of the suit land is a government land or belongs to a private person. He was not provided with any map for inquiry. The other cross-examinations being not touching the root of the cases in any manner, needs no further discussion. The evidence of the pleader commissioner such as C.W. 1 is quite clear and elaborate. Undoubtedly the same supports the case of the plaintiffs to the effect that schedule A land (Suit land) is being used by the plaintiffs as their road to approach the government P.W.D. Road.

13. The whole discussion on the pleadings, evidence of both the parties as well as the documents relied upon, it has been clearly came out that schedule A land (suit land) belongs to the defendant Nos. 1 to 3. The same has been lying vacant and just adjacent to the shops of the plaintiffs, which are facing towards north. Similarly, the main road is also approaching towards the north of the schedule A property of the plaintiffs. Therefore, the main road and the homestead of the plaintiffs over schedule B property is intervened by the suit land. So far as the other sides of the schedule B land of the plaintiffs are concerned, these are the private lands and acquired by the respective tenants. Therefore, the suit land is only way of the plaintiffs to approach the main road and this fact has also been admitted by the defendants witnesses as well as by the advocate commissioner, who have been deputed by this court and submitted his report vide Ext. IV. Therefore, it is the considered opinion of this court that the

plaintiffs are entitled for the relief of their right to way over the suit property. But so far as the extend of the land which is likely to be used by the plaintiffs as their way is concerned, the specific claim of the plaintiffs in their pleading is that they have been using the middle portion of the suit land to the extend to 27.5 feet in breadth extending from road to the shop rooms. This fact has also been supported by the pleader commissioner (C.W-1). Therefore, the plaintiffs are only entitled for the same extend of the land over the suit land as their way. But, so far as the question of permanent injunction is concerned, the defendant nos. 1 to 3 are to be restrained from causing any obstruction over the use of the such land by the plaintiffs as their way, but the plaintiffs, defendant Nos. 1 to 3 and the public in general have got the right to use the same as their way to approach the public road, if any.

Issue Nos. i, ii, iii & iv.

14. The above issues being not pressed by the parties needs no further discussion.

ORDER

The suit of the plaintiffs' be and the same is decreed in part on contest against the defendants No-1,2 and 3 while ex-parte against defendant No-4, but in the circumstances without any cost. The right of way of the plaintiffs over the suit land such as the middle portion of the suit land to the extend of 27.5 feet in breadth extending from road to their shop rooms is here by declared. The defendants are also hereby permanently enjoined not to interfere with the peaceful use of the said land by

the plaintiffs as their way, failing of which the plaintiffs are at liberty to execute the order of this court through the process of the court.

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 16th day of July, 2014.

Senior Civil Judge, Khordha.

List of witnesses examined on behalf of plaintiffs's :-

- P.W. 1 Baman Mahapatra.
P.W. 2 Achutananda Maharana.
P.W. 3 Baidhar Sahoo.
P.W. 4 Baikuntha Nath Sahoo.

List of witnesses examined on behalf of Defendants :-

- D.W. 1 Trilochan Biswal.
D.W. 2 Harihar Jena.
D.W. 3 Khetrabasi Moharana.
D.W. 4 Nabakishore Pattanaik.
D.W. 5 Basant Kumar Choudhury.
D.W. 6 Gobardhan Mohanty.

List of witnesses examined on behalf of Court's :-

- C.W. 1 Biswanath Ram.

List of documents admitted on behalf of the plaintiffs' :-

- Ext. 1 Certified copy of ROR in khata No. 644 of mouza Bolagarh.
Ext. 2 Certified copy of ROR in khata No. 172 of mouza Trutiapada.
Ext. 3 Certified copy of ROR in khata No. 213 of mouza Trutiapada.
Ext. 4 Hal-Sabik information sheet issued by Tahsildar, Khordha.

- Ext. 4/a Hal-Sabik information sheet issued by Tahsildar, Khordha.
Ext. 5 Certified copy of Regd. Sale deed No. 1378 dt. 21.02.1976.

List of documents admitted on behalf of Defendants :-

- Ext. A Sabik ROR in khata No. 213 of mouza Trutiapada.
Ext. B to B/10 Rent receipts.
Ext. C Sketch map.
Ext. D Certified copy of Regd. Gift deed No. 2696 dt. 10.08.1983.
Ext. E Village map of mouza Trutiapada Sheet No. 3.
Ext. F Village map of mouza Trutiapada sheet No. 4.
Ext. G Hal Village map of mouza Trutiapada sheet No. 4.
Ext. H RSD No. 1378 dt. 21.07.1976.
Ext. J Certified copy of Hal ROR in khata No. 172 of mouza Trutiapada.
Ext. K Certified copy of Yadast bearing sl. No. 1808 of mouza Trutiapada.
Ext. L Certified copy of order sheet in Rev. Case No. 685 dt. 30.03.2006.
Ext. M Certified copy of Sabik ROR in khata No. 418 of mouza Trutiapada.
Ext. N to N/5 Six numbers of rent receipts.

List of documents admitted on behalf of Court :-

- Ext. i He admitted the reach application.
Ext. ii & Ext. iii-The notice to the parties as, spot notice.
Ext. iv His report.
Ext. v. The sketch map to be

Senior Civil Judge, Khordha.