

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANPUR.

Present:

Sri Satya Ranjan Pradhan, LL.B.,
Senior Civil Judge, Banpur.

Civil Suit No. 83/136 of 2014/2012

Kelu Charan Mangaraj, aged about 71 years,
S/o Antaryami Mangaraj of Vill: Saralapadar Main road,
N.H.-5, Balugaon, Po/P.S: Balugaon, Dist: Khurda

..... Plaintiff.

-Versus-

1. Kishore Chandra Mohaptara, aged about 68 years, S/o Late Panu Mohapatra.
2. Bijoy Kumar Mohapatra, aged about 42 years, S/o Kishore Chandra Mohapatra.
3. Ajay Kumar Mohapatra, aged about 39 years, S/o Kishore Chandra Mohapatra.

All are of Vill: Saralapadar Mainroad, N.H-5, Balugaon, Po/P.S: Balugaon, Dist: Khurda.

.....Defendants

Counsel for the plaintiff ...

Sri S.N.Mishra Advocate
& his Associates.

Counsel for the defendants

Sri A.K. Hota, Advocate
& his associates.

Date of Argument – 27.10. 2014

Date of Judgment – 31.10.2014

J U D G M E N T.

1. This is a suit for declaration and permanent injunction filed by the plaintiff Kelu Charan Mangaraj.

2. The case of the plaintiff as per the plaint is that:

He is the owner in possession of the suit land situated in Mouza Singheswar pertaining to Khata No.37, Plot No. 376 with an area of Ac.0.058 decimals . The consolidation ROR of the year 1994 also stands recorded in the name of the plaintiff . So far as cause of filing of the present suit is concerned it is claimed

by the plaintiff that he is residing in his residential house situated over the Southern portion of the suit plot No.376 and the Northern portion of the suit land is used by him as a courtyard. The defendants are his adjacent Northern side neighbours. The defendants are residing there by constructing their house. In the mean time the defendants were proceeding with the construction work of their first floor. The roof of the said first floor was touching to the northern side boundary wall of the suit land and also with a slopping towards the courtyard of the plaintiff. As because the roof of the first floor of the defendants house is having a slope towards the courtyard of the plaintiff the waste water and rain water which was accumulated there are passing towards the courtyard of the plaintiff for which the family member of the plaintiff are facing a lot of inconvenience. On 09.08.2012 when the plaintiff was present in his house the defendants passed the water of the centering and false work of the roof to the courtyard of the plaintiff's house. When the plaintiff protested the defendants did not listen to him rather threatened him to pass the waste water for all times to come. Being aggrieved by the work of the defendants the plaintiff has filed the suit with a prayer to declare that the defendants have no right to pass water of the first floor as well as the water of their land into the suit land along with a decree for permanent injunction against the defendants prohibiting them from passing any water to the courtyard of the plaintiff.

3. The defendants have appeared in the suit and filed their written statement denying all the allegations made by the plaintiff. Further the defendant No.1 claimed that the suit is defective for non-joinder of necessary parties because the adjacent northern plot of the suit plot is recorded in the name of the wife of defendant No.1

who was not made as a party to the suit. However they admitted the fact that they are residing over the said house constructed by the wife of defendant No.1 since the year 2000. Thereafter in the mean time constructed the first floor of the house and placed the R.C.C roof on 18.08.2012. So far as the position of the two houses and draining of waste water to the courtyard of the plaintiff is concerned it was mentioned by the defendants that there is no courtyard of the plaintiff over the suit land and there is a gap of 10 inch between the two buildings . In addition to this the real fact of the case is that the vendor of the plaintiff and wife of defendant No.1 had purchased their respective land in the year 1980. After purchase the vendor of the plaintiff constructed the plinth of his house leaving a gap of one feet from the southern boundary wall. Later on he sold the suit property to the plaintiff in the year 1990. The wife of defendant no.1 constructed the ground floor of the building in the year 2000. While she was placing the RCC roof of the first floor the plaintiff had complained about this before the Mason Association, Balugaon. Thereafter the office bearers of the said Association came and verified the construction work technically but found nothing objectionable in the construction work. On the other hand the plaintiff is having a three stored building having a water tank on the first floor. The excess water from the water tank generally sprinkles into the bed room of the defendant No.1's wife causing inconvenience. Although the defendants complained about it the plaintiff is not listening to it rather the son of the plaintiff had threatened them with dire consequence at the gun point.

4. On the above pleadings of the parties the following issues were settled.
 - 1) Is the suit maintainable ?

- 2) Is there any cause of action for the plaintiff to file the suit?
 - 3) Whether the suit is bad for non-joinder and Mis-joinder of necessary parties?
 - 4) Whether the defendants have no right to pass water of their first floor land water of their land towards the suit land of plaintiff?
 - 5) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?
 - 6) Is the plaintiff is entitled to any other relief?
5. In order to substantiate his case the plaintiff had examined only two witnesses including himself as P.W.1 and proved certain documents in his favour. On the other hand the defendants examined one witness who is the defendant No.2.

F I N D I N G S.

6. Issue Nos. 4 & 5 :-

Both these issues are taken together as they are interlinked.

Here so as to come into the conclusion as to whether the defendants have any right to pass any water of their first floor in to the land of the plaintiff or whether the plaintiff is entitled for the relief of permanent injunction it is necessary to find out as to whether the defendants are passing any water into the land of the plaintiff or not. Here the plaintiff claimed that he is the owner in possession of the suit property bearing plot No. 376 with an area of Ac.0.058 decimals under Khata No.37 in Mouza Singheswar and the defendants are his northern side neighbours. The defendants also did not dispute about the ownership of the plaintiff over the suit land. They have also admitted the fact that they are residing on the northern side of the suit land in the house constructed by the wife of defendant No.1. Subsequently during the cross examination of D.W.1 it is admitted by him that Defendant No.1 is

constructing the house although it is recorded in the name of his wife. So now dispute is regarding the slopping of the roof of the first floor of defendants house towards plaintiff courtyard and draining the waste water into it. It is the allegation of the plaintiff that the defendants have constructed the work of first floor over their land which situates adjacently to the north of the courtyard of the roof of the plaintiff. The shuttering and false work of R.C.C roof is touching to the boundary wall. As because the first floor was made with such a sloping towards the courtyard of the plaintiff that the waste water is passing into his land. The plaintiff while being examined as P.W.1 also stated same thing. To prove his case he examined one other witness namely Monoranjan Mohapatra as P.W.2. He also stated that the roof of the first floor of Kishore Chandra Mohapatra covers his entire land and it is constructed with a sloping towards south and north. The plaintiff has kept the front side of the house as vacant and waste water of defendants first floor is passing into the vacant place of the plaintiff which is used by him as his courtyard. So far as the cause of action of the suit is concerned he claimed that in the month of August-2012 there was a hot exchange of words between both parties for the aforesaid reason. On the other hand defendant No.2 Bijay Kumar Mohapatra while being examined as D.W.1 denied all the allegations made by the plaintiff. Apart from these witnesses no other witness was examined on behalf of either side.

So far as proving the case is concerned it is the duty of the plaintiff to prove its own case. Because burden lies on the party which affirms a fact and not on the party which denies it. This principle accords commonsense as it is much easier to prove a positive than a negative. This has also got sanction from Evidence Act (Sec.

101,102 & 103). The normal rule which governs Civil proceeding is that a fact is said to be established if it is proved by preponderance of probabilities. U/s 3 of the Evidence Act, a fact is said to be proved when the court either believes it to exist or if considers its existence so probable that a prudent man ought, in the circumstances, to act upon the supposition that it exist. Simply saying preponderance of evidence means the greater weight of evidence superior evidentiary weight that though not sufficient to free the mind wholly from all reasonable doubt is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. So it is to be seen from the evidence placed on the record that whether the plaintiff has able to prove its own case on the basis of preponderance of probability or not. Whether the plaintiff could able to produce such evidence which makes it believe that such a fact exist which he asserts or its existence is so probable that the court will consider in all probabilities that it exist. Here in this case at hand the plaintiff alleged about the construction of the roof of the first floor of defendants house in such a manner that it is having a slope towards the northern side . By virtue of which all the waste water goes into his courtyard. He himself orally submitted the same thing. in addition to that he produced one other witness namely Manoranjan Mohapatra who was examined as P.W.2 and he also stated the same thing. On scrutiny of evidence of P.W.2 it reveals that this witness is a resident of village Ghiakhala and the parties of the present proceeding are resident of village Saralapadar. The plaintiff to substantiate his claim could able to bring a witness from other locality but could not able to produce a witness from the neighbourhood who has seen the suit plot or the construction of the house of the defendants regularly. Additionally speaking as it

involved regarding the construction of the house the plaintiff was required to prove the position of both the houses, the distance between two, the manner of construction of the first floor and about the sloping of the first floor i.e. whether there is any sloping or not. If there exist any sloping then the degree of the sloping to find out whether waste water is going into the land of the plaintiff or not. Although orally some matters were placed by the plaintiff but still it required more than that like some documentary evidence or an inquiry by a competent person which could have been done on the application of the plaintiff but those recourse were not sought for by the plaintiff. Rather produced only the oral evidence and in my opinion the same is not sufficient enough to incline the mind of the court towards the existence of the fact which was alleged by him on the touchstone of preponderance of probabilities.

Issue No.3

7. So far as non-joinder of the necessary party is concerned it is claimed by the defendants that the wife of the defendant No.1 is the real owner of the property which exist adjacent to the northern side of the suit land but the plaintiff has not made her a party. On the other hand the plaintiff claimed that as because the construction was made by the defendants and they are the persons who are residing in the said houses doing the mischief by passing the waste water to his land, only they are the necessary parties. After hearing the rival submission of both the parties as well as perusing the case record it is found out that although the defendants claimed that the wife of defendant No1 is the owner of the property but they have not produced any documents in that respect. On the other hand they have admitted the fact that they are residing in their house moreover defendant No.2 while being examined as D.W.1

admitted in para-12 of his cross examination that the said house was constructed by his father that means defendant No.1. So taking all into account and the facts and circumstances of the case I am of the opinion the suit is not defective for non-joinder of necessary parties.

Issue No.1, 2 .& 6

8. Although these issues regarding maintainability and cause of action were formulated the defendants did not press those issues either during hearing or during the argument. So those issues are answered affirmly in favour of the plaintiff. So far as any other relief is concerned the plaintiff is not entitled to get any such relief.

O R D E R.

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

Advocate's fee is at the contested scale.

Senior Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 31st day of October, 2014.

Senior Civil Judge, Banpur.

List of witness examined on behalf of the Plaintiff :-

P.W.1 Kelu Charan Mangaraj.

P.W.2 Manoranjan Mohapatra

List of witness examined on behalf of defendants :-

D.W.1 Kelu Charan Mangaraj

List of documents admitted into evidence by the Plaintiff:-

Ext-1 ROR

Ext.2 Rent Receipt.

List of documents admitted into evidence by defendants :-

Nil

Senior Civil Judge, Banpur.