

IN THE COURT OF THE SENIOR CIVIL JUDGE BANPUR.

PRESENT:-

Sri Satya Ranjan Pradhan,
Senior Civil Judge, Banpur.

C.S. No 63/159 of 2014/2007

1. Sri Kanhu Jali, aged about 44 years, S/o Indramani Jali.
2. Sabitri Sahoo, aged about 35 years, W/o Sudam Sahoo.
3. Nabitri Dei @ Das, aged about 30 years, W/o Upendra Das.
All are of Vill: Badakula, P.,S: Balugaon, Dist: Khurda. ...
Plaintiff.

-Versus-

1.Sri Banamali Jali, aged about 42 yearss,
2.Sri Sanatan Jali, aged about 40 years,
3.Sri Dhruba Charan Jali, aged about 28 years,
All are sons of Late Indramani Jali of Vill: Badakul,
P.S:Balugaon, Dist: Khurda.

.... Defendants

Counsel for Plaintiffs ... Sri S.N.Mahapatra, Advocate
and associates.

Counsel for defendants ... None.

Date of Exparte Argument - 30.07.2014.

Date of Exparte Judgment - 06.08.2014

EXPARTE JUDGMENT

This is a suit for partition of the suit properties by metes and bounds among the parties.

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

The suit properties stands recorded in the name of Indramani Jali who is father of the parties to the present suit. Out of the suit properties the homestead land of the parties situate over plot No.738 under Khata No.23 whereas the agricultural lands situate in plot No.503 and 505 under

Khata No. 13. The said Indramani Jali died leaving behind him four sons namely Kanhu Jali, Banamali Jali, Sanatana Jali and Dhurba Jali and two daughters namely Sabitri and Nabitri . After death of Indramani as his interest over the suit properties devolved among his children.so all of them are entitled to 1/6th share over it. The said suit properties are not partitioned among the co-sharers previously. So on 15.04.2007 all the parties to the suit sat together for amicable partition of the suit property but the defendants did not co-operate the plaintiffs for which the plaintiffs have filed the suit for partition with a prayer to pass a preliminary decree for partition allotting 1/6th share each to the parties out of the suit property.

3. Out of the the three defendants, defendant No.2 did not appear , so he was set exparte on 05.05.2008. The case against defendant No.1 to 3 was dismissed as the plaintiff did not file the necessary requisites as directed by the court on 28.01.2011. Accordingly, the suit was proceeded with exparte.

4. No issue was framed as the defendants did not appear in the suit. However in order to succeed, the plaintiffs have to prove that (i) the suit properties are partible in nature and secondly (ii) that all the parties to the suit are entitled to have 1/6th share over the suit property.

5. In this suit the plaintiff No. 1 examined himself as P.W.1 and proved the copy of R.O.R. of Khata No. 23 as Ext.1, copy of R.O.R of Khata

No.13 as Ext.2 and the rent receipts as Ext.3 series.

6. Here in the suit as mentioned in para-4 of the judgement it is to be determined as to whether the suit properties are partible in nature and secondly whether all the parties to the suit are entitled to have 1/6th share out of the suit properties or not. So far as first point is concerned it is to be decided whether the suit properties are partible in nature or not. As mentioned in the plaint the homestead land of the parties situates over Plot No.738 under Khata No.23 and the agricultural lands situate over Plot No. 503 and 505 under Khata No.13. During the examination of Kanhu Jali he produced the RORs of the said plots which were marked as Ext-1 and 2. On perusal of the said exhibits it reveals that the suit plots bearing No.503 and 505 under Khata No.13 are chaka lands which can not be fragmented either by way of sale or partition as per section 34 (1) of the Orissa consolidation of Holding and Prevention of fragmentation of land Act-1972. Section 34 (1) of the said Act reads as follows:- (1) No agricultural land in a locality shall be transferred or partitioned so as to create a fragment. The definition of fragment is provided U/s 2(m) of the said Act which reads as follows:- "fragment means a compact parcel of agricultural land held by a land owner by himself or jointly with others comprising an area which is less than (i) one acre in the district of Cuttack, Puri, Balasore and Ganjam and in the Anandapur subdivision in the district of Keonjhar, and (ii) two acres in the other areas of the state. Here in the present suit the parties to the suit

have an area of Ac.0.151 decimals in Plot No. 503 and 657 decimals in Plot No. 505. The total area of both the lands is Ac.0.808 decimals which is less than one acre and the parties to this suit are six in number. In the present circumstances I am of the opinion that the agricultural land under Khata No.13 is not partible in nature . So far as the other suit properties under Khata No.23, Plot No.738 is concerned no such bar is there as it is not a chaka plot. So it is partible in nature.

7. So far as the shares of the parties are concerned it is mentioned by the plaintiffs in this plaint as well as in his examination in chief, that the plaintiffs and defendants are the sons and daughters of Late Indramani Jali who was the recorded tenant of the suit land. After his death the parties to the suit have succeeded to the suit properties which went unchallenged. After the amendment of section 6 of the Hindu succession Act in the year 2005 the daughters have also got equal share over the ancestral property as that of a son. The daughters by virtue of their birth get the status of a coparcener like a son. So considering the aforesaid position of law it can be said that the plaintiff as well as the defendants who are the sons and daughters of Late Indramani Jali are entitled to 1/6th share over the suit properties. Hence it is ordered.

O R D E R.

The suit be and the same is preliminarily decreed in part on exparte against the defendants but without cost.

The plaintiffs and defendants are entitled to have one-sixth share each over the suit properties. Both the parties are directed to effect partition of the property under Khata No.23 and Plot No.738 among themselves by metes and bounds within 2 months hence. Failing which any party to the suit is at liberty to effect the partition of the said properties through the process of law.

Advocate's fee is at the exparte scale.

Sr. Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 6th day of August,2014.

Sr. Civil Judge, Banpur.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1 Kanhie Jali

List of documents proved on behalf of the Plaintiffs :-

Ext.1 ROR under Khata No.23.

Ext.2 ROR under Khata No.13

Ext.3 Rent receipt.

Ext.3/a Rent receipt.

Sr. Civil Judge, Banpur.