

**IN THE COURT OF THE CIVIL JUDGE (J. D.),
BHUBANESWAR, DISTRICT- KHURDA.**

Present : **Ms. Sujata Priyambada Swain,**
Civil Judge(Jr.Divn.),
Bhubaneswar, Dist-Khurda.

C.S. No. 313/88

Hari @ Haribandhu Mohanty, aged about 38 years,
S/o-Late Alekha Mohanty, of Vill./PS-Bargarh,
PO-Bhubaneswar-14, Dist-Khurda.

..... Plaintiff

- **Versus** -

1. Union of India represented by General Manager of the South Eastern Railway, Garden Reach, Calcutta.
2. The Estate Officer of the SE Railway, Waltair (AP), at present functioning at Khurda Road, PO/PS-Jatni, Dist-Khurda.

..... Defendants

Counsel for the Plaintiff : M/s. Sri Somanath Mishra
& Associates, BBSR

Counsel for the Defendants : M/s. Sri Ajaya Kumar Mohanty
& Associates, BBSR

Date of hearing of Argument : **04.09.14**

Date of delivery of Judgment : **15.09.14**

J U D G E M E N T

1. The plaintiff has filed the present suit for permanent injunction against the defendants demolishing or destroying the front portion of shop room of the plaintiff standing over schedule "A" land as shown in schedule "B" sketch map, confirmation of the possession of the plaintiff over the said land and other reliefs.
2. The plaint averments in brief are as follows:

The suit schedule property constitutes a shop room of area Ac 0.005 decimals bearing holding No.1323 under ward no.3 of Bhubaneswar Municipality, corresponding to Ac 0.004 decimals and 6 kadis of sabik plot nos.8/3798 (Ac 0.045 decimals), 12/4029 (Ac 0.012 decimals) i.e a total area of Ac 0.057 decimals under sabik khata no.335. The suit land had been purchased by the plaintiff vide RSD no.6535 dated 10.3.76 from Bidulata Mohanty, for consideration. The plaintiff got delivery of possession from his vendor by clear demarcation on 10.3.76. The vendor of the plaintiff had purchased her land from the recorded land owner Dinabandhu Sahoo, who has 1/3rd share along with Bharat Sahoo and Tangi Sahoo. The plaintiff purchased Ac 0.005 decimals out of Ac 0.019 decimals which fell to the share of Dinabandhu Sahoo. The vendor, Bidulata sold land to the plaintiff from the middle portion keeping land on both sides of the suit shop room. Public pucca road runs close to the shop room of the plaintiff and at little distance the premises of the railway station exists with clear demarcating iron and cement pillars. The plaintiff had been issued draft record of rights during the running settlement wherein he has been recorded as landlord independently by way of mutation in ROR. After purchase the plaintiff has constructed a pucca shop room to the knowledge of Bhubaneswar Municipality. The railway administration had never raised objection while the plaintiff started construction. Illegally the defendant no.2 (Estate Officer South Eastern Railway) served notice upon the plaintiff to show cause u/s.7 (3) of the PP Act, 1971. The notice does not refer to plot number and khata number and alleges unauthorized occupation of railway land measuring 7.95 meters X 3.25 meters. The defendant no.2 has no authority to serve notice for realization of rent or damages @ Rs.5 for 2583 days. If the Estate Officer, the defendant no.2 was of the opinion that the plaintiff was in unauthorized occupation, he (Estate Officer) was duty bound to issue notice to show cause u/s.4 of the Act. The Estate Officer for

the purpose of holding inquiry under PP Act, 1971 exercises the power vested in the Civil Court. The defendants should have been fair to measure the lands before proceeding under PP Act, 1971. The "premises" as defined u/s.2 of The Public Premises (Eviction of Unauthorized Occupants) Act, 1971 does not cover the land in question as indicated in the schedule of notice dated 13.10.88. The railway staffs are threatening the plaintiff to realize money illegally, failing which they will demolish the pucca structure of the shop room claiming the front portion of the shop room. The cause of action arose on 13.10.88. Therefore, the suit may be decreed.

3. On the other hand the defendant no.1 has made his appearance and filed his WS, but defendant no.2 has appeared but has not filed any WS and has been set exparte vide order dtd.3.4.89. In the WS of defendant no.1 it is submitted that the suit is not maintainable; there is no cause of action; the Court has no jurisdiction to try the suit, the suit is bad for non-compliance of section 80 CPC. It is submitted that defendant no.2, who is an Estate Officer appointed by Government of India is competent to issue notice to a person against whom requisition is filed. In the present case requisition with regard to eviction and realization of damage for illegal occupation of railway land was filed before defendant no.2 and in pursuance of the said requisition, the defendant no.2 has issued notice against the plaintiff. The defendant neither affirms nor denies the title of the plaintiff acquired through registered deed no.6535 dated 10.8.78. Land measuring 7.95 meters X 3.25 meters towards the western side of the plaintiff's plot is a land of the defendant no.1, which is shown in red colour of the sketch map mentioned in schedule "B" of the plaint. Due to unauthorized occupation over schedule "B" land by the plaintiff, on 5.9.81 the defendant no.1 initiated an eviction proceeding in the Court of Estate Officer i.e. defendant no.2 and a case was registered against him bearing case no.EC/133 of 1984

for his eviction. Eviction order was passed by defendant no.2 on 28.2.85 against the plaintiff. The plaintiff preferred an appeal in the Court of District Judge, Puri bearing Misc Appeal No.22/85 against the order of defendant no.2. The Appeal was dismissed by District Judge, Puri on 24.2.86. The plaintiff filed OJC No.944/86 in the Hon'ble High Court of Odisha against the order of District Judge, Puri, which was dismissed by the Hon'ble High Court vide order no.7 dated 25.4.86. Thus, the encroachment of railway land measuring 7.95 meters X 3.25 meters by the plaintiff is confirmed by the Hon'ble Court and the plaintiff is liable to pay damages for which the defendant no.2 had received notice u/s.7 (3) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The defendant no.1 all along raised objection concerning unauthorized occupation of the plaintiff over railway land which is shown in red colour of the sketch map of the schedule "B" land. The defendant no.2 while issuing notice in form no. F has mentioned the area of the encroached land. The detail description of the encroached land has been indicated in the sketch map submitted by defendant no.1 in the requisition letter. The land shown in red colour in the sketch map of schedule "B" of the plaint is the land of defendant no.1 and the plaintiff is an encroacher. Eviction proceeding was initiated against him vide case no.EC/133/84 by the defendant no.2 for realization of damage for illegal occupation of railway land and the defendant is not obliged to give the plot number under the show cause notice as the show cause notice is linked to the previous eviction proceeding. Whether the concerned land is a railway land or not has been finally determined by the Hon'ble Court in OJC No.944/86 and it has been decided that the land belongs to the defendant no.1. The defendant has taken steps for demolition of structure standing on the railway land as shown in red portion of the sketch map of schedule "B", after the final decision pronounced in OJC No.944/86. The value of the suit land is more than Rs.30,000 (Rupees thirty thousand only) and therefore, it is beyond

the pecuniary jurisdiction of the present Court. Therefore, the suit may be dismissed.

4. In view of the above pleadings of the parties the following issues have been framed for adjudication.

Issues

- i) Whether the suit is maintainable?
- ii) Whether the plaintiff has any cause of action to file the suit?
- iii) Whether the Civil Court has lack of pecuniary jurisdiction to try the present suit?
- iv) Whether the plaintiff is entitled for confirmation of possession over the schedule-A land?
- v) Whether the plaintiff is entitled for permanent injunction against the defendants?
- vi) Whether the plaintiff is entitled for any other relief or reliefs?

5. In order to substantiate his case the plaintiff has examined himself as the sole witness on his behalf and has proved four numbers of documents on his behalf. In order to contradict the plaintiff, the defendant no.1 has not examined any witness, but has proved one number of document on his behalf.

6. **Findings:**

For the sake of convenience issue no. (iv) & (v) shall be taken up consideration together as the issues are interrelated.

Issue No.(iv) & (v)

- i) An evaluation of the oral evidence adduced reveals as follows:

PW 1, who is the plaintiff reiterates the plaint averments concerning his purchase of the suit land from Bidulata Mohanty,

vide RSD No.6535 dated.10.8.76. He states that the suit land measures Ac 0.004 decimals and 6 kadis. The suit land is situated at Lakshmisagar . PW 1 states that he has constructed his residential house on the suit land after his purchase. There was assessment of municipality and his house was provided with holding no.1323. He had applied before the settlement authority to record his name and got parcha in respect of Ac 0.005 decimals of land. He owns a tea stall and a betel shop on the suit land. The railway authorities never obstructed his raising of construction in 1978, till 1987. Public road runs to the south of the suit land as well as to the east. The Bhubaneswar railway station is to the side of the road. The railway authorities issued notice to him for realization of rent, which is void. PW 1 denies that he has encroached upon the land of the defendant and states that the defendants have never identified the land measuring 7.95 meters X 3.25 meters. PW 1 denies encroaching 1 and ½ decimals of lands belonging to the defendants. Concerning the boundary description of the suit land PW 1 states that to east is shop of Satrugna Sahoo; to west is railway land on road; to north is land of Bidulata; to south is land of Gopal Behera. He states that he had purchased Ac 0.004 decimals and 6 kadies of land. Parcha was issued in respect of Ac 0.005 decimals of land. He denies having participated in the encroachment case which was initiated against him. He denies having preferred an appeal before Hon'ble District Judge, Puri against the order. He denies having filed OJC No.946/84 before the Hon'ble High Court against the order of Hon'ble District Judge, Puri. He denies having filed the present suit as he was unsuccessful in other litigations. He denies the existence of any fence between his land and the lands of the defendant. In Para 8 he denies that title has been settled in OJC No.944/86.

During re-examination PW 1 has proved RSD No.6535 dated 10.8.76 as Ext.1; holding tax receipt in respect of the suit land as Ext.2; municipality assessment letter concerning holding

no.1323 as Ext.3; Parcha of recent settlement as Ext.4.

During cross-examination PW 1 states that the length of land purchased by him was 24 feet from north to south and 11 feet wide. In Para 12 he states that the land of railway exists to the west of his purchased land as per Ext.1 and to the west of railway land exists public road. In Para 13 he states that the western portion of the land purchased is his hotel and to the east exists his residential house. The dimension of his residence from east to west is 11 feet. In Para 19 he admits that he had appealed against the notice for eviction issued by defendant no.2 before Hon'ble District Judge, Puri. In Para 19 he admits that being unsuccessful in the Misc Appeal, he had preferred an appeal before the Hon'ble High Court and did not get an order in his favour in the said case. In Para 20 he admits that he did not send notice to the railway before filing of this case.

ii) An evaluation of the documents submitted reveals the following:

Ext.1 is the RSD No.6535 dated 10.8.76; the vendor is Bidulata Mohanty; the vendee is the present plaintiff; there is reference to sale of Ac 0.004 decimals and 6 kadies out of Ac 0.019 decimals in respect of Hal plot no.388. There is reference to corresponding sabik khata and plot numbers in respect of Mouza-Paschima Baragarh. The length is stated to be 24 feet, and width is stated to be 8 feet 6 inch.

Ext.2 is the Municipality Holding Tax Receipt issued in favour of the plaintiff, dated 30.1.90.

Ext.3 is the Municipality Tax Assessment Notice dated 26.9.78 in respect of Holding No.1323 issued in the name of Hari Mohanty, the plaintiff.

Ext.4 is the document concerning Hal sabik correspondence and bears khata no.1189 issued in the name of the plaintiff. The concerned Hal plot is 388 and the sabik plots are 3798 and another plot which is not visible due to torn condition of the document.

There is also reference to sabik khata no.335 of area Ac 0.004 ½ decimals. It is pertinent to mention that vide Ext.1 there is reference to sabik khata no.335 and 2 numbers of Sabik plots.

Ext.A is the copy of notice u/s.7 (3) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 issued to Hari Mohanty, the plaintiff, in which there is reference to the railway land measuring 7.95 meters X 3.25 meters i.e. the 25.85 sq. meters. Damages amounting to Rs.12,915 is stated to be due for unauthorized occupation of the concerned land. The plaintiff is directed to show cause as to why an order for payment of damages should not be made.

III) After a careful evaluation of the available evidences and documents on records and the submissions of counsels, the following is revealed:

The plaintiff does seem to have not come out with clean hands. The Evidence of the plaintiff as PW 1 reveals mutually inconsistent statement. In Para 6 the plaintiff has denied initiation of Encroachment Case No.133/84 against him or his participation in the Trial of the said case or his preferring Appeal No.22/85 before Hon'ble District Judge, Puri or his filing OJC No.946/84 before the Hon'ble High Court against the order of District Judge, Puri. He denies his writ petition having been dismissed. In contrast in Para 19 of his evidence PW 1 admits that he had filed appeal against notice for eviction by defendant no.2 before the Court of District Judge, Puri and on being unsuccessful he had filed Misc. Case No.22/85 before the Hon'ble High Court . PW 1 admits that he did not get an order in his favour from the Hon'ble Court.

The case of the plaintiff is that he has opened his shop over the suit land which is his purchased land. In Para 11 of his evidence the plaintiff as PW 1 states that the length of land purchased by him is 24 feet from north to south and 11 feet wide. In

Para 13 he submits that on the western portion of the land purchased is his hotel and to the east exists his residential house. He further states that the dimension of his residence is 11 feet from east to west. As per the admission of the plaintiff the land purchased by him is 11 feet wide from east to west. Therefore, if the residence of the plaintiff is 11 feet from east to west and his hotel exists to the west of his residence, as per his claim – it would mean that the hotel and the residence of the plaintiff cover more than 11 feet from east to west, which was covered by the purchased area of the plaintiff. In this regard the learned counsel for the plaintiff had submitted during argument that it is the shop of the plaintiff which exists on the suit land and railway land exists to the west of the suit land. In this regard it is pertinent to mention that in Para 2 of his evidence the plaintiff (PW 1) has admitted that he constructed his residential house on the suit land soon after his purchase and there was assessment by municipality and his house has been provided with Holding No.1323. This evidence of PW 1 is inconsistent with the plaint averments that the hotel of the plaintiff exists over the suit land.

The learned counsel for the plaintiff has submitted during argument that the sketch map as given in the scheduled “B” has been admitted by the defendant; the sketch map reveals that the land of the vendor of the plaintiff Bidulata exists to north of the suit land; and other private lands exist to the south of the suit land and Government road and railway land exist to west; it cannot be expected that the railway land would project into private land and exist between two private plots. In this regard it is pertinent to mention that the area of the suit land has been described as 7.95 meters X 3.25 meters, as per the area described in the notice to the plaintiff for payment of damages for unauthorized occupation vide Ext.A. The claim of the plaintiff is that he has purchased an area of 24 feet X 11 feet. But, the RSD in favour of the plaintiff reveals that

an area of 24 feet X 8 feet 6 inches had been purchased. Thus there is inconsistency concerning the land purchased by the plaintiff as per his oral evidence and as per the documents submitted by him.

The plaintiff has not filed any revenue map or other document to show that the relative location of his purchased land tallies with the relative location of the land as shown in the sketch map vide schedule "B".

The cause of action relates to notice sent by the defendant vide Ext.A for payment of rent for unauthorized occupation. But the prayers in the suit are for injunction and confirmation of possession - while it is evident from the plaint that dispute concerning title exists.

As per the admission of the plaintiff, the defendant no.2 (Estate Officer) had sent eviction notice to him, the matter was challenged before the Hon'ble District Judge, Puri and he had gone an appeal to the Hon'ble High Court and did not get an order in his favour. The claim of the defendant in the WS Para 7 concerning eviction order passed by defendant no.2, the appeal before the Court of District Judge, Puri by the plaintiff, the filing of OJC No.944/86 in the Hon'ble High Court by the plaintiff and dismissal of the same – has been admitted by the plaintiff. Thus, it seems that dispute concerning title has already been decided and the plaintiff has filed the present suit for injunction simplicitor which is not maintainable. The plaintiff has claimed for confirmation of his possession in respect of schedule "A" land describing the same as shown in a sketch map of the schedule "B". As already discussed the land shown in schedule "B" does not tally with the land purchased by the plaintiff; and the defendant no.2 (Estate Officer) has passed notice u/s.7 in respect of the said land; and the Civil Court lacks jurisdiction in the matter. But, the plaintiff has claimed

to establish that schedule "B" tallies with schedule "A" land in area and location and also tallies with his purchased land. Further, the plaintiff has made suppression of facts concerning eviction order against him and the appeals filed by him before District Judge, Puri and Hon'ble High Court respectively and his not getting a favourable order. It seems that the land shown in the suit schedule relates to the said eviction case and appeals which were dismissed. In view of the preceding discussions the plaintiff is not entitled to the relief of injunction or confirmation of his possession. Accordingly issue no.(iv) and (v) are answered in negative.

Issue No.(i)

Concerning maintainability of the suit it is claimed by the defendant that the jurisdiction of the Civil Court is barred in view of the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In this regard the cause of action as stated in the plaint relates to the issue of notice U/s.4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 to the plaintiff. In this regard reference may be made to section 7 (1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 which reads as "*Where any person is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such installments as may be specified in the order*". Further reference may be made to section 10 of the said Act which reads as "*Every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act*". In the present case as the plaintiff has challenged the action of the Estate Officer i.e. defendant no.2 and has prayed for injunction in respect of action to be taken in

pursuance of power conferred under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 – the jurisdiction of the Civil Court is clearly barred.

If for the sake of argument the jurisdiction of the Civil Court would not have been barred under the provisions of the Public Primes (Eviction of Unauthorized Occupants) Act, 1971, the present suit for injunction simplicitor would not be maintainable as dispute concerning title has already been heard and finally decided against the plaintiff as per the admission of the plaintiff. In view of the aforesaid discussions the suit is not maintainable.

Issue No.(ii) and (iii) and (vi):

In view of the aforesaid discussions the plaintiff has no cause of action to file the suit. As regards pecuniary jurisdiction no evidence has been put forth in this regard; nevertheless in view of the discussions concerning maintainability and bar of jurisdiction of this court this issue needs no determination. Under the circumstances the plaintiff is not entitled to any other relief.

Order

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

Advocate's fee be assessed at contested scale.

**Civil Judge (Jr. Divn.)
Bhubaneswar.**

The judgment is dictated, corrected and pronounced by me in the open Court today i.e. on the day of 15th September, 2014 under my seal and signature.

Civil Judge (Jr.

