

**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. 501/12

Baikunthanath Khuntia, aged about 76 yrs,
S/o-Late Bihari Kuntia, Plot no.3397/3,
Lingaraj Nagar, PO-Bhubaneswar-2,
PS-Lingaraj, Bhubaneswar, Dist-Khurda.

..... Plaintiff

- Versus -

1. Subhada Mohapatra, aged about 40 yrs, W/o-Prasanta
Kumar Khuntia, Plot No-3397/3, Lingaraj Nagar, PO-
Bhubaneswar-2, PS-Lingaraj, Bhubaneswsar, Dist-Khurda.

2. Prasanta Kumar Khuntia, ageda bout 42 yrs,
S/o-Baikunthanath Khuntia, Plot no-3397/3, Lingaraj Nagar, PO-
Bhubaneswar-2, PS-Lingaraj, Bhubaneswar, Dist-Khaurda.

..... Defendants

Counsel for the plaintiff
Associates.

: Ms. R. C. Sarangi, Advocate & his

Counsel for the defendant
& his Associates..

: M/s. N. Satapaty, Advocate

Date of hearing of argument : .27.11.13

Date of delivery of judgment : 29.11.13

J U D G E M E N T

1) The plaintiff has filed the present suit for restraining the defendant no.1 from interfering with the peaceful possession of the plaintiff in respect of the suit property and for direction to the defendants to vacate the suit property and stay outside till death of the plaintiff.

2) The plaint averments in brief are as follows:

The defendant no.1 is the daughter-in-law and the defendant no.2 is one of the sons of the plaintiff. The marriage between defendant no.1 and 2 was solemnized on 7.7.02 as per Hindu Rights and Customs; at that time the wife of the plaintiff was alive. After the said marriage the defendants started residing in joint mess with the plaintiff and his wife. Gradually quarrelsome attitude and erratic behavior of defendant no.1 made it intolerable for the family members of the plaintiff to reside under the same roof. In order to implicate the plaintiff and the family members with a false criminal cases defendant no.1 threatened to commit suicide on several occasion. On 4.2.08 defendant no.1 attempted to commit suicide by closing her door from inside with the help of her saree. Her husband saved her life and intimated the same to the local police on Dt.5.2.08. The suit has been entered in the police station as SD No.158 dt.5.2.08 and 180 dt.6.2.08. The defendant no.1 has been regularly torturing the plaintiff by causing nuisance and

annoyance by assaulting, insulting and humiliating the plaintiff, by utilizing vulgar language. The plaintiff is a heart patient who is suffering from such diseases since 2006. The plaintiff is the owner of the suit schedule property which has been acquired in his own name and the ROR is in his own name and the residential house has been constructed over the same much earlier. The sons of the plaintiff have no contribution to construction of the residential house. The plaintiff called the defendant no.2 and ask him to reside separately with his wife to prevent unnecessary tension to the plaintiff; and defendant no.2 agreed. The defendant no.1 requested her husband not to take such decision with the assurance that she would try to amend her mischievous behavior. For a week the situation was better and thereafter the defendant no.1 continued with her misbehaviour as usual. In the meantime the plaintiff was so shocked that he stopped taking meals along with the defendants and other son and daughter-in-law in a common mess for seven days. The plaintiff has notice that the defendant no.1 is a person of abnormal state of mind who quarrels with people without any justifying reasons and shouts as a drunkard hooligan attracting the attention of neighbours and outsiders . So the plaintiff ask defendant no.1 and 2 on 25.8.12 to make their own arrangement and to reside elsewhere. But, defendant no.1 denied to reside elsewhere as she has married the son of the plaintiff and cannot be asked to vacate the house of the plaintiff. On 26.8.12 the defendant started abusing the plaintiff by coming inside room of the plaintiff and creating a serious situation.

The cause of action arose on 26.8.12 when defendant no.1 created a serious disturbances in peaceful living of the plaintiff. Therefore, the plaintiff has filed the present suit.

3) The Defendant no.1 has been said ex parte. The defendant no.2 has made his appearance and filed his written statement. The averments of the WS in brief are as follows:

The suit is not maintainable and there is no cause of action. The plaint averments concerning the relationship between the parties and the defendant no.1 being of quarrelsome nature and attempting to commit suicide and torturing the plaintiff- are admitted. It is submitted that the plaintiff is more than 75 years and therefore it would not be wise for the defendant no.2 to leave the house. It is admitted that the defendant no.2 is of abnormal state of mind and quarrels with the plaintiff and defendant no.2.

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

4) ISSUES

- i.) Whether the suit is maintainable?
- ii) Whether there is any cause of action?
- iii) Whether the plaintiff is entitled a decree of permanent injunction against the defendants from interfering in the peaceful life of the plaintiff over the suit land?
- iv) Whether the plaintiff is entitled to a decree of mandatory direction to the defendants to vacate the suit schedule property till

death of the plaintiff?

v) To what other relief (relief's) is the plaintiff entitled?

In order to substantiate his case the plaintiff has examined himself as the sole witness on his behalf and has proved three documents on his behalf.

On the other hand, defendant no.2 has examined himself as the sole witness on his behalf and has proved no documents.

5) **FINDINGS**

For the sake of convenience issue numbers (iii) and (iv) shall be determined together as the evidences are interwoven and both the issues are interrelated.

Issue numbers (iii) and (iv)

1) An examination of the oral evidences adduced reveal the following:

PW 1 who is the plaintiff reiterates the plaint averments concerning the suit land being recorded in his name and states that he had purchased the suit land and the suit land is his exclusive property. PW 1 reiterates the plaint averments concerning his relationship with the defendants; the attitude of the defendant no.1; the attempt of defendant no.1 to commit suicide on 4.2.08 and registration of SD entries in police station; PW 1 being heart patient. PW 1 states that the defendants have no right to reside in his house without his consent although the defendant no.2 is his successor. PW/.1 proves the ROR of khata no.626 of Mauza-Bhubaneswar Sahar, Unit-27 as Ext.1; a rent receipt in

respect of the suit land as Ext.2; the documents concerning his treatment in Hitech Medical College and Hospital as Ext.3. During cross - examination PW 1 states that his elder son is mentally retarded and he is dependent on his younger son for the works of the house. PW 1 also states that he can manage without his younger son as he is getting pension.

DW 1 who is defendant no.2 states that he is the second son of the plaintiff and the elder son is mentally abnormal. DW 1 states that he is the only person to look after the family and the plaintiff who is more than 75 years of age and it is not possible or wise to leave the plaintiff alone . DW 1 admits the plaint averments that defendant no.1 has abnormal state of mind for which she always quarrels with him and the plaintiff. During cross-examination DW 1 admits that his father had purchased the disputed house. DW 1 states that when he was 8/9years old the house was purchased. DW 1 refers to houses over the disputed property; he states that his father had constructed those also.

II) An evaluation of the documents proved reveal the following:

Ext.1 is the ROR of Khata no.626 of Mauza-Bhubaneswar Sahar, Unit -27; the said khata consists of plot no.388 of status homestead of area Ac 0.103 decimals. The said property tallies with the schedule of property as given in the plaint. Ext.2 is a rent receipt in respect of the khata no.626 in the name of the plaintiff. Ext.3 is the document concerning Out-Patient Registration Data issued by Hi-Tech Medical College and Hospital in the name of

Baikunthanath Khuntia; the date of birth of B. Khuntia (plaintiff) is stated to be 31.1.1936 and the age is stated to be 76; statements of the years 2006 to 2012 have been mentioned in the said document .

III) The learned counsel for the plaintiff has submitted during his argument that the suit property is the self-acquired property of the plaintiff and the defendants have been residing in his house under his permissive possession. As the plaint discloses a cause of action the suit should be decreed.

On the other hand the learned counsel for the defendant number 2 has submitted during his argument that the plaintiff's allegations are against defendant number 1 and not against defendant number 2. Therefore the suit should be dismissed against defendant number 2.

IV) After a careful evaluation of the available evidences and documents on record and the submission of the counsels I am of the following opinion. The plaintiff claims that the schedule of property of the plaint is his self acquired property. The defendant number 1 who is his daughter-in-law has been set exparte. Thus the oral and documentary evidences concerning the suitland being the self-acquired property of the plaintiff have not been rebutted by the defendant number 1. The defendant number 2 who is his son has admitted the suit properties to be the self acquired property of the plaintiff. The said admission of the defendant 2 is to be seen in the light of the circumstances of the case; the defendant number 2 has admitted the allegation of the plaintiff

that defendant no 1 is mentally unstable and is subjecting the plaintiff to mental torture; however defendant no 2 has opposed the claim of the plaintiff that he and his wife should vacate the plaintiff's house on the ground that the plaintiff who is old and ailing is dependent on defendant 2 in his old age as the other son of the plaintiff is mentally retarded. Under such circumstances the admission of defendant 2 that the suit property is self acquired property of the plaintiff is relevant under the provision of section 21 of the Indian Evidence Act as such admission would go against the pecuniary interest of the defendant 2- as the plaintiff may dispose off his property according to his own sweet will and has allegedly another son who is mentally retarded. Further exhibit 1 reveals that the suit land is recorded in the name of the plaintiff. Taking these discussions into consideration I am of the opinion that there is preponderance of evidences concerning the suit land being the self-acquired property of the plaintiff.

V) The defendant number 2 has opposed the claim of the plaintiff that he and defendant 1 should vacate the house of the plaintiff.

The plaintiff on the other hand bases his claim on the grounds of mental torture and health problems. Abusive behaviour of the defendant number 1, her attempts at committing suicide, her threats to file criminal cases, her quarrelsome nature and behaviour which tend to lower the dignity of the family in the neighbourhood are alleged as the causes of mental torture. Further the plaintiff has claimed health problems and has submitted documents to prove that same. Further, the plaintiff has claimed to

be a senior citizen. The plaintiff has claimed that he can manage without defendant 2 as he is getting pension.

Although the defendant number 1 has been set ex parte it has to be kept in mind that she has certain rights as a woman and wife of defendant number 2. As the husband of defendant number 1, i.e defendant number 2 is alive , I am of the opinion that the rights of defendant number 1- such as maintainance and residential rights can be claimed from defendant number 2, her husband and as her husband is alive such rights cannot be claimed from her father-in-law. It has to be kept in mind that the plaintiff has not claimed that only defendant number 1 should vacate his house; rather the plaintiff has claimed that both the defendants should vacate the house. Thus the plaintiff has expressed his willingness to reside without his able son(the other son being allegedly mentally retarded) and relinquish his needs as an old ailing man from the son who allegedly looking after his needs to get respite from the behaviour of defendant number 1.

As the plaintiff is a senior citizen with health problems and claims long years of mental torture and humiliation on account of the behaviour of defendant number 1, he would be prejudiced unless he gets some respite from the alleged mental torture. Under the circumstances as the suit land is the self acquired property of the plaintiff and as admittedly the plaintiff has constructed the house existing over it, and claims that the defendant number 1 is invading his right to peaceful enjoyment of his property, I am of the opinion that unless the plaintiff gets respite from the alleged

torture he is subjected to- there would be no standard for ascertaining the actual damage caused likely to be caused to the life of the plaintiff ; I am also of the opinion that such invasion is such that compensation in money would not afford adequate relief. Accordingly issue no(iii) is answered.

VI) As regards issue no (iv) I am of the opinion that in order to prevent breach of peaceful enjoyment of his property by the plaintiff in his old age it is necessary to give direction to the defendants to vacate the house of the plaintiff.

As the plaintiff has not disputed the rights of the defendants to succeed to his property and has claimed relief in respect of his residual life the above findings shall in no way affect the rights of the defendants to succeed to the property of the plaintiff as envisaged under the provisions of Hindu Succession Act.

Issue number (i), (ii), (v)

in view of the afore said discussions I am of the opinion that the suit is maintainable and the plaintiff has cause of action to file this suit. In view of the findings of the preceding paragraphs concerning reliefs claimed under issue (iii) and (iv), issue no (v) needs no determination.

Order

The suit be and the same is decreed on contest against the defendants . Accordingly the defendants are permanently restrained from interfering with the peaceful possession of the plaintiff over the suit land . The defendants are directed to vacate

the house of the plaintiff over the suit land within a period of four months hence failing which the plaintiff shall have the option to take recourse to the process of the court for such vacation .

Advocate's fee is to 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 ofunder my seal and signature.

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

List of witnesses examined for the plaintiff:

P.W.1 Baikunthanath Khuntia

List of witnesses examined for the defendants

DW 1 Prasanta Kumar Khuntia

List of documents marked as exhibits for the plaintiffs:

Ext.1 ROR Khata no.626

Ext.2 Rent receipt in respect of the suit land

Ext.3 Document concerning my treatment (six sheets)

List of documents marked as exhibits for the defendants

Nil

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