

**HEADING OF DECISION IN CIVIL SUITS**

IN THE COURT OF 1<sup>st</sup> ADDL.SENIOR CIVIL JUDGE,  
BHUBANESWAR,

PRESENT:- *Pranab Kumar Routray, LL.,M,*  
*1<sup>st</sup> Addl. Senior Civil Judge,*  
*Bhubaneswar.*

**C.S.993/2010**

Sri Chandramohan Sharma, aged about 82 years,  
Son of late Adikanda Sharma,  
of Village- Alipur, P.O.Ramachandrapur,  
P.S.Bari Ramachandrapur, Dist.Jajpur,  
At present- Plot no.E/10, B.J.B. Nagar,  
P.S. Badagada, Dist. Khurda.

... Plaintiff

-Versus-

1. General Administration Department,  
Government of Odisha, Represented  
through its Secretary, Secretariate Building,  
At/P.O. Bhubaneswar, Dist.Khordha.
2. Bhubaneswar Development Authority,  
Represented through its Vice-Chairman,  
At/P.O.Bhubaneswar, Dist.Khordha.

... Defendants.

**COUNSEL APPEARED**

For the Plaintiff : Sri Himanshu Sekhar Pati  
For Defendant no.1 : Sri R.K. Mohanty, A.G.P  
For Defendant no.2 : Sri S.K. Mohapatra & Associates

**DATE OF CONCLUSION OF ARGUMENT : 12-03-2014**  
**DATE OF JUDGMENT : 20-03-2014**

### **J U D G M E N T**

This is a suit for declaration of right, title, interest of the plaintiff over the suit land and for permanent injunction.

2. The case of the plaintiff in brief is that in the 1928 Settlement the suit land measuring an area of Ac.0.780 decimals situated in Mouza Gadakana was recorded in the name of Zamindar Choudhury Chakradhar Mohapatra corresponding to Khata no.918 Plot no.1725. The plaintiff has asserted that in the year 1943 the suit land was leased out in favour of his father Adikanda Sharma as a permanent lease and after taking delivery of possession his father made the suit land productive. The record of right was corrected accordingly by the Tahasildar, Cuttack on 19-11-1943 in Waste Land Lease Case no.2517 of 1943-44. His father also paid rent to the Intermediary till 1956 whereafter the suit land vested with the State Govt. and till 1974 he paid rent for the suit land. In the 1970 Settlement operation the suit land was wrongly recorded in the name of Political and Services Department (Now General Administration). His father could not take steps during the settlement operation for recording the suit land in his name resulting in aforesaid wrong recording. The suit land corresponds to Khata no.1076, Plot no.4704 (P) as per 1970 Settlement which

corresponds to Hal settlement not final Khata no.3649, Plot no.7255 (P). Against such wrong recording the plaintiff filed Objection Case no.3388 dtd.14-07-2003 in which his physical possession over the suit land was noted in the remarks column of the R.O.R but the R.O.R was prepared in the name of Govt. of Odisha. He preferred Settlement Appeal no.544/2004 before the Settlement Officer and by order dated 16-02-2006 the note of possession in his favour was confirmed but the land was not recorded in his name. He has been paying rent for the suit land and has been obtaining rent receipts. He enquired and came to learn that the G.A. Department has illegally alienated the suit land in favour of Bhubaneswar Development Authority (in short B.D.A) and consequent upon such transfer both the aforesaid authorities are creating disturbance in his peaceful possession over the suit land. It is alleged that on 15-07-2009 and thereafter on 12-08-2009 the aforesaid authorities with help of local police attempted to take over physical possession of the suit land. He issued notice u/s.97 of the Orissa Development Authority Act to the B.D.A and u/s.80 of the C.P. Code to the Govt. Authority and thereafter has filed the present suit.

3. Defendant no.1 has filed written statement denying all the assertions and allegations of the plaintiff besides challenging maintainability of the suit on the ground of limitation and undervaluation. The suit land is a small part of a vast area corresponding to Khata no.1074, Plot no.4704 of 1973-74 settlement recording which again corresponds to

1928 Settlement Anabadi Khata no.918, Plot no.1725, area Ac.134.25 decimals recorded in the name of Intermediary Choudhury Chakradhar Mohapatra and others, the Kisam being 'Jhudi Jangal', i.e. Communal land. As such the Ex-Intermediary could not have leased out the suit land on permanent lease basis in favour of the father of the plaintiff. Again grant of any permanent lease can only be made under a registered instrument. When the suit land was recorded in the name of the Ex-Intermediary Tahasildar, Cuttack had no jurisdiction to grant Waste Land lease in favour of the father of the plaintiff on 19-11-1943. The said land vested in the State of Odisha as per Section 3(1) of the O.E.A Act, 1951 vide notification no.1802/EA dtd.01-05-1954 free from all encumbrances. So, the claim of the plaintiff that his father paid rent to the Ex-Intermediary till 1956 is false. The further claim of the plaintiff that rent was paid to the Tahasildar, Cuttack for the suit land till 1974 is also denied by the defendant. No Tenants Ledger nor any Ekpadia were submitted by the Ex-Intermediary before the Tahasildar in proof of grant of lease in favour of the father of the plaintiff. After vesting of the suit land no application for settlement of rent in respect of the suit land before the O.E.A Collector has been made. Neither his father nor the plaintiff himself ever possessed the suit land but by gaining over the settlement authorities the plaintiff managed to obtain an order to note his possession in the remarks column. On the other hand, after following due procedure the suit land along with other landed properties have been alienated in favour of B.D.A vide

Order no.11134/CA dtd.21-08-1996 and B.D.A has already taken over possession of the same and constructed compound wall surrounding the said land. Defendant no.1 has also denied the other allegations of the plaintiff regarding attempt to forcibly take over possession of the suit land or issuance of any statutory notice as required under the law. Hence, for dismissal of the suit.

4. Defendant no.2, B.D.A filed written statement after commencement of trial and substantial progress of recording evidence from the side of the plaintiff. In the written statement defendant no.2 has denied the claim of the plaintiff regarding right, title, interest and possession over the suit land. On the other hand, a total area of Ac.10.741 decimals including the suit land has been alienated by defendant no.1 in favour of defendant no.2 whereafter defendant no.2 has taken over possession of the same. Hence, the suit of the plaintiff is liable to be dismissed.

5. With the aforesaid pleadings of the parties the following issues are settled.

### **ISSUES**

1. Is the suit as laid maintainable ?
2. Whether the plaintiff has cause of action to file the suit ?
3. Whether the suit is undervalued and barred by the law of limitation ?

4. Whether the suit land was leased out to the father of the plaintiff in the year 1943 on permanent lease basis by the Ex-Intermediary Choudhury Chakradhar Mohapatra ?
5. Whether the father of the plaintiff paid rent for the suit land to the Ex-Intermediary and thereafter the plaintiff paid rent to the State Authorities ?
6. Whether the plaintiff has right, title, interest over the suit land ?
7. Whether the plaintiff is entitled to the relief of permanent injunction ?
8. To what other relief(s) the plaintiff is entitled ?

6. In order to prove the case the plaintiff has examined as many as four witnesses without examining himself. P.W.1, Brundaban Sharma is the Power of Attorney holder of the plaintiff, P.W.3 is the son of P.W.1 while P.W.2, Chittaranjan Nath and P.W.4, Babaji Charan Sahoo are other witnesses examined from his side. On the other hand, defendant no.1 examined one witness D.W.1 who is the R.I. in G.A. Department, Govt. of Odisha, Bhubaneswar. But defendant no.2 has not adduced any oral or documentary evidence except filing certain documents in course of argument for taking judicial notice of the same.

Besides oral evidence, the plaintiff has produced and proved documents marked as Exts.1 to 7 respectively whereas

the documents admitted into evidence from the side of defendant no.1 are Ext.A to E respectively.

So, with the aforesaid evidence on record the issues are to be answered.

### **FINDINGS**

7. **Issue no.4, 5 & 6**

Considering the nature of the reliefs claimed by the plaintiff these three issues being inter-related core issues are taken up together at first. It is the claim of the plaintiff that the suit land was leased out to his father on permanent lease basis by the Ex-Intermediary Choudhury Chakradhar Mohapatra in the year 1943. His father has already expired. The plaintiff was aged about 82 years at the time of filing of the suit in the year 2010, hence, he was aged about 15 years at the time of the alleged lease. Under the above circumstances he must have some direct knowledge about acquisition of the suit property and the manner of dealing of the same. In absence of his father he is the best person to throw light on the said facts. But surprisingly he has not entered into the witness box nor had taken any steps to be examined through Commission. On the other hand, after filing of the suit, he executed a General Power of Attorney (Ext.1) in favour of P.W.1 and on that basis P.W.1 being empowered has deposed in this case. P.W.1 being the Power of Attorney holder has no authority to depose facts prior to the date of execution of Ext.1. By virtue of the said document he is competent to depose about the facts relating to the acts he did

being so empowered. This view of this Court finds support of a recent decision of our Hon'ble High Court reported in 2013 (II) CLR, 1009 (Soubhagini Tripathy -vs.- Subhasini Tripathy & others). Our Hon'ble Court relied on a decision of the Hon'ble Apex Court reported in AIR 2005 SC, 439 (Janki Vash Deo Bhojwani V. Indusind Bank Ltd.). Under the above circumstances the evidence of P.W.1 cannot be of any help for the plaintiff to establish grant of permanent lease of the suit land in favour of his father by the Ex-Intermediary. Ext.B is the certified copy of the R.O.R of the year 1931 in respect of Khata no.918 Anabadi of Mouza Gadakana recorded in the name of Choudhury Chakradhara Mohapatra & others recording Plot no.1725, 'Judi Jangal', area Ac.134.25 decimals of land besides other properties. This pre supposes that the suit land being part of Plot no.1725 was part of the Intermediary estate as recorded in 1931 Settlement. The plaintiff has not filed any such R.O.R nor any 'Patta' with respect to permanent lease in favour of his father. Law is well settled that any lease for more than one year must be under a registered document. Even any unregistered lease deed for permanent lease will not be admissible in evidence in absence of registration. This view of the Court finds support of decision of a Division Bench of our Hon'ble High Court reported in 2013 (II) CLR, 923 (State of Odisha Vs. Baidyanath Jena & others). Thus, the plaintiff has failed to establish his claim of obtaining the suit land on permanent lease basis by way of any documentary evidence. Though he claims that till 1956 his father



went on paying rent to the Intermediary but he has not filed a single rent receipt to prove the same. Further, after abolition of the Intermediary system, the Ex-Intermediary was not competent to collect rent from the tenants under him.

8. Now, it needs a discussion as to the effect of abolition of Intermediary System on commencement of the Orissa Estate Abolition Act, 1951. By virtue of commencement of the said Act the Intermediary system came to an end and the Intermediary Estate vests with the Govt. free from all encumbrances. The further effect is that the tenants under the Ex-Intermediary will continue as tenants under the State on payment of rent to be settled by the O.E.A Collector. But in this case the plaintiff has failed to prove that his father's name was entered in the Tenants Ledger maintained by the Ex-Intermediary and submitted before the State Authorities after abolition of the estates. The plaintiff is not able to prove that after commencement of the O.E.A Act his father made any application before the O.E.A Collector for fixation of rent for the suit land.

The plaintiff is not sure as to the position of the present recording of the suit land. According to him the suit land is part of Plot no.4704 of Khata no.1076 of Mouza Gadakana as per 1973-74 Settlement R.O.R but he has not produced and proved any scrap of paper to that effect. On the other hand, Ext.C discloses that Plot no.4704 measuring an area Ac.90.170 decimals has been recorded under Khata no.1074 of Mouza Gadakana. As per the Hal Settlement recording part of Plot no.4704 has been recorded

as Plot no.7255 under not final Khata no.3649 of Mouza Gadakana as would be seen from Ext.D.

9. Discussed from another angle the suit land could not have been leased out to the father of the plaintiff by the Ex-Intermediary as the same was of 'Jhudi Jangal' Kisam as per Ext.B. 'Jhudi Jangal' i.e. bushy forest is communal in nature as such could not have been leased out by the Ex-Intermediary. In this context, the decision of Hon'ble Apex Court reported in 2009(II) OLR (SC) 229 (State of Odisha and other V. Harapriya Bisoi) as relied on by defendant no.1 is of permanent consideration. The said case before the Hon'ble Apex Court relates to the Intermediary Estate of Chakradhar Mohapatra i.e. the Intermediary of the present case and the property involved is of 'Jhudi Jangal' Kisam. No communal land can be leased out as the same is meant for the community as a whole. This has been held by a Division Bench of our Hon'ble High Court reported in 2013(II) CLR 815 (Bichitrananda Jena & others v. State of Odisha & others). So, the lease of the suit land on permanent basis in favour of the father of the plaintiff appears to be a myth. In that view of the matter the rent receipts, Exts. 2 & 2/a produced on behalf of the plaintiff can be termed as forged documents as there is no basis for issuance of any such rent receipt in token of receipt of rent since Khata no.918 or Khata no.1076 has not been recorded in the name of the father of the plaintiff. As already discussed in the foregoing paragraphs suit Plot no.4704 has not been recorded under Khata no.1076 (Ext.E) but under Khata no.1074 (Ext.C).

10. The suit land as described in the schedule of the plaint is also not identifiable for grant of an effective decree if at all permissible. The disputed land measuring Ac.0.780 decimals forms part of a vast area of Ac.134.25 decimals as per Ext.B. As such the suit land is a negligible part of the entire land recorded under the said plot. So, the plaintiff should have described the suit land in a manner so that the same could have been easily identifiable. Our Hon'ble High Court in a case reported in 2013 (II) CLR 991 in a similar situation have held as hereunder.

*“In the case of Bijay Kumar Swain (supra) this Court has held that where the subject matter of the suit is immovable property the plaint shall contain description of the property sufficient to identify it and in case such property is identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers, where the suit is in respect of a part of a bigger plot or a portion of plot, in such event the description should be given which direction of bigger plot the portion of the disputed property is situated. It is not correct to say that a portion of the plot or boundary be identified by giving boundaries thereof where further particulars are necessary for its proper identification of the suit property. x xx x”*

This is the exact position in the present case. So, the suit property of the present case is not properly identifiable. As such hit under the provision of Order 7 Rule 3 of C.P.C.

11. In view of the aforesaid discussions the plaintiff has miserably failed to establish his right, title & interest over the suit land.

So far as his claim of possession over the suit land is concerned, the evidence of P.W.1 is important. In the

schedule of the plaint P.W.1 has been described as the northern boundary tenant of the suit land. But according to P.W.1 the suit land is bounded as follows:

East & West – land of Govt.  
North- Govt. road & Govt. land  
South – Govt. land.

At another place P.W.1 has deposed that as per 1973-74 settlement operation the boundary of the suit land is as follows :

East – Land of Chittaranjan Nath (P.W.2)  
West- Govt. land  
North- His own land  
South- Govt. land

The present boundary of the suit land as deposed by P.W.1 is as follows:

East – Land of Aniruddha Nath and Chittaranjan Nath.  
West- Govt. road  
North- Land of Shiva Singh  
South – Land of Unitech Company.

So, he has given different boundaries of the suit land which cannot substantially vary from time to time.

So far as the evidence of P.W.2 is concerned, the boundary of the suit land as deposed by him during cross examination does not tally with the boundary as described in the schedule of the plaint. According to P.W.4, one Radhu Pradhan is now occupying the suit property by keeping cow and doing milk business since the year 1954 but the plaint is silent about the same. Though he claimed that he had seen delivery of possession of the

suit land to the father of the plaintiff but during cross examination he admitted that he was not in Bhubaneswar in the year 1943 when delivery of possession was given to the plaintiff by the Intermediary. He came to Bhubaneswar for the first time in the year 1954. From his aforesaid evidence it appears that he is a procured witness.

Thus, from the aforesaid evidence physical possession of the plaintiff over the suit land has not been established. The claim of the plaintiff that the settlement authorities passed orders for recording his possession over the suit land while recording the land in favour of G.A. Department, Defendant no.1 must be held to have been obtained by gaining over the said authorities.

12. In view of the aforesaid discussions this Court comes to the conclusion that the suit land was never leased out to the father of the plaintiff in the year 1943 by Ex-Intermediary Choudhury Chakradhara Mohapatra. Neither the plaintiff's father nor the plaintiff himself paid rent for the suit land. The plaintiff miserably failed to establish his right, title, interest and possession over the suit land. Thus, issue nos.4, 5 & 6 are answered in the negative and against the plaintiff.

13. **Issue no.7**

As already held under issue no.6 the plaintiff is not in possession over the suit land. Law is well settled that a party not in possession over the property is not entitled to the relief of permanent injunction. Thus the plaintiff is not entitled to the said

relief under the facts & circumstances of the case. This issue is answered in the negative and against the plaintiff.

14. **Issue no.3**

Defendant no.1 has taken a specific plea that the suit is under valued. This is a suit for declaration with consequential relief. As such the Court fee is to be assessed u/s.7 (iv) (c) of the Court Fees Act and accordingly the plaintiff has to pay *advolrem* Court fee. In the given circumstances the valuation of the suit must have some nexus with the market price of the suit property at the time of filing of the suit. The suit has been filed which comes under Bhubaneswar Town, Unit no.39, Gadakana. The plaintiff has valued the suit at Rs.15,000/-. By no stretch of imagination, it can be said that the market price of the suit land at the time of filing the suit the market price was Rs.15,000/-. Hence, without going to the materials on record it can be safely concluded that the suit is grossly undervalued by taking judicial notice to the facts.

So far as question of limitation is concerned, the plaintiff has come up with the suit after about 36 years of last settlement recording of the suit land in the year 1973-74. The settlement appeal filed by the plaintiff has been disposed of by order dt.16-02-2006 as per Ext.7. But the suit has been filed on 28-05-2010 i.e. after more than four years. Hence, the suit is not within time.

Thus, this issue is answered in the affirmative and against the plaintiff.

15. **Issue no.1 & 2**

In view of the findings under the aforesaid issues it can be held that the cause of action as given in the plaint is imaginary and the present suit is not maintainable on the basis of such imaginary cause of action. Thus, both these issues are answered against the plaintiff.

16. **Issue no.8**

In view of the findings under issue no.1 to 7, the plaintiff is neither entitled to the reliefs as claimed nor to any other relief (s).

Hence, ordered.

**ORDER**

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

***1st. Addl. Senior Civil Judge,  
Bhubaneswar***

The judgment is typed to my dictation by the Typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today on the 20th day of March, 2014 under my seal and signature.

***1st. Addl. Senior Civil Judge,  
Bhubaneswar***

**List of Witnesses examined for the Plaintiff:**

- P.W.1: Brundaban Sharma  
P.W.2: Sri Chittaranjan Nath  
P.W.3: Sri Sanjay Kumar Sharma  
P.W.4: Sri Babaji Charan Sahoo

**List of Witnesses examined for the Defendants :**

- D.W.1: Sri Rabinarayan Jena

**List of Documents marked as Exhibits for the Plaintiffs:**

- Ext.1: General Power of Attorney executed by the plaintiff ;  
Ext.2 &  
Ext.2/a : Two numbers of rent receipts in respect of the rent paid in respect of the suit land;  
Ext.3 : Office copy of the notice of P.W.1 sent to the Secretary, G.A. Department, Govt. of Odisha U/s.80 of C.P.C  
Ext.3/a: Signature of the P.W.1 on Ext.3 ;  
Ext.4 : Copy of the notice of P.W.1 sent to the Vice Chairman, Bhubaneswar Development Authority u/s.97 of O.D.A. Act ;  
Ext.4/a: Signature of P.W.1 on Ext.4 ;  
Ext. 5 &  
Ext.5/a : Postal A.D. Cards of the registered letters containing notices sent to the Special Secretary, G.A. Department and Vice Chairman, B.D.A respectively ;



- Exts.6  
to 6/e : Six numbers of postal receipts of the letters sent to the  
aforesaid addressee ;
- Ext.7 : Copy of order sheets in connection with Settlement  
appeal no.544/2004 passed by the Settlement Officer,  
Cuttack-Puri Major Settlement obtained under the  
R.T.I. Act along with the letter and annexures ;

**List of Documents marked as Exhibits for the Defendants :**

- Ext.A : Authorisation letter issued by Spl. Secretary,  
G.A. Department, Govt. of Odisha ;
- Ext.A/1: Seal & Signature of Spl. Secretary, G.A. Department,  
Govt. of Odisha ;
- Ext.A/2: Signature of D.W.1 attested by Spl. Secretary,  
G.A. Department, Govt. of Odisha ;
- Ext.B: Certified copy of Pre-Sabik R.O.R in respect of  
Khata no.918, Mouza-Gadakana, Plot no.1725 ;
- Ext.C : Settlement R.O.R of 1973/74 of the suit land ;
- Ext.D : Draft R.O.R (not final) of the suit land of  
Khata no.3649, Mouza-Gadakana ;
- Ext.E : Settlement R.O.R of 1973/74 of Khata no.1076 of  
Mouza- Gadakana ;

***1st. Addl. Senior Civil Judge,  
Bhubaneswar.***