

**IN THE COURT OF 2<sup>ND</sup> ADDL. SENIOR CIVIL JUDGE,  
BHUBANESWAR, DISTRICT-KHURDA.**

PRESENT:- **Shri S.K. Pattanaik, M.A., LL.,M,**  
2<sup>nd</sup> Addl. Senior Civil Judge, Bhubaneswar.

**C.S. No. 407/1149 of 2010/2008**

1. Mina Behera, aged about 42 years,  
Wife of Late Brahmananda Behera,
2. Laxmi Behera, aged about 22 years,
3. Bharati Behera, aged about 20 years,
4. Arati Behera, aged about 19 years,
5. Sarathi Behera, aged about 19 years,

Sl. No.2 to 5 are daughters of  
Late Brahmananda Behera.

6. Rinku Behera, aged about 16 years,
7. Pinku Behera, aged about 12 years,

Sl. No. 6 & 7 are sons of  
Late Brahmananda Behera,  
being minors are represented through  
Mother guardian Plaintiff No.1.

All are resident of Badagarh,  
PO/PS: Badgarh, Dist : Khurda.

..... Plaintiffs  
-Versus-

1. Pravakar Behera, aged about 56 years,
2. Pramod Behera, aged about 51 years,

Both are sons of late Padia Behera,  
of Badgarh, PO/PS. Badgarh,  
Dist : Khurda.

3. Asha Behera, aged about 52 years,  
Wife of Hata Behera of Vill:Sahani Kashipur,  
PO: Sahani Kashipur, PS. Khandagiri,  
Dist : Khurda.

..... Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiffs: M/s S.S. Deo & Associates  
For Defendant No.1 : M/s. P.C. Mishra, Advocate  
For Defendant No.2 : M/s. C.S. Jena, Advocate  
For Defendant No.3: M/s. S. Bhuyan, Advocate

DATE OF ARGUMENT: 14.11.2013

DATE OF JUDGMENT: 28.11.2013

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

This is a suit for declaration and permanent injunction.

2. The gist of the plaintiff's case is as follows :

As per genealogy Raghu Behera the common ancestor died leaving behind his two sons namely Dinabandhu and Krupasindhu. Dinabandhu died leaving behind his four sons namely Udayanath, Bira, Digambar and Sarbeswar. The plaintiffs are least concerned with the branch of Digambar and Sarbeswar along with the branch of Krupasindhu because they have got their legitimate share by virtue of a family partition deed executed in the year 1962 and accordingly separate ROR has been prepared in their names. Bira died leaving behind his adopted son Madan who is dead, Brahmananda Behera is the son of Madan who died leaving behind plaintiff No.1, his wife and plaintiff No.2 to 5 are the daughters and plaintiff No. 6 and 7 are the sons of Brahmananda. Padan Behera died leaving behind his daughter Asha Behera defendant No.3 and two sons Pravakar Behera defendant No.1 and Pramod Behera defendant No.2. The property described in the schedule 'B' of the plaint are the ancestral properties of the parties. The property described in Lot No.1 appertaining to settlement khata No. 696 stands recorded in the name of Pravakar Behera, Pramod Behera and Asha Behera who are the sons and daughter of Padia Behera, Madan Behera, S/o. Bira Behera along with other co-sharers. As there was partition of properties among the co-

sharers the plaintiffs and defendants branch were jointly allotted the plots described in Lot No. 1 of schedule 'B' property. As such, the other co-sharers have not been made parties to this case. Lot No. 2 to 4 of the schedule 'B' property has been allotted in favour of the plaintiffs and defendants branch in a mutual partition effected in the year 1962 among the recorded co-sharers. The recorded co-sharers are in separate possession of their allotted plots and in this manner the plaintiffs and defendants branch were in joint possession of their allotted plots.

It is the further case of the plaintiffs that while Brahmananda was alive there was dissension and as per their convenience since 1980 without any papers indicating partition in metes and bounds and separately possessed their property. There was dispute and quarrel in possession of property and there was partition among Brahmananda and defendants before the village Panchayat which was reduced in writing on 10.02.2001 in which specific portion of specific plot with sketch map were allotted in favour of Brahmananda and defendants No. 1 and 2 the branch of Padia. As per Panchayat partition the properties are in separate possession of their respective allotments and accordingly Brahmananda Behera was in peaceful possession of the suit schedule 'C' property till his death and after that his legal heirs. Similarly, as per the panchayat partition effected in the year 2001 the defendants are in separate possession of the allotted properties and enjoying the same.

It is the further case of the plaintiffs that when Brahmananda met a premature death leaving behind his widow and unmarried daughters and minor sons. The defendants taking advantage of the helpless condition of the plaintiffs are trying to create mischief and trouble in the peaceful possession of the suit properties by the plaintiffs and also in spite of repeated requests did not hand over the original papers of panchayat faisalanama as well as the properties related documents. The plaintiff No.1 in order to meet the marriage expenses of daughters and their maintenance wanted to sell some properties out

of the schedule properties where the defendants are creating mischief as a result the plaintiffs brought the facts to the notice of some pancha members who expressed their inability and advice for taking recourse in the court of law. In this process, the plaintiffs filed the suit getting no alternative with a prayer to declare the plaintiffs are absolute owner of the schedule 'C' property allotted in favour Brahmananda in "Aposh Bantan Patra" dated 10.02.2001 with a declaration that the defendants or anybody claiming under them have no right, title, interest and possession over the same along with permanent injunction.

3. The contesting defendants No.1 to 3 have filed separate written statement in the suit. The defendant No.1 in his written statement denied the allegations stating that the suit is not maintainable, it brings no cause of action, grossly under valued and the plaintiffs have no locus standi to bring the suit against the defendants and the suit should have been dismissed for non-joinder of necessary party. Further stated that there is suppression of material facts for which mere declaration is not entertainable or maintainable. The suit land as per the description is vague, unidentifiable for which no executable decree can be passed. The genealogy given is not correct and made a clever drafting to draw the sympathy of the Court. It is pleaded that during the lifetime of Madan and Brahmananda, Brahmananda expressed his desire to be separated from the successors of Padia and accordingly to honour the wish of Brahmananda, village panch was called for, for separation of Madan, Brahmananda from the successors interest of Padia and accordingly unanimously all the successors in interest of Padia along with Madan and Brahmananda agreed with the village panch for their respective allotment shares as per the decision of the village pancha regarding the respective allotment shares of the parties which has been morefully described in written Panchayat faisala on dated 18.01.2001. A Xerox copy of Aposh Bantan Patra has been supplied to the husband of plaintiff No.1. In this process pleaded for dismissal of the suit.

4. Similarly the defendant No.2 denied the major allegations of plaintiff averments about its maintainability, cause of action, non-joinder of necessary party and etc. It is pleaded that the genealogy is not correct. Padia is not the son of Balabhadra but he is the son of Udayanath. In fact Bauribandhu is the common ancestor who died leaving behind his two sons namely Dinabandhu and Krupasindhu. Dinabandhu died leaving behind his four sons namely Udayanath, Bira, Digambar and Sarbeswar. After death of Udayanath he has been survived by two sons Padia and Giridhari. The defendants are the successors of Padia whereas the plaintiffs branch belong to Bira. All the legal heirs of common ancestor were/are possessing a portion of suit property as there was/is no valid partition among all the co-sharers till yet. All the co-sharers are possessing a portion of an ancestral property of common ancestor for convenience as per mutual adjustment but there was/is no partition among the parties by metes and bounds or otherwise. On 10.02.2001 the possession of Brahmananda and defendants were reduced in writing. In the said panchayat faisalanama the defendant No.3 Asha Behera is not a signatory nor she has been allotted any share out of the suit property. Similarly sisters of Brahmananda namely Usha, Pramila, Kamala and Lily were not the signatories of the panchayat faisalanama dated 10.02.2001 nor they have given any share property in their shares so the document dated 10.02.2001 could not be taken as a valid document regarding partition as all the sharers of the properties neither signed nor given any share from the suit property. The panchayat faisalanama dated 10.02.2001 is an incomplete faisalanama and regarding partition Brahmananda could not be said that he is the exclusive owner in possession over schedule 'C' property. The document dated 10.02.2001 is invalid and void deed. It is further pleaded that after death of Brahmananda his legal heirs the plaintiffs are leading a dissent life by possessing the property of Brahmananda which she was possessing during lifetime for convenience. It is not known to the defendants where the defendant No.1 keeping all the original documents with him regarding family property and creating

mischief against the plaintiffs. The defendants are never in custody of Aposh Bantan Patra. In this process prayed for dismissal of the suit.

5. Likewise, the defendant No.3 in her written statement has stated that she is a married daughter of late Padia Behera and sister of defendants No. 1 and 2. After marriage she used to stay in her husband's house at village Kusipur under Khandagiri P.S. She being the daughter of late Padia she is entitled to get full share from the ancestral family property but she has not been given any share in the Bantan Patra dated 10.02.2001 nor she is a signatory in the said document. Similarly, the sisters of Brahmananda are not the signatories of Panchayat Faisalanama dated 10.02.2001. So the faisalanama document is not binding on her and the plaintiffs shall not be entitled to get schedule 'C' land in their favour over which the defendants have also a share. In this process pleaded for dismissal of the suit.

6. On the basis of the pleadings of the parties, following issues are settled for adjudication.

### **ISSUES**

1. Is the suit maintainable in the eye of law ?
2. Is there any cause of action to bring this suit ?
3. Whether the Aposh Bantan Patra dated 10.02.2001 is valid ?
4. Whether the plaintiffs are the absolute owner in possession over 'C' schedule property?
5. Whether the defendants and their agents are permanently enjoined from the peaceful possession of 'C' schedule property ?
6. To what any other relief the plaintiffs are entitled ?

7. In order to establish their claim, the plaintiffs have examined two witnesses. P.W.1 is Mina Behera and P.W.2 is Lily Das and relied upon Ext.1 to 5 .in support of their stand. The Defendants have not

examined any witness on their behalf but only took part in the cross examination.

### **FINDINGS**

#### **ISSUE NO. 3, 4 & 5:**

8. These issues are interlinked and interdependent to each other and need common evidence for discussion for which these issues have been taken up together for discussion. The plaintiff filed the suit for declaration and permanent injunction. Plaintiff No.1 Mina Behera examined as P.W.1, she has corroborated her evidence as stated in the plaint. In cross examination she has stated that she has not filed any deed of relinquishment of share of her sister-in-law. She is residing separately. Similarly the defendants No. 1 and 2 are also residing separately. She has sold some property relating to the suit land during pendency of the suit. She cannot say the khata No., Plot No. and area of the suit land. She has half share over the same. There was previous partition in the year 1962 over the suit land. The share as per partition recorded respectively in the name of defendants as well as herself. She cannot say the day, date and time of execution of panchayatnama. She cannot say the contents of panchayatnama and the name of the recorded tenants of Ext.1 and 2 and their entitlement. As she was an illiterate she has not filed any correction of ROR since it was issued last 10 years.

9. P.W.2 Lily Das corroborated the evidence of P.W.1. She along with her other sisters have relinquished their share in favour of the plaintiff. In cross examination she has stated that they have not prepared any document regarding transfer of their share in favour of her brother. She has also not seen the panchayatnama. As she is residing in her in-laws house she does not have any knowledge about the panchayatnama and cannot say the khata No., Plot No. of 'C' schedule property. The defendants No. 1 and 2 and plaintiff are residing separately.

10. Let me examine the oral evidence as well as documentary evidence relating to the fact in issue. The main stand of the plaintiffs in this suit is that to declare the panchayatnama on dated 10.02.2001 is valid one. According to plaintiff the panch was held on 10.02.2001 and in the said panch resolved the issue in between the parties, one side Brahmananda and other side Pravakar and Pramod, branch of Padan Behera. All the parties along with village panch put their signatures on the panchayat faisalanama after it was reduced in writing with all the details of allotment of shares. The husband of the plaintiff No.1 Brahmananda was allotted with the share details in 'C' schedule property. Thus the panchayat came into effect after the share of the parties was determined and partition was effected in metes and bounds, accordingly separate sketch map was prepared. Admittedly, P.W.1 in her evidence also stated that she has not impleaded Usha, Pramila, Kamala and Lily are party to the suit, who are the sisters of Brahmananda. On the other hand, in the said panchayatnama defendant No.3 Asha Behera the sister of defendant No. 1 and 2 has not been impleaded as a party to the suit. The defendant No.3 filed separate written statement has categorically pleaded that she is entitled to get her full share from the ancestral property. She has not been given any share in the Bantan Patra dated 10.02.2001 nor she is the signatory of the said document. Besides that Lily the sister of Brahmananda has been examined as P.W.2 who has categorically stated that she has not seen the Bantan Patra nor has filed any document regarding relinquishment of her share. The plaintiff P.W.1 has also stated about not filing of any document regarding relinquishment of share of her sister-in-laws namely Usha, Pramila, Kamala and Lily. When the sister-in-laws of the plaintiff named above and defendant No.3 have not relinquished their share, though they are the co-sharers of the ancestral suit property their presence is quite required while effecting family partition by metes and bounds or in the Bantan Patra. In the instant case, the sisters of Brahmananda and the sister of defendant No.1 and 2 are not present while the Bantan Patra on dated 10.02.2001 was prepared. In absence of their presence there

cannot be any effective partition as each shareholder is entitled to get an inch share of property from the suit land which is the ancestral property. So the Bantan Patra dated 10.02.2001 cannot be taken into valid document with regard to the partition as all the shareholders of the property neither signed nor have given any deed of relinquishment from the suit property. In other words, there is also no writing in the said panchayatnama that those who have not allotted any share they have relinquished their share. Since the panchayatnama dated 10.02.2001 is an incomplete faisalanama, the plaintiffs cannot be said to be the exclusive owner in possession of 'C' schedule property. Similarly, as per discussion made supra the permanent injunction also cannot be granted in favour of the plaintiffs. So these issues are answered accordingly.

**ISSUE NO.1, 2 & 6 :**

11. These issues are formal in nature, need no elaboration. As per discussion, supra, the suit is not maintainable in the eye of law and there exists no cause of action to bring the suit. There is no other evidence with regard to any other relief. So these issues are answered accordingly.

Hence, it is ordered

**ORDER**

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

Lawyer's fee at contested scale.

2<sup>nd</sup> Addl. Senior Civil Judge,  
Bhubaneswar

Judgment is typed out to my dictation, corrected and pronounced in open court, on this the 28<sup>th</sup> day of November, 2013 under the signature and seal of this court.

2nd Addl. Senior Civil Judge,  
Bhubaneswar.

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFFS:

P.W.1 : Mina Behera

P.W.2 : Smt. Lily Das

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFFS:

Ext.1 : Certified copy of ROR bearing Khata No. 696

Ext.2 : Certified copy of ROR bearing Khata No. 1051.

Ext.3 : Certified copy of ROR bearing Khata No. 1544

Ext.4 : Certified copy of ROR bearing Khata No. 697.

Ext.5 : Certified copy of sale deed No. 3501 dated 16.05.2001.

Mark-X: Panchayatnama dated 10.02.2001

LIST OF DOCUMENTS FILED ON BEHALF OF DEFENDANTS:

Nil

2nd Addl. Senior Civil Judge,  
Bhubaneswar.