

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

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

C.S. No. 1297 of 2011

Kashinath Jena, aged about 58 years,
Son of Late Sikhar Jena,
At/P.S. Laxmisagar, P.O. Budheswari,
Bhubaneswar-6, District-Khurda.

..... Plaintiff

-Versus-

1. Radha Swain, aged about 80 years,
Wife of Late Banambar Swain,
2. Lingaraj Swain, aged about 43 years,
Son of Late Banambar Swain.
3. Nidrabati Sahoo, aged about 35 years,
D/o. Late Aparti Sahoo.

All are of Vill/P.O. Laxmisagar, Budheswari,
P.S. Laxmisagar, Bhubaneswar-6, Dist. Khurda.

4. Sashirekha Patnaik, aged about 62 years,
Wife of late Ramesh Jena,
At/P.S. Laxmisagar, P.O. Budheswari,
Bhubaneswar-6, Dist : Khurda.
Sl. No.4 at present : Badhei banka,
Bhubaneswar-2, P.S. Lingaraj, Dist. Khurda.

..... Defendants

COUNSELS APPEARED FOR THE PARTIES

For the Plaintiff: M/s. B.K. Mohanty (A) & Associates

For Defendant No.1 & 2 : M/s. S.C.Dash & Associates

For Defendant No.3 : M/s. S.C. Sahoo & Associates

For Defendant No.4 : M/s. R.K.Mohanty & Associates

DATE OF ARGUMENT: 10.04.2014

DATE OF JUDGMENT: 15.04.2014

J U D G M E N T

This is a suit for partition and declaration.

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

The suit property belongs to Sabik Mouza-Laxmisagar, bearing Sabik Khata No. 173, Sabik Plot No. 618, area Ac.0.200 decimals, Plot No. 623, area Ac. 0.045 decimals was recorded in the name of Banambar Swain, husband of defendant No.1 and father of defendant No.2 having 1/3rd share. Ramesh Jena, Bhanu Bewa @ Bhanumati Sahoo having 1/3rd share and Sikhar Jena, the father of the plaintiff having 1/3rd share which corresponds to Hal Mouza-Bhubaneswar Sahar, Unit-30, Laxmisagar-1 bearing Hal Khata No. 827, Hal Plot No. 1064, area Ac. 0.028 decimals and Hal Plot No. 1058/337, area Ac. 0.018 decimals, a total area Ac. 0.046 decimals recorded in the name of late Banambar Swain, Ramesh Jena and Sikhar Jena (the father of the plaintiff) having 1/3rd share each. But in Hal Khata No. 987, Hal Plot No. 1060, area Ac. 0.020 decimals, Hal Plot No. 1065, area Ac. 0.045 decimals, the total area Ac.0.065 decimals has been wrongly recorded in the name of Bhanumati Sahoo alone instead of the previous co-owners, such as Banambar Swain, Ramesh Jena and Sikhar Jena. Similarly, the Hal Khata No. 1193, Hal Plot No. 890, area Ac.0.023 decimals, Hal Plot No. 1061, area Ac. 0.004 decimals, Hal Plot No. 1063, area Ac. 0.065 decimals, the total area Ac. 0.092 decimals has also been wrongly recorded in the name of Radha Swain, W/o. Late Banambar Swain alone instead of the previous co-owners.

Likewise, the Hal Khata No. 826, Hal Plot No. 1064/3166, area Ac. 0.021 decimals has been wrongly recorded in the name of Banambar Swain alone instead of the previous recorded owners which has been described in Schedule 'A' and 'B' of the plaint.

It is the further case of the plaintiff is that as per the convenience the parties are in possession of their respective share over the suit schedule properties as per amicable partition and possession by constructing building. The plaintiff as per the amicable partition is residing over his 1/3rd share in the suit property by constructing his own building therein and rest property as bari. On 05.06.2011 when plaintiff asked the defendant No.1 and 2, who are the elder members to give the ROR for obtaining electricity connection to his house but the defendant No.1 and 2 said that the ROR wrongly recorded in which the name of the plaintiff has not been recorded. So immediately the plaintiff asked all the defendants for partition of the suit properties which they denied. In the circumstances, the plaintiff filed the present suit with a prayer to declare the Schedule 'A' and 'B' of the suit properties are the joint properties of the plaintiff and defendants in which the plaintiff is entitled to get 1/3rd share and Schedule 'A' and 'B', Lot-1 and 2 suit properties be partitioned preliminarily among the parties allotting 1/3rd share to the plaintiff and 1/3rd share to defendant No.1 and 2 and 1/3rd share to defendant No.3 and 4 as per the sabik record of the joint properties and as per their amicable partition and possession

3. The contesting defendant No.4 alone filed written statement has challenged the plaint averments in various grounds such as its maintainability, cause of action and mis-joinder of parties. The plaintiff has wrongly impleaded the defendant No.3, Nidrabati

Sahoo as a party to the suit. The defendant No.3 has no right, title, interest over the suit land. The present defendant No.4 Sashi Rekha Pattnaik being the widow of late Ramesh Chandra Jena has got 1/3rd share and interest over the suit property. After death of Ramesh Chandra Jena in October, 2011 the defendant No.4 is in possession of the suit land as per her entitlement and share.

It is further case of the defendant No.4 is that Pravakar Jena is the father of late Ramesh Chandra Jena. Immediately after the death of Pravakar Jena, his widow Bhanumati left the house and got remarried to one Apariti Sahoo, as such she had no interest over the suit schedule land. But the settlement authority most illegally and wrongly recorded the name of Bhanumati in the ROR without any basis and foundation. Moreover, Bhanumati during her life time by gaining over the settlement field staff illegally managed to record her name in respect of some of the suit schedule of property though she had no right, title, interest over the same. The defendant No.3 is a stranger to the suit property. She is the daughter of Bhanumati through Apariti Sahoo. So the defendant No.3 Nidrabati Sahoo has got no share or interest over the suit property like her mother Bhanumati. Neither Nidrabati nor her deceased mother Bhanumati is/was in possession over the suit property. Further the defendant No.4 stated that she being the widow and only successor of deceased Ramesh Chandra Jena is entitled to 1/3rd share over the suit property which may be allotted in her favour and prayed for necessary order be passed to allot 1/3rd share in her favour and accordingly decree may be passed for partition of the suit land by metes and bounds and separate possession to be delivered to her.

4. Basing on the plaint averments and written statement, following issues are framed.

ISSUES

1. Is the suit maintainable ?
2. Is there any cause of action to bring the suit ?
3. Whether the schedule 'A' and 'B' are the joint family properties of the parties ?
4. Whether the plaintiff has got 1/3rd share over 'A' & 'B' schedule property ?
5. Whether in Schedule 'A' and 'B', Lot-1 and 2, the plaintiff has 1/3rd share, the defendant No.1 & 2 and defendant No.3 & 4 have 1/3rd share each over the suit properties ?
6. To what other relief, the plaintiff is entitled ?

5. In order to establish his claim, the plaintiff examined himself as P.W.1 and Mangaraj Jena as P.W.2 and relied upon Ext.1 to 5 in support of his stand. The defendant No.4 has not adduced any evidence but only took part in the cross examination.

FINDINGS

ISSUES NO. 3, 4 & 5:

6. 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. This is a suit for partition and declaration. The plaintiff is claiming 1/3rd share over the suit property. It is evident from the evidence of P.W.1 is that the suit property vide Sabik Khata No. 173 vide Ext.1 stands recorded in the name of Banambar Swain, husband of defendant No.1 and father of defendant No.2 having 1/3rd share, Ramesh

Jena, Bhanu Bewa @ Bhanumati Sahoo having 1/3rd share and Sikhar Jena (father of the plaintiff) having 1/3rd share which corresponds to Hal Khata No. 827 vide Ext.2 for total area Ac.0.046 decimals. He further stated that the Hal Khata No. 1193 vide Ext.3, Hal Khata No. 826 vide Ext.4 and Hal Khata No. 987 vide Ext.5 have been wrongly recorded in the name of Radha Swain, Banambar Swain and Bhanumati Sahoo respectively instead of the previous co-owners, such as Banambar Swain, Ramesh Jena and Sikhar Jena. Further stated that as per amicable partition, he is residing over 1/3rd share by constructing building thereon. On 05.06.2011 when he asked the defendant No.1 and 2 to give ROR for obtaining electric connection, the said defendant No.1 and 2 disclosed about the wrong recording. The plaintiff demanded partition of the suit property claiming 1/3rd share to which the only contesting defendant No.4 is claiming her 1/3rd share over the suit property. P.W.2 Mangaraj Jena corroborated his evidence to the evidence of P.W.1 that the plaintiff is entitled to get 1/3rd share over the joint family property. The defendant No.1, 2 & 3 did not contest the suit. The defendant No.4 challenged the maintainability of the suit. According to her, the plaintiff has wrongly impleaded as defendant No.3 is a party who has no right, title, interest over the suit land.

7. The contesting defendant No.4 in her written statement has taken the stand that in all the suit properties she has 1/3rd share as she is the wife of late Ramesh Chandra Jena. She is in possession of her share of her late husband Ramesh Chandra Jena as per her entitlement and share. She further pleaded that Pravakar Jena is the father of Ramesh Chandra Jena. Immediate after the death of Pravakar Jena his widow Bhanumati left the

house and got married to one Aparti Sahoo, as such Bhanumati has no interest over the suit land. The defendant No.3 is the daughter of Bhanumati through Aparti has also got no share or interest over the suit property like her mother. But Bhanumati during her lifetime by gaining over the settlement staff illegally managed to record her name in respect of some of the suit schedule property though she had no right, title, interest over the same.

8. The evidence of P.W.1 shows that the suit properties are the ancestral properties stands in the jointness, the same has not been partitioned by metes and bounds. As he has got 1/3rd share over the suit property and possessed his share amicably need to be partitioned. It is further evident that the defendants denied for partition of the suit property due to wrong recording for which he has compelled to file the suit for claiming his 1/3rd share over the suit property. In cross examination he has stated that the defendant No.3 is not the member of his family. She is belong to different caste. The defendant No.4 is the daughter of Aparti Sahoo. Sashi Rekha Pattanaik, the defendant No.4 is the only successor of Ramesh Chandra Jena has been possessing 1/3rd share. The mother of defendant No.3 Bhanumati has no share in the suit property nor she was in possession over the same. P.W.2 in his cross examination has stated that there is no partition deed in writing between the parties.

9. Admittedly the suit schedule property is the ancestral properties of the parties to the suit. The sabik record of rights stood in the name of Banambar Swain, Ramesh Jena, Bhanu Bewa, W/o. Pari Jena and Sikhhar Jena which is also corresponds to Hal Khata No. 827 vide Ext.2 where each shareholder has 5 anna 4 pahi share. But in Hal settlement ROR vide Ext.3, 4 and 5 finally published in the name of Radha Swain, Banambar Swain and Bhanumati Sahoo respectively have been recorded. The plaintiff in his evidence has taken the stand

that the above names in Exts.3, 4 and 5 have been wrongly recorded instead of the previous co-owners. Here neither the defendant No.1 and 2 nor the defendant No.3 have come to challenge the evidence of P.W.1. They also did not file the written statement challenging the averments of the plaintiff. Since they have not challenged the plaintiff's suit, absolutely there is no material to show under which circumstance the suit property is recorded in the name of Radha Swain vide Ext.3, Banambar Swain vide Ext.4 and Bhanumati Sahoo vide Ext.5. No doubt a record of right does not either create or extinguish title. But it is well settled that the RORs have a presumptive value both in regard to the title and possession. Though the defendant No.1, 2 and 3 have appeared but not contested the suit, so in the facts and circumstances of the case shows that in the settlement their names have been wrongly recorded. As the plaintiff and defendant No.4 are the co-sharers of the suit property, they have got 1/3rd share over the same. As the plaintiff has 1/3rd share over the suit schedule property, he is entitled for partition of the same. So these issues are answered accordingly.

ISSUES NO.1, 2 & 6 :

10. These issues are formal in nature, need no elaboration. In the discussion, supra, this Court held that the plaintiff has got 1/3rd share over the suit property as he has right, title, interest over the same. The defendant No.4 has also 1/3rd share over the suit property as a co-sharer. Unless the plaintiff is carved out his share it would cause inconvenience to enjoy his right over the suit property. So, the suit is maintainable and there exists 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 decreed preliminarily on contest against the Defendant No.4 and exparte against the defendants No.1, 2 & 3. The plaintiff is entitled to get 1/3rd share where the defendants No.1 & 2 and defendant No.4 are also entitled to get 1/3rd share each out of the suit property. The parties are directed to effect partition on the basis of the ratio indicated above. If the parties failed to make partition within three months, any party to the suit can approach this Court to effect partition by Civil Court Commissioner. There is no order as to costs.

. Lawyer's fee at contested scale.

2nd Addl. Senior Civil Judge,
Bhubaneswar

Judgment is typed out to my dictation, corrected and pronounced in open court, on this the 15th day of April, 2014 under the seal and signature of this court.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:

P.W.1 : Kasinath Jena

P.W.2 : Mangaraj Jena

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

- Ext.1 : Certified copy of ROR of Khata No. 173
- Ext.2 : Certified copy of Hal Settlement ROR of Khata No. 827.
- Ext.3 : Certified copy of ROR of Khata No. 1193.
- Ext.4 : Certified copy of ROR of Khata No. 826.
- Ext.5 : Certified copy of ROR of Khata No. 987.

LIST OF DOCUMENTS FILED ON BEHALF OF DEFENDANTS:

NIL

2nd Addl. Senior Civil Judge,
Bhubaneswar.