

**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. 205/452 of 2013/2010

Sri Chintamani Badajena, aged about 65 years,
S/o. Late Swapreswar Badajena,
Vill. Kantia, PO. Kantia, PS.Jatni,
Dist : Khurda.

..... Plaintiff

-Versus-

1. Sri Sudarshan Badajena, aged about 40 yrs,
2. Sri Gajanana Badajena, aged about 37 years,
Both are sons of late Nimain Charan Badajena
3. Miss Kalpalata Badajena, aged about 43yrs,
D/o. Late Nimai Charan Badajena.
4. Sri Dushashana Badajena, aged about 70yrs,
S/o. Late Brukodhar Badajena.
5. Damodar Badajena, aged about 88 yrs.,
S/o. Late Banchhanidhi Badajena.
6. Bidyadhar Badajena, aged about 68yrs.,
S/o. Late Banchhanidhi Badajena.
7. Somanath Badajena, aged about 55yrs,
S/o. Late Pranakrushna Badajena.
8. Jagannath Badajena, aged about 48yrs.,
S/o. late Pranakrushna Badajena.

All are of Vill/PO.Kantia, PS. Jatni
Dist : Khurda.

9. Smt. Kali Pradhan,
W/o. Late Parakhita Pradhan,
D/o. Late Pranakrushna Badajena,
Vill/PO: Harirajpur, PS.Delanga,
Dist : Puri.

..... Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff: M/s B.K.Mohanty (B) & Associates
For Defendants No.1 to 4 : M/s. A.B. Chand, Advocate
For defendants No.5 to 9 : None

DATE OF ARGUMENT: 01.11.2013

DATE OF JUDGMENT: 07.11.2013

J U D G M E N T

This is a suit for partition.

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

All the properties of the joint family have been amicably partitioned among the ancestors of the plaintiff, defendants No. 1 to 4 in one branch and other defendants No. 5 to 9 in another branch. Accordingly, separate khatas have been created as per the separate possession by metes and bounds in respect of 'A' schedule of property. Further pleaded that as per the remark column of the 'A' schedule property bearing Khata No. 1198, Plot No. 3539, area Ac. 0.375 decimals, the plaintiff and the defendants are possessing jointly in respect of 'A' schedule property. The plaintiff and defendant Nos. 1 to 4 have 1/3rd share in respect of 'A' schedule property and the other defendants have 2/3rd share in respect of the same and out of 1/3rd share the plaintiff is entitled with 2 anna 8 pahula share as well as the defendants No. 1 to 4 are entitled to 2 anna 8 pahula share in respect of 'A' schedule property.

It is the further case of the plaintiff is that the plaintiff is entitled to 8 anna share as well as the defendant No.1 to 4 are entitled to 8 anna share in respect of 'B' and 'C' schedule properties. Further pleaded that in Khata No. 1198, the names of some recorded owners have been wrongly mentioned as Banchhanidhi Badajena, Pranakrushna Badajena, Balaram Badajena, all are sons of Chaitanya

Badajena but the correct names of the above recorded owners are Banchhanidhi Badajena, S/o. Chaitanya Badajena and Pranakrushna Badajena S/o. Balaram Badajena. Further pleaded that except 'A' schedule property the defendants No. 5 to 9 have no right, title, interest and possession in respect of 'B' and 'C' schedule property. When the suit schedule properties are not yet been partitioned and the defendants did not agree for the same, the plaintiff without finding any other alternative filed the suit for partition. Hence, the suit.

3. The defendants No. 5 to 9 are set exparte vide order dated 27.08.2010 and the Defendants No. 1 to 4 contested the suit but they have not filed their written statement.

4. To substantiate their claim, the plaintiff examined himself as P.W.1 and relied upon Exts. 1 and 2 in support of his stand. The Defendants have not examined any witness but only took part in the cross examination.

5. Plaintiff has filed the suit for partition claiming 1/3rd share in respect of 'A' schedule property and 8 anna share each in respect of 'B' and 'C' schedule property. The plaintiff Chintamani Badajena examined as P.W.1. He corroborated his evidence to the plaint story and deposed in a parrot like manner of evidence. The defendants No. 1 to 4 do not prefer to challenge the evidence of P.W.1 by way of cross examination but have declined their evidence.

6. Law is well settled that partition consists in numerical division of the property in defining the shares of coparceners in the joint property and an actual division of property. Partition means severance of a joint status and, therefore, it is a matter of individual volition. There is necessary to constitute a partition is, therefore, a definite, unequivocally indication the intention of a member of a joint family to separate himself from the family and enjoy his share in severalty. Equal share among all the claimants through court with each ancestral property is called metes and bounds partition. As regards to the 'B'

and 'C' schedule property the evidence of P.W.1 will remain unshakable during cross examination. Therefore, the plaintiff and defendants No.1 to 4 each have 8 anna share over 'B' and 'C' schedule of property.

7. Let me advert the real exercise over the 'A' schedule property. According to plaintiff as per the pleading as well as evidence that except 'A' schedule property the defendants No. 5 to 9 have no right, title, interest over the other schedule of properties i.e. 'B' and 'C' schedule. Now it is very much clear that all these defendants have share over 'A' schedule property. As per Ext.2 the ROR which discloses that all these recorded owners have right over their share in 'A' schedule of property. Taking into consideration their right in 'A' schedule property each branch will be entitled to get 1/3rd share over the same.

Hence, it is ordered.

ORDER

The suit be and the same is preliminarily decreed on contest against the Defendants No. 1 to 4 and exparte against the defendants No. 5 to 9 without cost. It is declared that the plaintiff and defendants No. 1 to 4 have 8 anna share over 'B' and 'C' schedule of property and the suit property highlighted under 'A' schedule will be equally partitioned with three branches among the plaintiff and defendants No. 1 to 9 as per genealogy depicted in plaint and each branch will get 1/3rd share over 'A' schedule property. The parties are directed to carve out their respective share within three months, if fails any party to the suit can approach the Court to effect partition by Civil Court Commissioner.

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 7th day of November, 2013 under the seal and signature of this court.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:

P.W.1 : Sri Chintamani Badajena

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

None

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

Ext.1 : Settlement ROR of Khata No. 1196
Ext.2 : Settlement ROR of Khata No. 1198.

LIST OF DOCUMENTS FILED ON BEHALF OF DEFENDANTS:

NIL

2nd Addl. Senior Civil Judge,
Bhubaneswar.