

**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. of 298/957 of 2013/2008**

Md. Bakaur Raheman, aged about 75 yrs,  
S/o. Late Nakiur Raheman,  
of Village/Post-Jadupur,  
PS-Khandagiri, Dist : Khurda.

Plaintiff

-Versus-

1. Maimuna Bibi, aged about 60 yrs,  
W/o. Sayed Habibulla,  
Village/post-Jadupur,  
PS-Khandagiri, Dist : Khurda
2. Abdul Tayab Khan, aged about 60 yrs,  
S/o. Abdul Soban Khan.
3. Abdul Dayan Khan, aged about 70 yrs,  
Son of Late Abdul Rahaman Khan.
4. Abdul Manan Khan, aged about 65 yrs,  
Son of Late Abdul Rahaman Khan

Sl. No. 2 to 4 are of Vill-Siriapur,  
Sultan Nagar, PO-Danagohiri, Ps-Pipili,  
Dist : Puri.

5. Mallick Mehemud, aged about 50 yrs,  
S/o. Late Mallick Ekrun
6. Mallick Ismille, aged about 45 yrs,  
Son of Late Mallick Ekram.

Sl. No. 5 and 6 are of Vill/Po/Ps-Niali,  
Musilim Basti (Near Masjid)  
Dist : Cuttack.

..... Defendants

**COUNSELS APPEARED FOR THE PARTIES:**

For the Plaintiff: M/s Kamadev Tripathy & Associates  
For Defendants No.1: M/s. P.R. Bhuyan & Associates  
For Defendants No.2 & 3 : M/s. M.K. Das, Advocate  
For Defendant No.5 & 6 : M/s. Md. Immamuddin & Associates

DATE OF ARGUMENT: .27.03.2014  
DATE OF JUDGMENT: 03.04.2014

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

This is a suit for declaration of right, title, interest, cancellation of sale deed and permanent injunction.

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

Originally the suit Khata No.293, Plot No. 243, area Ac. 0.240 decimals stands recorded in the name of Sayed Habibulla (the husband of Maimuna Bibi, defendant No.1), Samsun Bibi (mother of defendant No.3 and 4 and grandmother of defendant No.2), Kamran Bibi (mother of plaintiff) and Mallick Ekaram (father of defendant No.5 and 6) as per the genealogy described in the plaint. Accordingly, consolidation ROR was prepared. In the year 1970 the suit land was mutually partitioned among the legal successors of late Sayed Noor Alli as per Muslim law. Sayed Noor Alli has only one son namely Abdul Rajak and three daughters namely Samsun Bibi, Kamrun Bibi, Aturun Bibi. As per Muslim law schedule 'A' land was divided in to 5 equal shares. Abdul Rajak as a son got  $\frac{2}{5}$ <sup>th</sup> share and other three daughters also got  $\frac{1}{5}$ <sup>th</sup> share each. After death of Abdul Rajak his son Sayed Habibulla with help of Mallick Ekaram, S/o. Aturun Bibi with a clandestine manner in consolidation operation recorded their names in  $\frac{1}{3}$ <sup>rd</sup> share. The said ROR was published in the year 1982. At the time of publication of ROR Abdul Rajak, Aturun Bibi were dead and other two daughters Samsun Bibi and Kamrun Bibi were married.

It is further case of the plaintiff is that after mutual partition between the co-sharers out of total area Ac. 0.240 decimals Sayed Habibulla got  $\frac{2}{5}$ <sup>th</sup> share i.e. Ac.0.096 decimals, Samsun Bibi, Kamrun Bibi and Aturun Bibi each got  $\frac{1}{5}$ <sup>th</sup> share i.e. Ac. 0.048 decimals respectively. Sayed Habibulla for his legal necessity sold some portion of the land i.e. Ac. 0.036 decimals to the plaintiff through Regd. Sale Deed bearing No. 6442 dated 07.08.1985. After purchase the plaintiff has mutated his land in his favour and obtained ROR vide Khata No. 306/27, Plot No. 243/714, for the area of Ac. 0.036 decimals. Sayed Habibulla along with Abdul Tayed Khan, S/o. Abdul Soban Khan, Abdul

Dayan Khan and Abdul Manan Khan were illegally sold some land to Maimuna Bibi, W/o. Sayed Habibulla measuring an area Ac. 0.174 decimals without the knowledge of the plaintiff and defendant No.5 and 6. When the suit schedule land has been mutually partitioned among the co-sharers then the other co-sharers have no right to sell the land to anybody. Sayed Habibulla with a malafide intention alienated the land in his wife's favour only to grab the suit land which is bad in law. The defendants very well know that the schedule 'A' has already been partitioned. The plaintiff is in possession of his purchased area of Ac. 0.036 decimals so also his share Ac. 0.048 decimals, a total area of Ac. 0.084 decimals of land. But the husband of defendant No.1, defendant No.2, 3 and 4 have illegally sold the land in favour of defendant No.1 for which the illegal Regd. Sale Deed No. 3828 dated 03.10.1985 is void ab initio. In this process prayed for to declare the share land of the plaintiff Ac.0.048 decimals in his favour and to cancel the illegal sale deed No. 3828 dated 03.10.1985, confirmation of possession and permanent injunction.

3. The contesting defendant No.1 has filed the separate written statement challenging the present suit in various ground about its maintainability, cause of action, limitation, mis-joinder and non-joinder of necessary party. He has categorically stated that the plaintiff has no locus standi being an outsider does not belong to the family successors of Sayed Noor Alli has no right over the suit schedule property. He has also no right, title, interest over it. The plaintiff has filed the suit at a belated stage with an ulterior motive prior to publication of ROR in the year 1983. The suit land was initially exclusively recorded in the name of Sayed Abdul Rajak, father-in-law of defendant No.1 vide Khata No. 119, Plot No. 15/769/833, area Ac. 0.260 decimals. The plaintiff by gaining over the consolidation authority managed to record the suit land jointly in favour of the husband of defendant No.1 and others. The sisters of Abdul Rajak were given marriage more than 80 years back in different places. The plaintiff being the son of late Nakaur Raheman who belongs to other family is not entitled to any claim as claimed for.

There was no valid partition in respect of the suit land during the life time of late Samsun Bibi, Kamrun Bibi and Aturun Bibi since the father of late Habibulla was exclusive owner of the entire suit land. The husband of defendant No.1 was in peaceful possession over the suit land and the plaintiff was/is never in possession thereof. The defendant No.1 admitted that Habibulla sold an area of Ac.0.036 decimals to the plaintiff vide Regd. Sale Deed No. 6442 dated 07.08.1985. The said Sayed Habibulla along with Abdul Tayan Khan, Abdul Soban Khan, Abdul Dayan Khan and Abdul Manan Khan sold an area of Ac.0.174 decimals out of total suit land to defendant No.1 vide Deed No. 8328 dated 03.10.1985. The plaintiff is in possession over his purchased area Ac.0.036 decimals and the defendant No.1 is in possession over Ac.0.174 decimals and the suit land has never been divided into five equal parts.

It is further plea of the defendant No.1 is that after the purchase of the aforesaid plot by the plaintiff there was boundary dispute between the co-sharers in the year 1988 in respect of the suit plot. As such, a demarcation Misc. Case No. 497/88 was filed before Tahasildar, Bhubaneswar wherein an Amin was deputed to the spot for measurement and to demarcate the boundary line and after due service to the concerned parties, the plot was demarcated in presence of both the parties and witnesses. The area of defendant No.1 measuring Ac. 0.174 decimals under Plot No. 243 was bounded by pillars, all the parties and witnesses have signed therein. The plaintiff has never possessed any part of the suit plot except Ac.0.036 decimals and has filed the present suit at a belated stage only to harass the defendant No.1. In this process prayed for dismissal of the suit.

4. Similarly, the defendant No.5 and 6 also filed separate written statement stating inter alia that originally the suit land bearing Khata No. 293, Mouza Jadupur, Plot No. 243 stands recorded in the name of father of defendant No.5 and 6 i.e. Mallick Ekaram and Sayed Habibulla, husband of defendant No.1, Samsun Bibi i.e. mother of

defendant No.3 and 4 and Kamrun Bibi, mother of the plaintiff. As per mutual partition in 1970 among the legal successors late Sayed Noor Alli who was one son namely Abdul Rajak and three daughters, namely, Samsun Bibi, Aturun Bibi and Kamrun Bibi. As per Muslim law the suit land was divided into five equal shares and as a son Abdul Rajak got  $\frac{2}{5}$ <sup>th</sup> share and three daughters got  $\frac{1}{5}$ <sup>th</sup> each. After death of Abdul Rajak his son Habibulla with help of consolidation staff recorded his name in  $\frac{1}{3}$ <sup>rd</sup> share in the year 1982. At the time of Abdul Rajak, Aturun Bibi were dead and the other daughters Samsun Bibi and Kamrun Bibi were married. So the ROR published in the year 1982 is not legally considerable as well as binding of law.

It is further stated by them that after mutual partition between the co-sharers they are in peaceful possession over their respective shares. Out of total share Ac.0.240 decimals Sayed Habibulla got  $\frac{2}{5}$ <sup>th</sup> share i.e. Ac.0.096 decimals, Samsun Bibi got  $\frac{1}{5}$ <sup>th</sup> share i.e. Ac.0.048 decimals, Kamrun Bibi and Aturun Bibi each got  $\frac{1}{5}$ <sup>th</sup> share i.e. Ac.0.048 decimals each. Due to legal necessity Habibulla sold Ac.0.036 decimals from his share to plaintiff on 07.08.1985. The plaintiff after purchase mutated his name and ROR obtained by him in his favour. Sayed Habibulla, Abdul Tayeb Khan, Abdul Dayan Khan, Abdul Manan Khan were illegally sold measuring an area of Ac. 0.174 decimals to Maimuna Bibi, defendant No.1 without the knowledge of the plaintiff and defendant No.5 and 6. As there was mutual partition among the co-sharers they have no right to sell the land to anybody. The defendant No.5 and 6 are in peaceful possession over their share land. When plaintiff and defendant No.5 and 6 are in possession over their respective land and defendant No.2, 3, 4 and husband of defendant No.1 have illegally sold the land in favour of defendant No.1, wife of Sayed Habibulla illegally through Regd. Sale Deed No. 3828 dated 03.10.1985 which is void in law. Accordingly support the plaintiff averments along with the prayer made by the plaintiff.

5. 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 the present suit ?
3. Whether the plaintiff is entitled to get a declaration of right, title, interest and possession over an area of Ac. 0.048 decimals as the share land of plaintiff ?
4. Whether the sale deed No. 8328 dated 03.10.1985 is illegal and declared to be cancelled ?
5. Whether the plaintiff is entitled to get confirmation of possession over his share land ?
6. Whether the plaintiff is entitled to get any permanent injunction ?
7. To what any other relief, the plaintiff is entitled ?

6. In order to establish his claim, the plaintiff examined himself as P.W.1 and relied upon Ext.1 to Ext.6/b in support of his stand. Similarly, to substantiate the allegation, Sarwari Bibi, the daughter of the Defendant No.1 examined as D.W.1 and relied upon Ext.A to Ext.D in support of the stand of her mother. No witness examined on the side of other defendants

### **FINDINGS**

#### **ISSUE NO. 3, 4, 5 & 6:**

7. 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 declaration of right, title, interest, cancellation of sale deed and permanent injunction. The plaintiff Bakaur Raheman examined as P.W.1 and fully corroborated his evidence to the plaint story as averred by him. In cross examination he has stated that the defendant No.1 is the daughter-in-law of Abdul Rajak and Sayed Habibulla sold Ac.0.036 decimals out of Ac.0.096 decimals to the plaintiff and sold Ac.0.018

decimals to Kalim and he has now possessed Ac.0.048 decs. plus Ac.0.036 decs. There was no previous partition in respect of the suit land. He has not seen any document showing the suit land was exclusively recorded in the name of Sayed Rajak. He has also not seen the suit land. He has no knowledge about the sale deed vide Ext.1 at the time of its execution.

8. D.W.1 Sarwari Bibi, daughter of defendant No.1 in her evidence has corroborated the stand taken in the written statement by defendant No.1. According to her, her mother is suffering from old age ailments unable to move and the plaintiff has filed the suit illegally only to harass them. Her father during his lifetime along with other vendors has sold an area of Ac. 0.174 decimals through Regd. Sale Deed No. 3828 dated 03.10.1985 in favour of defendant No.1 and she is in peaceful possession over the same. Prior to publication of ROR the property was exclusively recorded in the name of her grandfather Abdul Rajak, after that her father Habibulla is the absolute owner of Ac.0.240 decimals of land. During consolidation operation, the plaintiff and the sisters of Abdul Rajak by gaining over the consolidation authority managed to record the suit land jointly with her father in order to have a future claim. It is further stated by her that during the lifetime of her father he sold Ac.0.036 decimals to plaintiff through Regd. Sale Deed No. 6442 dated 07.08.1985. One Demarcation Misc. Case No. 497/88 was filed for boundary dispute and a proper demarcation was made over Ac. 0.174 decimals under Plot No. 243 in presence of all the parties. The plaintiff has knowledge of RSD No. 3828 dated 03.10.1985 in favour of defendant No.1 since the date of demarcation in the year 1988 and filing of cancellation of sale deed is illegal and void. In cross examination D.W.1 has stated that the suit land was mutually partitioned among the legal heirs. Noor Alli has one son and three daughters. The defendant No.1 has denied the share noting of plaintiff that Abdul Rajak got 2/5<sup>th</sup> share and their daughters have got 1/5<sup>th</sup> share each. Sayed Habibulla sold Ac.0.036 decimals of land to the plaintiff who subsequently mutated the same in his name. Further

stated that the sale deed vide Ext.B is validly executed and there was never any previous partition entered between the parties. She also denied that the plaintiff is in possession of Ac.0.084 decimals of land.

9. Let me now go to examine the oral and documentary evidence relating to the fact in issue. According to plaintiff in the final consolidation ROR published in the year 1982 by that time Abdul Rajak and Aturun Bibi were died and other two daughters Samsun Bibi and Kamrun Bibi were married. Taking into the said advantage without giving any information the said Sayed Habibulla, husband of Maimuna Bibi and Mallick Ekaram (son of Aturun Bibi and late Beheram Mallick) recorded their names along with other two sisters jointly which is illegal and arbitrary. It is further stated by him that there was mutual partition between the co-sharers, they are remaining in peaceful possession over their respective shares out of total area Ac. 0.240 decimals. As per share Sayed Habibulla got  $\frac{2}{5}$ <sup>th</sup> share i.e. Ac. 0.96 decimals, Samsun Bibi got  $\frac{1}{5}$ <sup>th</sup> share i.e. Ac.0.048 decimals, Kamrun Bibi also got  $\frac{1}{5}$ <sup>th</sup> share i.e. Ac.0.048 decimals and Aturun Bibi also got her share  $\frac{1}{5}$ <sup>th</sup> i.e. Ac.0.048 decimals respectively. P.W.1 has also stated that he purchased Ac.0.036 decimals of land from Sayed Habibulla through Regd. Sale Deed No. 6442 dated 07.08.1985 vide Ext.1. After purchase P.W.1 mutated the same in his name vide Mutation ROR vide Ext.5 and rent receipts vide Ext.3 and 3/a. P.W.1 also relied on original ROR bearing Khata No. 293 marked as Ext.4.

10. Learned counsel for the plaintiff during course of his argument has submitted that the plaintiff as per partition he is in peaceful possession of his shared land Ac.0.048 decimals as well as the purchased land through Regd. Sale Deed No. 6442 dated 07.08.1985 vide Ext.1 i.e. Ac.0.036 decimals, a total of Ac. 0.084 decimals. The defendant No.1 to 4 are creating disturbance on the strength of sale deed executed by Sayed Habibulla along with Abdul Tayed Khan, S/o. Soban Khan, Abdul Dayan Khan and Abdul Manan Khan both are sons of Abdul Raheman Khan were illegally sold some land to Maimuna

Bibi, W/o. Habibulla measuring an area of Ac. 0.174 decimals without the knowledge of the plaintiff as well as defendant No.5 and 6. It is further argued that when the suit schedule 'A' land has been mutually partitioned among the co-sharers then the other co-sharers have no right to sell the land to anybody.

11. Learned counsel for the contesting defendant No.1 in his argument has submitted that initially the suit property was exclusively recorded in favour of Abdul Rajak, the father-in-law of defendant No.1. Abdul Rajak, who is father of Habibulla, is the exclusive recorded owner of the sabik Plot. The defendant No.1 filed Regd. Sale Deed No. 8328 dated 03.10.1985 which goes to show that during the lifetime of Habibulla he and others sold an area of Ac. 0.174 decimals in favour of defendant No.1. Since the plaintiff has admitted that there was no partition in respect of the suit property, the plaintiff has failed to establish his case. Accordingly, prayed for dismissal of the suit.

12. From the aforesaid pleading and evidence, submission and counter submission of the parties now let me advert the real exercise as stated in the foregoing paragraphs. Admittedly Sayed Habibulla, the husband of defendant No.1 for his legal necessity sold some portion of his shared land i.e. an area of Ac. 0.036 decimals to the plaintiff through Regd. Sale Deed No. 6442 dated 07.08.1985 vide Ext.1. The plaintiff (P.W.1) after purchase got mutated the land in his favour vide Mutation Case No. 1419/87, Khata No. 306/27, Plot No. 243/714 for an area of Ac. 0.036 decimals. The said certified copy of mutation ROR marked as Ext.5. Therefore, it is not disputed that the plaintiff has purchased Ac. 0.036 decimals of land as shared land of Habibulla and he is in possession over the same. The real dispute lies with Ac.0.048 decimals of land which the plaintiff (P.W.1) in his evidence so also pleading has stated that as per the mutual partition he along with other co-sharers are remaining in peaceful possession with their respective shares. Out of total land Ac. 0.240 decimals Sayed Habibulla got 2/5<sup>th</sup> i.e. Ac. 0.096 decimals, the other three sisters namely Samsun Bibi,

Kamrun Bibi and Aturn Bibi have 1/5<sup>th</sup> share each and an area of Ac. 0.048 decimals each respectively. This fact is completely denied by the contesting defendant No.1. In support of the partition, the plaintiff (P.W.1) has not filed single documentary evidence showing there was previous partition between the parties. The plaintiff has also not adduced any evidence in his support to prove his possession over Ac.0.048 decimals. Besides that none of the co-sharers have ever examined on behalf of the plaintiff in regard to his possession. The defendant No.5 and 6 though have filed separate written statement supporting the version of the plaintiff but does not come forward to depose evidence by appearing into the witness box and stated his own case on oath and they also do not offer themselves to be cross examined by other side. At this juncture a presumption would arise that the case set off by them is not correct. When there is no documentary and oral evidence, the evidence of P.W.1 with regard to possession by him over Ac. 0.048 decimals is of no significance. That apart P.W.1 in his cross examination has categorically stated that there is no previous partition in support of the suit land. The plaintiff except his self explanation and pleading made in the plaint has not adduced any sufficient evidence nor has given any explanation on that score. Rather the contesting defendant No.1 has proved Ext.A which goes to show that the suit land stands recorded in the name of Sayed Abdul Rajak, S/o. Sayed Noor Alli. The defendant No.1 also filed Ext.D which indicates that there was boundary dispute between the parties and the said Ext.D (Amin report) goes to show that in Demarcation Case No. 497/88, an area of Ac. 0.174 decimals out of Plot No. 243 was bounded in presence of the parties. So it has to be informed that the plaintiff was knowledge about the Regd. Sale Deed No. 8328 dated 03.10.1985 vide Ext.B. The said Ext.B was executed not only by Sayed Habibulla but also the other co-sharers in favour of the defendant No.1. From the execution of above sale deed, it is clear that there was no objection from any co-sharers while the same was executed and registered in favour of defendant No.1. Furthermore, when the plaintiff (P.W.1) does not state about the previous partition

and the same has not been proved by any independent witness through the co-sharers. In this circumstance how can it be believed that the plaintiff is in possession of Ac. 0.048 decimals as his share. At the cost of repetition, in absence of any positive evidence either oral or documentary and that the evidence of P.W.1 indicates there was no previous partition. In this circumstance, in my humble views do not come to aid of the plaintiff on the score of establishment in his case. Since there is no partition, the prayer for right, title, interest, confirmation of possession and permanent injunction would not arise. A fundamental fact required to be proved has not at all been satisfactorily proved in this case by the plaintiff. Therefore, I find the plaintiff has failed to establish his case and the ultimate result disentitling the plaintiff to be granted with the relief claimed. So, these issues are answered accordingly.

**ISSUE NO.1, 2 & 7 :**

13. 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 3<sup>rd</sup> day of April, 2014 under the signature and seal of this court.

2nd Addl. Senior Civil Judge,  
Bhubaneswar.

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:

P.W.1 : MD Bakaur Raheman

LIST OF WITNESSES EXAMINED FOR THE DEFENDANTS:

D.W.1 : Sarwari Bibi

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

Ext.1 : Regd. Sale Deed No. 6442 dated 07.08.1985  
Ext.1/a : Signature of P.W.1.  
Ext.2 : Certified copy of Regd. Sale Deed No.3828 dated 03.10.1985  
Ext.3 & 3/a: Rent receipts  
Ext.4 : Certified copy of ROR Khata No. 293, Mouza Jadupur.  
Ext.5 : Certified copy of ROR Khata No. 306/27, Mouza Jadupur  
Ext.6 to 6/b : Encumbrance Certificates.

LIST OF DOCUMENTS FILED ON BEHALF OF DEFENDANTS:

Ext.A : ROR No. 199 of Jadupur Mouza.  
Ext. B : Sale Deed No. 8328 dated 03.10.1985.  
Ext. C to C/2: Rent receipts.  
Ext.D : Demarcation Misc. Case No. 497/88.

2nd Addl. Senior Civil Judge,  
Bhubaneswar.