

IN THE COURT OF THE SENIOR CIVIL JUDGE BANPUR

PRESENT:-

Sri Satya Ranjan Pradhan,
Senior Civil Judge, Banpur.

Civil Suit No.147 of 2014

287 of 2010

Pravakar Dash, aged about 40 years, S/o Late Rankanatha Dash
of Vill: Brahmanakosadiha, Po: Ankulachati, P.S: Balugaon, Dist: Khurda.

... Plaintiff.

Versus

1. Bhagirathi Dash, aged about 50 years, S/o Late Rankanath Dash.
2. Damodar Dash, aged about 45 years, S/o Late Rankanath Dash.
3. Ratnakar Dash, aged about 35 years, S/o Late Rankanath Dash.
4. Manorama Dash, aged about 45 years , W/o Bhagirathi Dash
5. Meerarani Dash, aged about 40 years, W/o Damodar Dash.
6. Kamalarani Mahapatra @ Dash, aged about 30 years, W/o Ratnakar Dash.

All are of Vill: Brahmanakosadiha, Po: Ankulachati,
P.S: Balugaon, Dist: Khurda.

... Defendants.

Counsel for the plaintiffs ... Sri S.S. Pattnaik, Advocate,
and associates.

Counsel for the defendant ... Sri B.S. Satpathy Advocate
and associates.

Date of Argument – 25.04.2014

Date of Judgment – 30.04.2014

J U D G M E N T .

1. This is a suit for partition and declaration.
2. The case of the plaintiff as per the plaint is that the suit property described in Schedule-A of the plaint is their ancestral property. The defendant No.1 to 3 are his brothers and defendant Nos.4 to 6 are the wives of defendant Nos.1 to 3. After the death of his parents the plaintiff as well as defendant No.1 to 3 had inherited their ancestral properties. They used to possess the suit property jointly and raise crops by spending money. However

defendant No.1 to 3 with a mischievous mind executed three registered sale deed in favour of defendant No.4 to 6 vide registered sale deed Nos.1249,1250 and 1251 dated 07.05.2010 with respect to the suit property under Khata No.430,399 and 398 although there was no partition of the ancestral property. The plaintiff claimed that the said sale deeds executed by defendant No.1 to 3 are sham, illegal, collusive, without any consideration and delivery of possession. So far as the amount of the land alienated by the defendant Nos 1 to 3 it is mentioned in the plaint that the said defendants sold the entire property including the homestead land and agricultural land excluding only Ac.0.016 decimals in the middle of the homestead land and Ac.0.341 ½ decimals in the middle of the agricultural land which is not at all convenient to possess. So far as the cause of action to file the suit is concerned it is mentioned in the plaint that on 19.05.2010 the defendants had threatened the plaintiff that they will not allow him to possess the suit property and in the middle of exchange of words it came to the notice of the plaintiff about the alleged sale deeds executed by defendant No.1 to 3 in favour of defendant Nos.4 to 6. Submitting the aforesaid facts the plaintiff has prayed to pass a preliminary decree for partition amongst himself and defendant Nos.1 to 3 allotting 1/4th share to him from the suit property under Khata No.398,399,429 and 607 and 1/8th share for the proper under Khata No.430. As the property under Khata No.430 was recorded in the name of Radhamani Das, Rankanath Dash (parents of both the parties) and Bauribandhu Dash, Jamini Dash son of Somanath Dash and Sunamani Dash. From the said property the heirs of Somanatha had sold the suit property in favour of defendant No.3. Considering the aforesaid proposition the plaintiff has asked for 1/8th share over the suit property. Apart from the aforesaid prayer the plaintiff also prayed to declare that he is

not bound by the registered sale deeds executed by defendants Nos 1,2and 3 in favour of defendant Nos4,5 and 6 bearing Nos.1249,1250 and 1251 dated 07.05.2010.

3. Being summoned the defendants appeared in this case and filed their W.S denying all the allegations made by the plaintiff except the fact that the suit property are their ancestral property. So far as the dispute between them is concerned they mentioned in the W.S that the homestead land which is also a subject matter of the suit and part and parcel of the suit property was quite insufficient for habitation for all the family members. So during the life time of Rankanath Das and Radhamani Das disturbances started between the plaintiff and defendant Nos.1 to 3 for which wife of the plaintiff had filed several reports at the Police Station against defendant No.1 to 3. So a village meeting was conveyed on 27.10.2002. In the said meeting it was settled that the sons of Late Rankanath will partition the family property equally between them after the death of Rankanath and his wife. According to the settlement the plaintiff was to vacate the ancestral homestead land within seven days from such day. Accordingly the plaintiff left the suit premises and started staying at village Dikhitpada. Thereafter another settlement was made on 18.06.2003 wherein the plaintiff and defendant Nos.1 to 3 have mutually partitioned all the joint family property between themselves giving more share to the plaintiff as he less educated. In the said settlement it was further decided that the suit property would be sold by their father on 21.06 2003 in favour of defendant No.2 who consented to keep the suit land and pay the value of such homestead land to other defendants as per their share. Accordingly Rankanath Das executed a deed of sale in respect of the suit property in favour of defendant No.5 i.e. wife of defendant No.2 vide R.S.D No.1364 dated 21.06.2003 in presence of the

plaintiff wherein the plaintiff was cited as an indentifier. On that day the plaintiff on receipt of his share of money from the sale proceeds of the suit property had executed an agreement in favour of defendant Nos.1 to 3 declaring the fact that he will not to claim any share from the homestead property in future. However, the plaintiff in mischievous mind after the death of his parents had filed the suit once again claiming share from the suit property suppressing previous fact of partition. Alleging the aforesaid facts the defendants claimed to dismiss the suit of the plaintiff.

04. In view of the above rival pleadings of both the parties, the following issues have been settled for proper adjudication of the suit.

I S S U E S.

1. Is the suit maintainable?
2. Has the plaintiff any cause of action?
3. Whether the suit partible?
4. Whether there is previous partition between parties?
5. Whether the plaintiff is entitled to any share from the homestead land situated in Plot No.361 of Mouza Bramhan Kosadi?
6. Whether the plaintiff is entitled to get any relief claimed in the suit?

05. In order to substantiate his claim the plaintiff examined himself as P.W.1. and produced several which were marked as Exts.1,2,3,4,5, 7,8 and 9. That apart he has also produced the rent receipts marked as Ext.6 to 6/e. Similarly, the defendants examined four witnesses in their favour and produced documents marked as Ext.A to H.

F I N D I N G S.

Issue No.4

06. In this issue it is to be determine whether there was previous partition between the parties. In the suit amongst other the plaintiff has prayed to pass preliminary decree for partition amongst himself and defendant No.1 to 3 allotting $\frac{1}{4}$ share from Khata No.398.399,607 and 429 and $\frac{1}{8}^{\text{th}}$ share from Khata No.430 without disclosing about any previous partition. Where as the defendants plea is that the plaintiff has suppressed the fact of earlier partition that took place on 18.06.2003. A deed of partition was also prepared on which both the parties had put their respective signatures. After the said partition deed was prepared all of them acted upon as per the terms mentioned in the said partition deed. So as the defendants have claimed that there was previous partition between the parties, the onus is on them to prove the same. The defendants wanted to prove it by adducing both oral and documentary evidence. So far as oral statement is concerned the defendants had examined four witnesses such as Brundabana Das who is co-villager as D.W.1 , D.W.2 Ratanakar Dash, D.W.3 Damodar Dash and D.W. 4 Meerarani Mishra who are defendants in this case. All of them during their examination in chief have stated that the suit properties are their ancestral joint family properties which was amicably divided between them in the year 2003 and since that day there is no unit of jointness between them. Regarding the share of the parties or manner of division of properties it was stated by the witnesses that in the mutual partition it was decided that the share of the plaintiff in the homestead land would be sold by their father and the plaintiff will take the sale proceed. Accordingly $\frac{1}{4}^{\text{th}}$ share from the homestead land was sold in favour of defendant No.5 under R.S.D No.1364 dated 21.06.2003 and the consideration amount thereof was given to the plaintiff. The plaintiff also acknowledged the same through an unregistered agreement executed on 21.06.2013. So far as other ancestral landed properties are concerned it was stated by the witnesses that the suit land was also partitioned between them as the plaintiff is less qualified he was given more share. It was the contention of the defendants that as per the aforesaid conditions the

agreement of partition was prepared to which all the parties agreed and put their respective signatures on it. To prove the same the defendants have produced the said amicable settlement deed which is marked as Ext.A and other documents such as Ext.B and C. Ext.B and C are the documents said to be created as per the terms of the partition deed. Before going to any other documents firstly the partition deed Ext.A is to be examined to ascertain the fact of partition. As it appears from the very face of the instrument it is an unregistered document. Therefore the question arises whether partition can be effected on the basis of unregistered documents or not and the evidential value of Ext.A. In addition to that another question arises as to whether the parties were entitled to effect partition at that relevant time. It is stated so because the parents of the parties were alive at that time and they were not given any share in it. So also they were not signatures to Ext.A. First we have to discuss about the evidential value of Ext.A. To answer it we have to find out as to what are the documents which should be registered or which documents are compulsory registrable and the documents of which registration is optional. In this regard we have to peruse section 17 and 18 of registration Act 1908. Sec 17 provides the list of documents of which registration is compulsory. Whereas Sec 18 provides list of document of which registration is optional. So as because the present instrument is partition deed it comes under Section-17 (1)(b) of the said Act. So it is compulsory registrable but the same was not registered. So what would be its effect. The same was illustrated under section 49- of the Registration Act. According to section 49 "no document required by section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power unless it has been registered.....". So as per the section 49 of the said act the present deed which is a compulsorily registrable instrument but not registered cannot be received as evidence of

any transaction affecting such property or conferring such power. However the said document is admissible for a limited use. That means for a collateral purpose which does not require registration i.e. for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. The expression "collateral purpose" is a wide term. So before accepting an instrument for other collateral purpose we must see whether the purpose for which it is sought to use is really a collateral one or is to establish directly title to the immovable property sought to be conveyed by the said document. But by the simple device of calling it a "collateral purpose" a party cannot use the unregistered documents in any legal proceeding to bring about indirectly the effect which it would have had if registered. In the suit for partition it involves two concepts (1) change of status (2) division of property. Severance of status does not require to be proved by any documentary evidence at all nor it is necessary for the purpose of actual division of property between the members of joint family. So far as status is concerned the unregistered partition deed can be used for the purpose to show severance of joint status and it is inadmissible to prove the actual division of joint property to the different sharers. Here in this suit defendants intended to use the unregistered partition deed not for the collateral purpose but to establish directly the title of the parties over the suit properties. So considering the aforesaid discussion I am of the opinion that it is inadmissible, so far as admissibility of severance of joint status is concerned the same also can not be taken into consideration due to the existence of some other legal barriers. Before discussing on this point previously it was mentioned that here we have to see whether the parties were entitled to effect partition at the relevant time or not. It reveals from the documents marked as Ext.1,2,3,4 and 5 that the suit properties under Khata Nos.398,399,607 stands recorded in the name of Rankanath Dash and the property under Khata No. 429 stands recorded in the name of Radhamani Das. The property under Khata No.399 and 430 stands recorded in the name of Rankanath Dash and Radhamani Das

whereas property under Khata No.429 stands recorded in the name of Rankanath Dash and others and at that particular time when Ext.1 was said to be executed i.e. on 18.06.2003 both Rankanath and Radhamani were alive. On perusal of Ext.1 it reveals that both of them are not parties to the said partition and their signatures are also not there. So in the absence of the presence of Rankanath and Radhamani the partition deed effected by their sons is void and the same is not admissible at all. So considering these things I am of the opinion that the said un registered partition deed is inadmissible in evidence for all purposes and even cannot be held that there was any partition between the parties on the basis of that documents.

Issue Nos. 5 & 6

07. For the sake of convenience as well as for the fact that both the issues are connected to each other the same are answered jointly. Here we have to find out whether the plaintiff is not bound by the registered sale deed No.1249, 1250,1251 dated 07.05.2010, whether he is entitled from the homestead land as well as other cultivable land as per his share as prayed by him in the suit. As discussed earlier the plaintiff's claim is that both the suit property was not partitioned which is their ancestral property, the defendant Nos 1 to 3 mischievously executed three sale deeds bearing No. 1249,1250 and 1251 dated 07.05.2010 in favour of defendant Nos.4 to 6 and in the said sale deed they have sole the entire properties excluding Ac.0.016 decimals in the middle of the homestead land and Ac.0.341 ½ decimals in the middle of the agricultural land which is not convenient to possess. On the other hand the contention of the defendants is that there was mutual partition between them wherein it is decided that the father of the plaintiff and defendant Nos.1 to 3 will sale ¼ th share of the plaintiff in the homestead land and the plaintiff would take the consideration money. Accordingly, on 21.06.2003 a sale was executed by the father of both the parties in favour of defendant No.5 and the sale proceed thereof was received

by the plaintiff to which he acknowledged by executing an unregistered money receipt. Thereafter as per the agreement made earlier vide Ext.A he may sales of their shares in favour of defendant No.5 making her absolute owner of the suit property. Out of the aforesaid contention raised by the defendants the plaintiff had fairly conceded the sale executed by their father in favour of defendant No.5 made vide RSD No.1364 dated 21.06.2003 but made objection from the other sale deeds and now the main dispute is regarding the alleged sale deeds executed vide RSD No.1249,1250 and 1251. As discussed earlier in the preceding issues both the defendants claims partition it was not held to be a partition. So there was no partition by metes and bounds and the defendant Nos 1 to 3 are not authorized to sale the joint family property without the consent of the plaintiff who is also a co-sharer. Now the question arises in the alleged sale took place without the consent of the plaintiff it would to be its effect. It is a settled position of law now is that if transfer was effected by one of his co-sharer with others consent still then the transfer remains valid but upto the existence of share of the transferors. Here although the defendant Nos 1 to 3 had transferred properties vide registered deed bearing No.1249,1250 and 1251 to defendant Nos 4 to 6 and the same are valid up to the extent of their share that means shares of defendant Nos 1,2 and 3 and not beyond that. The plaintiff has also bound by said extent. Properties which were sold beyond their shares vide these registered the plaintiff is not bound by that.

Such being the position of law the plaintiff is to get his share of the property both from the homestead land (excluding the property sold by his father to defendant No.5 vide RSD No.1364 dated 21.06.2003 from the Khata No. 398, Plot No.361 Ac.0.008 decimal out of Ac.0.31 decimal and from plot No.401 Ac.0.007 decimals out of Ac.0.027 decimals) and other agricultural lands from the joint family property not with standing the fact that the defendants Nos. 1 to 3 had executed the alleged sale deeds. The plea of the defendants

regarding the acceptance of money by the plaintiff and relinquishing his title from the homestead land vide Ext.C is also not acceptable as it was already been held that Ext.A is not admissible. so far as Ext.C is concerned that was also required to have been registered as per section 17(1)© of the Registration Act.. In absence of the same it is also not admissible. Considering the aforesaid fact I am of the opinion that the plaintiff and defendant Nos 1,2 and 3 are entitled to get $\frac{1}{4}$ th share of property under Khata No.398 and 607,399 and 429 excluding the property sold by their father from Khata No.398, Plot No.361 Ac.0.008 decimal out of Ac.0.31 decimal and from plot No.401 Ac.0.007 decimals out of Ac.0.027 decimals. So far as Khata No.430 is concerned plaintiff and defendant No.1 & 2 are entitled to $\frac{1}{8}$ th share each while defendant No.3 has $\frac{5}{8}$ th share. Considering the discussion made earlier in respect of the sale deeds executed by the defendant Nos 1,2 and 3 in respect of the suit property I am of the opinion that as those are valid up to the extent of share of defendant No.1,2 and 3 the sale transactions made in favour of defendant Nos 4,5 and 6 be adjusted from the shares of defendant Nos 1,2 and 3.

Issue No. 1,2 & 3

08. So far as the issue No1 & 2 & 3 are concerned these issues are involved with the question of maintainability of the suit both by fact and law. But the defendants did not press these issues and as such the same need no further discussion. Being a suit of partition and declaration, the plaintiff has duly proved that the suit is maintainable in all respect. So far as the relief is concerned, the above discussion leads to the conclusion that the suit property is the ancestral property of the parties and the same is also partible. The partition are to be effected between the parties. That the plaintiff and defendant Nos 1,2 & 3 are entitled to get $\frac{1}{4}$ th share of property under Khata No.398 and 607,399 and 429 excluding the property sold by their father from Khata No.398 Plot No.361 Ac.0.008 decimal out of Ac.0.31

decimal and from plot No.401 Ac.0.007 decimals out of Ac.0.027 decimals and 1/8th share from Khata No.430. Hence it is ordered.

O R D E R.

The suit of the plaintiffs be and the same is preliminarily decreed in part on contest against the defendants but in the circumstances without any cost.

The plaintiff and defendant Nos. 1,2 &3 are directed to effect partition over the suit properties recorded under Khata No.398 and 607,399 and 429 excluding the property sold by their father from Khata No.398, Plot No.361 Ac.0.008 decimal out of Ac.0.31 decimal and from plot No.401 Ac.0.007 decimals out of Ac.0.027 decimals each having 1/4th share. .So far as Khata No.430 is concerned plaintiff and defendant Nos 1 & 2 are entitled to the 1/8 th share each while defendant No.3 is to get 5/8th share.

The plaintiff and defendants are hereby directed to effect partition among themselves amicably as per the observation of this court as above within three months hence. Otherwise the parties are at liberty to execute the partition through the process of the court.

More over the sale transaction made by defendant Nos 1,2 and 3 in respect of the suit property in favour of defendant Nos 4,5 and 6 be adjusted from the share of defendant Nos. 1,2 and 3. The sale transaction made in favour of defendant Nos 4,5 and 6 by the defendant Nos 1,2 and 3 exceeding their shares is not binding on the plaintiff.

Advocate's fee is at the contested scale.

Senior Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 30th day of April, 2014.

Senior Civil Judge, Banpur.

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Pravakar Dash

List of witnesses examined on behalf of Defendants. :-

D.W.1 Brundabana Rana

D.W.2 Ratnakar Dash.

D.W.3 Damodar Dash.

D.W.4 Smt. Mirarani Mishra

List of documents proved on behalf of the Plaintiff :-

Ext. 1,2,3,4 & 5 Certified copy of ROR of Khata No.398,399,607,429 and 430
of Mouza Brahman Khsodihi.

Ext.6 to 6/e Rent receipt.

Ext.7,8 & 9 Certified copy of R.S.D No.1249,1250,1251 dated 7.5.2010 executed
by Bhagirathi Das.

List of witnesses examined on behalf of Defendants :-

Ext.A Chuktinama dated 18.06.2013 between Plaintiff and defendant Nos.1,2 & 3.

Ext.A/1 Signature of D.W.2 on Ext.A.

Ext.A/2 Signature of Bhagirath Das on Ext.A.

Ext. A/3 Signature of Damodar Dash on Ext.A.

Ext. A/4 Signature of plaintiff Pravakar Dash on Ext.A.

Ext. B Regd. Sale deed No.1364 dated 21.06.2013.

Ext.B/1 Signature of D.W.2 on Ext.B.

Ext. B/2 Signature of plaintiff Pravakar Dash on Ext.B.

Ext.B/3 Signature of father of D.W.2 on Ext.B.

Ext. B/4 Signature of Mirarani Mishra on Ext.B.

Ext.C Agreement executed by plaintiff.

Ext.D Regd. Sale deed No.1251 dated 07.05.2010.

Ext. D/1 Signature of D.W.2 on Ext.D.

Ext. D/2	Signature of Bhagirathi Dash on Ext.B
Ext. D/3	Signature of Damodar Dash on Ext. B.
Ext.D/4	Signature of Kamala Mahapatra on Ext.D
Ext. D/5	Signature of witness Biswajeet Das on Ext.D.
Ext. D/6	Signature of witness Kailash Ch. Samantaray on Ext.D.
Ext. D/7	Signature of scribe Sarada Prasanna Pradhan on Ext.D.
Ext. E	Regd. Sale deed No.1249 dated 07.05.2010.
Ext.E/1	Signature of scribe Satyanarayana Jena on Ext.E
Ext. E/2	Signature of D.W.2 on Ext.E.
Ext.E/3	Signature of Bhagirathi Das on Ext.E.
Ext. E/4	Signature of Damodar Das on Ext. E.
Ext. E/5	Signature of Manorama Das on Ext.E
Ext. E/6	Signature of Biswajeet Das on Ext.E.
Ext. E/7	Signature of Kailash Ch. Das on Ext.E.
Ext.F	Regd. Sale Deed No. 1250, dt- 07.05.2010.
Ext.F/1	Signature of DW-3 on Ext.F.
Ext.F/2	Signature of Bhagirathi Das on Ext.F.
Ext.F/3	Signature of Ratnakar Das on Ext.F
Ext.F/4	Signature of Mirarani Mishra on Ext.F
Ext.F/5	Signature of Biswajeet Das on Ext.F
Ext.F/6	Signature of Kailash Ch. Samantaray on Ext.F
Ext.F/7	Signature of scribe Sarada Prasanna Pradhan on Ext.F
Ext.F/8	Signature of DW-4 on Ext.F
Ext.G	Sale Deed vide document No. 1101001886, dt-23.08.2010
Ext.G/1	Signature of DW-4 on Ext.G
Ext.G/2	Signature of Manorama Das on Ext.G
Ext.G/3	Signature of Bhagirathi Das on Ext.4
Ext.G/4	Signature of Nruisngha Baral on Ext.G

Ext.G/5 Signature of scribe on Ext.G

Ext.H, H/1 & H/2 Rent receipts.

Senior Civil Judge, Banpur