

I.A. No. 56/2014

(Arising out of C.S. No. 78/2014)

1. Sudar @ Sudarsan Bhujabal, aged about 65 yrs.
2. Sahadeb Bhujabal, aged about 60 yrs.
3. Jagannath Bhujabal, aged about 50 yrs.
4. Raghu Bhujabal, aged about 48 yrs.
5. Kabir Bhujabal, aged about 40 yrs.
6. Aparti Bhujabal, aged about 35 yrs.

All are sons of Late Daitari Bhujabal.

7. Gobardhan Bhujabal, aged about 62 yrs.
8. Golakha Bhujabal, aged about 60 yrs.
9. Akrura Bhujabal, aged about 45 yrs.
10. Gokula Bhujabal, aged about 43 yrs.
11. Rabi Bhujabal, aged about 40 yrs.

All are sons of Bhikari Bhujabal.

All are of Vill.- Brahmapada Patana Samil Haripur, P.O.- Haripur,
Via- Singipur, P.S.- Nirakarpur, Dist- Khordha.

..... ***Petitioners***

Verses

1. State of Odisha represented through the Collector, Khordha
At/P.O./P.S./Dist- Khordha.
2. Tahasildar, Tangi, At/P.O./P.S.- Tangi, Dist- Khordha.
3. Revenue Inspector, Bhusandapur, At/P.O.- Bhusandapur, P.S.- Tangi,
Dist- Khordha.

.... **Opposite Parties.**

Counsel for the petitioner Sri R. K. Mohanty, Advocate
and Associates, Khordha.

Counsel for the Opp. parties Govt. Pleader, Khurdha.

Date of argument - 19.08.2014
Date of order - 27.08.2014

PETITION U/O39 R1&2,CPC.

27.08.2014

The present order arises out of an application filed by the petitioners U/o- 39 R- 1 & 2 CPC with a prayer to pass an ad-interim temporary injunction against the Opp. Parties, restraining them from evicting the plaintiffs/ petitioners from the B Schedule land in any manner during the pendency of this suit.

The opp-parties have also served their joint counter to the above application of the petitioners.

The petitioners case is that the suit land as appended in the plaint to be Schedule A & B property was originally recorded in the name of Krupasindhu Bhujabal in the Sabik settlement ROR of year 1929-30 under khata No. 16 total measuring Ac. 0.735 decimals. The said Krupasindhu Bhujabal who is the father of Gaji Bhujabal subsequently executed a gift deed in favour of his son Gaji Bhujabal on 13.08.1925 vide registered deed No. 2220 and delivered possession in favour of Gaji Bhujabal and accordingly Gaji Bhujabal became the absolute recorded tenant in possession of the entire suit land till his death. But in the year 1962 the said land was reduced in to 610 decimals in place of 735 decimals. The rest 125 decimals, which has been deducted from the sabik ROR has been amalgamated with government plot bearing No. 135 in government khata No. 86 of suit Mouza, which is the schedule B property. The petitioners have to say that even though the property

was recorded in the name of the state, they have been in possession of the same since the time of their ancestors continuously and peacefully for more than 30 years and as such they acquired their right over the scheduled B land by virtue of adverse possession. It is again contended by the petitioners that on 15.03.2014 two encroachment notices bearing No. 241 & 242 of 2013-14 respectively have been received by the plaintiffs/ petitioners with a direction not to raise any construction over the disputed B land. Thereafter, the notice for eviction dt. 16.04.2014 was being received by the petitioners. Therefore, they approached the court in the original Civil suit along with the present interim application in order to restrain the Opp. Parties from exercising their illegal act over the suit land or from evicting the petitioners from the disputed land. The petitioners in support of their claim filed the Sabik ROR under khata No. 16 as well as the *Munsarif mistake* list and the Hal ROR bearing No. 12 recorded in the name of Daitari Bhujabal and Bhikari Bhujabal, S/o- Rabi Bhujabal. Similarly, the notice received by the petitioners in five sheets have also been filed in this case for consideration of the same in the light of above claim of the petitioners.

The Opp. Parties also submitted their written objection/ rejoinder. Their specific case is that the suit is not maintainable as per the provision U/s- 16 of OPLE act as the suit as well as the present interim application is barred by the above provision of law. The Opp. Parties specific case is that the petitioners came to the court with misconceived facts along with false story. The specific case of the Opp. Parties is that the Schedule B

property at no point of time was the property of the petitioners or their ancestors. The same originally belongs to government/ R & D.M. Department and the said land (scheduled B land) is an *Anabadi Kissam* land. The plot No. 41, 135 & 45 under khata No. 86 of Mouza '*Brahmapada Patana*' stands recorded in the name of State of Orissa having '*kisama pathara tangi*'. The villagers of Brahmapada Patana have alleged that Sudar @ Sudarsan Bhujabal and others are constructing dwelling house over the above plots by encroaching the government land by obstructing the movement of the general public and accordingly one inquiry was made by the R.I., Bhusandapur. He has reported the matter and for which the encroachment case was instituted against the petitioners vide encroachment case No. 241 & 242 of 2013-14. After observation of due formalities the Opp. Party No. 2 passed eviction order in the aforesaid two encroachment cases on 16.04.2014 and the Opp. Parties have challenged the said order of Opp. Party No. 2 by preferring one encroachment appeal before the sub-Collector, Khordha which is pending before the aforesaid court for disposal. To avoid the order of eviction, the petitioners have filed the present misc. case as well as the original suit against those Opp. Parties with a malafied intention to grab the valuable government land. Therefore, the petitioners case is liable to be rejected.

A civil court before granting of injunction desires to look into the case in order to ensure whether three basic ingredients are existing in favour of the petitioners or not. Coming to the first question pertaining to the prima-facie case, regards being had to the fact and circumstances of the case it

is well ascertained that the schedule B, which is the subject matter of the present application is claimed by the petitioner to be their own land and in alternative they has taken a plea of adverse possession. Lets come to the first question regarding the ownership or possession of the petitioners over the suit land. It is true that as per the Sabik ROR the land under khata No. 16 total measuring Ac. 0.735 decimals has been recorded in the name of Krupasindhu Bhujabala. The petitioners have referred that in the Hal khata the said land was reduced into 610 decimals. To that effect the certified copy of the Hal ROR recorded under khata No. 12 has been field, which reveals that plot No. 42 measuring Ac. 0.260 decimals and plot No. 134 measuring Ac. 0.228 decimals, in total Ac. 0.488 decimals of land has been recorded as per the Hal ROR. There is an endorsement that Ac. 0.122 decimals of land has been recorded in khata No. 51/09 by virtue of a mutation case No. 352/2004. Therefore, it is true that the land recorded in the Hal khata No. 16 total measuring Ac. 735 decimals has been reduced into 610 decimals in the Hal ROR. But, the petitioners have not assigned the exact reason of such reduction, rather the documents available in the record such as the Munsarim Mistake list appears that during KHANAPURI operation it was ascertain that the schedule B land has been wrongly included in the Sabik khata No. 12 and as such the total land measuring Ac. 0.125 decimals has been recorded in the government Khata No. 86. Now, it is clear that Ac. 0.125 decimals of land has been deducted from the Sabik khata No. 16 during 1961-62 settlement operation. But, it was very much within the knowledge of the petitioners as they have specifically averred

that they objected before the Settlement authority during KHANAPURI operation and they were directed by the concerned ASO to deposit amin fees in spot inquiry and report on 16.03.1956, but due to non-payment of amin fees the area so reduced has been amalgamated in ANABADI plot in stead of recording the same in in ROR of the petitioners. On the other hand the Opp. Parties have their own stand. Thy have specifically stated that the said property is the government property and the petitioners at no point of time are in possession of the said land. It is again contended by the Opp. Party that the petitioners have not filed the Hal Sabik information sheet to ascertain the exact fact whether a portion of land has been deducted from the Sabik plot or not. This court after going through the entire fact and circumstances of the case as well as the documents relied upon came to the conclusion that such aspect of the case can only be decided in the suit, but since the petitioners or their ancestor have not challenged the reduction of the land from their earlier property, if any, they cannot claim that the same has been deducted illegally as the act of the Opp. Parties have not been challenged by any forum by adopting the due recourse of law. In such circumstances, if the petitioners is desired to preserve and protect the schedule B property, they have to establish their possession over the same, but to that effect not a scarp of paper has not been submitted. While the petitioners have taken an alternative plea of adverse possession in the original suit they have expressly admitted the title of the Opp. Parties over the disputed property/ Schedule B property. In such circumstances they have admitted that the Opp. Parties is the rightful owner of

the suit property and so far as the adverse possession is concerned, the same involve with a question of law and can be decided in the original suit. In case their claim is found to be genuine and proper, they shall be entitled for the relief and can recover the suit land from the government, but at this stage it is the opinion of this court that except a bald statement nothing has been provided to the court to come to the conclusion that the petitioners are in exclusive, continuous and peaceful possession over the suit land for statutory period of 30 years and this court has also no opportunity to presume that the petitioners are in possession over the suit land. On account of the above discussion it is the further opinion of this court that the petitioners have not come with a bonafied dispute and particularly at this stage of the case they have not truly assigned that there is serious question to be tried in the suit and that on the facts before the court there is probability of them being entitled to the relief asked by them.

So far as the balance of convenience is concerned, the suit land is owned by the government as per the record from the year 1961-62 without any challenge from the petitioners. Nothing has been assigned by the petitioners to show that either they have been paying land revenue or they have residing over it. Being a Government land the same is not likely to be alienated to other. The notice issued to them further reveals that the notice has been issued for eviction of the half constructed house over the suit property. Admittedly, they have challenged the same before the Sub-Collector, Khordha as advanced by the Opp. Parties and the same is pendency and in same time they have approached the court. Since neither the right, title, interest or

possession over the suit land of the petitioners have been sufficiently advanced in this case, it is not possible on the part of the court to even presume that the refusal of injunction will cause more inconvenience to the petitioners rather than the Opp. Parties. On the other hand the Opp. Parties have taken a reasonable plea by saying that the act of the petitioners by encroaching the government land are causing inconvenience to the villagers, who approached the Opp. Parties to take necessary steps for eviction of the encroachment land. The balance of convenience is not tilt in favour of the petitioners. It is true that the petitioners have constructed a half-made building over the suit property and in case they are evicted the same will cause material loss to them. But on the above facts and circumstances it is well asserted by this court that the act of the petitioners is illegal and even after knowing that they have lost their title over the said disputed land since 1962. Such act cannot be sanctioned by this court for a temporary period in order to permit the petitioners to complete the half-made house over it. The petitioners, who have already approach the revenue authority are to wait for the order of the Sub-collector, Khordha in their encroachment appeal No. 241 & 242 respectively. The petition as above by the petitioners being devoid of any merit stands rejected. Hence it is order.

ORDER

The application of the petitioner under order 39 rule 1 & 2 CPC being devoid of any merit stands rejected, but in the circumstances without any cost.

Senior Civil Judge, Khordha.

Transcribed to my dictation,corrected and signed by me, and pronounced in the open court on this the 27th day of August, 2014.

Senior Civil Judge, Khordha.

List of Witnesses examined on behalf of the petitioner:-

None

List of Witnesses examined of behalf of the OP.

None

List of documents proved by the petitioner:-

Nil

List of document proved by the OP:-

Nil

Senior Civil Judge, Khordha.