

**HEADING OF A DECISION IN A CIVIL SUIT
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

*Sri Abhilash Senapati, LL.B.,
Civil Judge (Jr. Divn.), Khurda.*

Dated the 24th day of September, 2014

T.S. 09/1995.

Alekha Sahoo, aged about 50 yrs, S/o- Late Sankar Sahoo
of Vill./P.O.- Chhatrapada, P.S.- Begunia, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Manu Paikaray, aged about 74 yrs, S/o- Late Lokanath Paikaray
of Vill./P.O.- Chhatrapada, P.S.- Begunia, Dist- Khordha, since
expired, aged and substituted by :-

1a) Krushna Paikaray, aged about 55 yrs, S/o- Late Manu paikaray
of

Vill./P.O.- Chhatrapada, P.S.- Begunia, Dist- Khordha.

1b) Pramila Pradhan, aged about 53 yrs, D/o- Late Manu Paikaray,
at present W/o- Ranka Pradhan of Vill.- Chhiana, P.O.-
Garhmanatir, P.S.- Begunia, Dist- Khordha.

1c) Hari Paikaray, aged about 52 yrs, S/o- Late Manu Paikaray.

1d) Arjuna Paikaray, aged about 48 yrs, S/o- Late Manu Paikaray.

1e) Panchanan Paikaray, aged about 46 yrs, S/o- Late Manu
Paikaray, All Sl. Nos. 1 (c) to 1 (e) of Vill./P.O.- Chhatrapada,
P.S.- Begunia, Dist- Khordha.

1f) Urmila Badajena, aged about 44 yrs, D/o- Late Manu Paikaray,
At present W/o- Hari Badajena, of Vill./P.O.- Haja, P.S.- Jankia,
Dist- Khordha.

2. Smt. Hari Bewa, aged about 66 yrs, W/o- Late Bhagabat Sahoo,
expired and substituted by :-

2a) Hullas Bewa, aged about 65 yrs, D/o- Late Smt. Hadi Bewa
and Late Bhagabat Sahu, at present W/o- Late Hari Sahoo, C/o-
Hari Hotel, At- Akraphatak, P.O.- Burtala, Via-
Matiaburza, Kolkata – 18.

3. Dolagobinda Sahu, aged about yrs, S/o- Late Bhagaban
Sahu, since expired and substituted by :-

3a) Rama Chandra Sahoo, aged about 55 yrs.

3b) Laxman Sahoo, aged about 50 yrs.

3c) Satrugna Sahoo, aged about 48 yrs.

All are sons of Late Dolagobinda Sahu, of Vill./P.O.-
Chhatrapada, P.S.- Begunia, Dist- Khordha.

4. Bula Sahoo, aged about 36 yrs, S/o- Late Bhagaban Sahoo of
Vill./P.O.- Chhatrapada, P.S.- Begunia, Dist- Khordha.

..... Defendants.

Counsel for Plaintiffs ... Sri N. N. Mishra,
Advocate & Associates.

Counsel for defendant ... Ex-parte.

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Date of Argument – 09.09.2014

Date of Judgment – 24.09.2014
.....

JUDGEMENT

The plaintiff has filed this suit for prayer of partition, declaration along with recovery of possession and permanent as well as mandatory injunction against the defendants.

02. The plaintiff's case in short is that he has filed this suit in his personal capacity as manager and KARTA of his joint Hindu MITAKHAR family. The suit plot No. 75 corresponds to Sabik plot No. 26 & 27, which belonged to one Natabara Sahoo. Bhagabat, Arta and Sankar , who are sons of Late narottam. Natabara expired leaving behind his son, who also died issue less. Arta also expired leaving behind his wife Dhobi and daughter Hadi. Dhobi expired and also her daughter Hadi, who is the wife of Bhagaban Sahoo also died leaving her son and daughter impleaded as defendant Nos. 2 (a) and defendant No. 4. Bhagabat Sahoo expired leaving behind his only son Dolagobinda. The defendant No. 3, i.e. Dolagobinda died leaving behind defendant Nos. 3 (a) to 3 (c). The defendant No. 1 being the transferee is made as a party and he being dead during pendency of this suit as his successor impleaded as defendant Nos. 1 (a) to 1 (f). the above recorded tenants had been enjoying all the properties jointly. After expiry of Natabara and Arta, the widow and daughter of Late Arta namely Dhobi and Hadi, Kumara Sahoo, S/o- Late Natabara Sahoo, Bhagabat Sahoo and Sankar Sahoo divided all their joint family property by metes and bounds on 21.03.1940. In the above said partition Ac. 0.070 decimals from east out of Ac. 0.230 decimals in Sabik suit plot No. 26 fail to the share of Kumara Sahoo. Ac. 0.020

decimals from east middle. Sabik suit plot No. 27 fall to the share of Bhagabat Saho, i.e. Ac. 0.080 decimals from west middle out of Ac. 0.230 decimals in Sabik plot No. 27 & Ac. 0.007 ½ decimals from middle out of Ac. 0.120 decimals. Sabik plot No. 27 falls to the share of Dhobi Bewa and defendant No. 2. Similarly, Ac. 0.042 ½ decimals from west out of Ac. 0.230 decimals in Sabik suit plot No. 26 & Ac. 0.045 decimals from west out of Ac. 0.120 decimals in Sabik plot No. 27 fell to the share of Sankar Sahoo. Thus each of the four sharers got Ac. 0.087 ½ decimals, which corresponds to Hal plot No. 75. After division of the properties by metes and bounds and separate possessions said Kumar sold his share of Ac. 0.087 ½ decimals to Bhagabat Sahoo and delivered possession to him. Thus Bhagabat Sahoo became owner of Ac. 0.175 decimals from east out of the suit plots. After his expiry his son Dolagobinda sold the above Ac. 0.175 decimals to one Jagannath Mohapatra through registered sale deed No. 1039 dt. 19.03.1957 and delivered possession thereof to him. Thereafter, dispute arose between the said Jagannath Mohapatra for which there was a civil litigation in respect of some portion of the suit land. While continuing in such possession said Jagannath sold and transferred the entire Ac. 0.175 decimals to the plaintiff and another Bhagabat Sahoo, who is the husband of Hadi Dei, through registered sale deed No. 1477 dt. 30.09.1977. After such purchase the plaintiff became the owner of ½ of the suit plot No. 75 and the defendant became owner of the 1/4th of suit plot No. 75. Bhagaban Sahoo got purchaser of the plaintiff became owner of 1/4th interest. The suit plot No. 74 is on joint property of the parties. In the current settlement Sabik plot Nos. 26 & 27 corresponds to Hal plot No. 75 under Hal

Khata No. 90. Although in the remark column the suit plot has been shown to be in possession of Dhobi Bewa, but in fact the suit plot has been shown in possession of the plaintiff. The defendant No. 2 was never in exclusive ownership of the suit land. The defendant No. 2 had no right to transfer the entire suit plot of the defendant. The plaintiff was kept in darkness about such a sale deed. He came to know about it on 17.07.1995, i.e. when the defendant No. 1 attempted to raise some construction over the suit plot. The defendant No. 2 had 1/4th interest only in the suit properties. The sale deed is not supported by any consideration and is nominal for the sake of argument. The possession note in question in favour of Dhobi Bewa in the remark column of the ROR of suit plot 1964 is wrong. The defendant No. 2 had no authority to sale her husbands interest and the half interest of plaintiff in the suit property. The sale deed executed by defendant No. 2 in favour of defendant No 1 is sham, illegal, void and not binding to the interest of the plaintiff in the disputed property. The plaintiff demanded for partition of the suit property to the defendants, but as the defendants did not pay any heed to it hence the plaintiff has filed this suit. The cause of action arose for this suit on 17.01.1995, when the plaintiff demanded for partition and the defendants paid no heed over it. The present suit being a suit for partition the plaintiff has also prayed for declaring the registered sale deed No. 1044 dt. 23.04.1985 executed by defendant No. 2 in favour of defendant No. 1 is void, further more declaring the notice of possession in respect of suit Sabik plot No. 75 in the ROR is wrong, recovery of possession of any part if found under forcible possession of defendant No. 1, permanent injunction against the defendants and mandatorily injuncting the successors of defendant

No. 1 and directing them to remove any construction if any made by them during pendency of the suit.

03. The defendants did not appear and hence they were set ex-parte.

04. The plaintiff in order to prove his case has examined only one witness and has exhibited nine documents.

05. P.W. 1, who is the plaintiff in the suit has corroborated the entire plaint. Coming into the documents filed by the plaintiff it is seen that Ext. 1 is the ROR of khata No. 108 containing plot Nos. 26 & 27 of about Ac. 0.035 decimals as per the 1931 settlement. Ext. 2 is khata No. 90 in Sabik settlement containing suit plot Nos. 75 & 75. Ext. 3 is the suit land in Hal, which shows that Khata NO. 276 contains Hal plot Nos. 175 & 176 of about Ac. 0.350 decimals. Ext. 4 is the Hal Sabik relation, which shows that the suit land as mentioned in Ext. 2 corresponds to the suit land as mentioned in Ext. 3. Ext. 6 clearly shows that Dolagobinda sahoo through registered document No. 104 had sold to Jagannath Mohapatra the suit land, which was thereafter sold by Jagannath Mohapatra to the plaintiff as per Ext. 7. Ext. 8 shows that Hadi Dei had sold her share to one Manu Paikaray. Ext. 9 shows about a partition deed, which shows that earlier the parties had made the partition of the suit land. All the above documents with corroborating oral evidence clearly shows that the plaintiff is entitled to a share over the suit land and that the same needs to be partitioned. It is also clear that the said Hadi Bewa had 1/4th share over the suit

land, but she had sold more than the same. Further more it is also found that as the defendants have not stated anything with regards to registered sale deed No. 1044 dt. 23.04.1985 and the vendor thereof not having the perfect title, it can be said that the said sale deed is not a valid one. The plaintiff has also proved that he is got $\frac{1}{2}$ share over the suit land, which has wrongly been not recorded in his name. Hence order.

ORDER.

The suit be and the same is preliminarily decreed on ex-parte against the defendants, but in the circumstances without any cost. The plaintiff is entitled to $\frac{1}{2}$ share of the suit land. The parties are directed to carve out the share as per the above direction, failing of which the plaintiff may apply to court for execution of this court's order through proper procedure. Further more it is held that the registered sale deed No. 1044 dt. 23.03.1985 is a void document. The defendants are permanently enjoined from over the suit land and if they have possessed or have entered into possession into any share of the plaintiff they may vacate themselves within a period of three months or else the plaintiff can take the recourse through execution of this court's order.

Advocate's fee at uncontested scale.

(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 24th day of September, 2014.

(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.

List of witnesses examined on behalf of Plaintiff :-

P.W.1 Alekha Sahoo.

List of witnesses examined on behalf of Defendants :-

None

List of documents proved on behalf of the Plaintiff :-

Ext.1 Certified copy of ROR of Pre-sabik settlement of khata No. 108 of mouza Chhatrapada.

Ext. 2 Sabik ROR of khata No. 90of mouza Chhatrapada.

Ext. 3 Certified copy of ROR under khata No. 276 of mouza Chhatrapada.

Ext. 4 Hal-Sabik information.

Ext. 5 to 5/4 Rent receipts.

Ext. 6 Certified copy of RSD bearing No. 1039 dt. 19.03.1957.

Ext. 7 RSD No. 1477 dt. 19.09.1977.

Ext. 8 Certified copy of RSD No. 1044 dt. 23.04.1985.

Ext. 9 Unregistered partition deed dt. 21.03.1940.

Ext. 9/1 Signature of Sankar Sahu on Ext. 9.

List of documents proved on behalf of the Defendant :-

None

**(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.**