

HEADINGS OF DECISION IN CIVIL SUITS
IN THE COURT OF FIRST ADDL. SENIOR CIVIL JUDGE, BHUBANESWAR

*Present :- Pranab Kumar Routray, LL.M.
1st. Addl. Senior Civil Judge,
Bhubaneswar.*

T.S.No.418/682 of 2004/1998

1. Swarnalata Nayak, aged about 50 years,
W/o. Late Hadibandhu Nayak.
2. Ellora Nayak, aged about 25 years,
D/o. Late Hadibandhu Nayak.
3. Avijit Nayak, aged about 22 years,
S/o.Late Hadibandhu Nayak.
4. Ajanta Nayak, aged about 20 years,
D/o. Late Hadibandhu Nayak.

All are of Village Bali Sahi, P.O.Kundheihat,
P.S.Kakatpur, District-Puri.

... **Plaintiffs.**

Versus

1. Smt. Arnapurna Bewa (Dead)
deleted as per Order dt.10.3.2005.
2. Surendranath Nayak, aged about 62 years,
S/o.Late Jagannath Nayak, Vill-Balisahi,
P.O.Kundheihat, P.S.Kakatpur, Dist-Puri.
3. Nirupama Nayak, aged about 60 years, (Deleted)
W/o.Late Anadi Charan Nayak.
4. Sudhansu Kumar Nayak, aged about 40 years,
5. Himansu Kumar Nayak, aged about 35 years,
6. Subhransu Kumar Nayak, aged about 33 years,

Sl. Nos.4 to 6 are sons of Late Anadi Charan Nayak.

Sl.Nos.3 to 6 are of Vill-Balisahi, P.O.Kundheihat, P.S.Kakatpur,
District-Puri, At present-Gopal Krishna Lane, P.O.Puri Town,
P.S.Kumbharapara, Dist-Puri.

7. Sakhi Nayak, aged about 60 years,
W/o. Bhagaban Nayak, Vill/P.O.Manijanga,
P.S.Nimapara, District-Puri, At present-
Vill/P.S.Kumbharapara, P.O.Puri Town, Dist-Puri.
8. Laxmipriya Mohanty, aged about 50 years,
W/o.Hadibandhu Mohanty, Vill-Basanta Pedi,
P.O.Balakati, P.S.Balipatna, Dist-Khurda.
9. Haramani Nayak, aged about 75 years,
W/o.Late Dasarathi Nayak.
10. Sandhyarani Nayak, aged about 55 years,
11. Sunanda Nayak, aged about 50 years,
(Deleted vide order dtd.10-08-12)

12. Kalyani Nayak, aged about 48 years,
13. Sangita Nayak, aged about 42 years,
14. Sambita Nayak, aged about 34 years,

Sl.Nos.10 to 14 are of Vill-Balisahi,
P.O.Kundheihat, P.S.Kakatpur, Dist-Puri,
At present-Upper Nuasahi, P.O.Puri Town,
P.S.Kumbharapara, District-Puri.

15. Bauribandhu Nayak, aged about 70 years,
S/o.Late Jadumani Nayak.
16. Pravati Nayak, aged about 60 years,
W/o. Bauribandhu Nayak.

Sl.Nos.15 & 16 are of Vill-Balisahi, P.O.Kundheihat,
P.S.Kakatpur, Dist-Puri, At present- Qr.No.23/1-E-Type,
Unit-9 (Flat), Bhubaneswar-751007, P.S.Saheednagar,
Bhubaneswar, District-Khurda.

.... **Defendants**

COUNSEL APPEARED

For Plaintiffs : Sri P.K. Mohapatra & associates

For Defendant
 nos.1 & 3 : Deleted
 no.2 : Sri A. Mohanty & associates
 nos.4 to 8 : Set exparte
 nos.9 to 14 : Sri Ajaya Kumar Mohanty & associates
 no.15 : Sri Anil Kumar Ray & associates
 no.16 : Sri B. Mohanty & associates

DATE OF ARGUMENT : **18-09-2014**

DATE OF JUDGMENT : **30-09-2014**

JUDGMENT

This is a suit for partition wherein the plaintiff have jointly claim 1/4th share from the properties as described in the Schedule A to D of the plaint.

2. The case of the plaintiff in brief is that the genealogy appended to the plaint shows the inter-se relationship of the parties. Govinda and Arta are the two sons of the common ancestors. Govinda died leaving behind him one son namely Jadumani and one daughter namely Dhani who died sometimes in 1970 without issues. Jadumani died leaving behind two sons namely Hadibandhu and Bauribandhu. The plaintiffs 1 to 4 are the widow, son and daughters of the said Hadibandhu whereas Bauribandhu is defendant no.15 and his wife Pravati is defendant no.16. Similarly, Arta, the other son of the common ancestor died leaving behind two sons namely Gouranga & Nityananda of whom Nityananda was separated in the year 1917 as per amicable arrangement

in the joint family. Therefore, his legal heirs & successors have not been made parties in the suit. On the other hand, Gouranga left behind him two sons namely Jagannath @ Jagabandhu and Dasarathi and defendant no.1 is the widow of Jagabandhu who died during pendency of the suit and defendant no.2 to 8 are his other legal heirs & successors. Defendant nos.9 to 14 are the widow and daughters of Dasarathi.

2(a). So far as the suit properties are concerned, the branch of Govinda and that of Arta have got 8 annas each. Jagannath was looking after the agricultural and homestead properties of the joint family. Bauribandhu was employed in the Collectorate Puri whereafter he joined as a Stenographer in Orissa Secretariate. Dasarathi was an Advocate's Clerk at Puri. The joint family was being managed from the income from the landed property as well as that of the individual members and after meeting the joint family requirement there was sufficient nucleus with which some landed properties were purchased at Puri, Bhubaneswar and in their native village. Jadumani, Dasarathi and one Balaram Nayak had contributed for purchase of Schedule A property then measuring Ac.0.050 decimals but Dasarathi was working as an Advocate's Clerk purchased the same in the name of his wife i.e. defendant no.9 by R.S.D no.10271 dtd.29-12-1959 instead of Jadumani, Dasarathi and Balaram. When questioned, Dasarathi explained that the said property was purchased in the name of his wife as a matter of solace as she was not mentally fit due to successive birth of three daughters. But when Balaram insisted for transfer of half of the said property as he had contributed 50% towards the consideration, defendant no.9 transferred Ac.0.025 decimals of land to the wife of Balaram vide R.S.D. no.11490 dt.19-11-1960. Sometimes in the year

1965 the old dilapidated house over Schedule A was demolished and a new building was constructed over the same by the contribution of defendant no.15 and other members of the joint family. So, the plaintiffs have jointly got 1/4th share out of Schedule A property.

2(b). So far as Schedule 'B' property at Bhubaneswar is concerned, the same was purchased by the contribution of the members of the joint family out of which Hadibandhu had alone contributed 25% of the consideration money but defendant no.15 purchased the said property in the name of his wife i.e. defendant no.16 for which she has been made a party in this case. The plaintiffs jointly claim 1/4th share out of Schedule B property.

2(c). So far as Schedule C properties are concerned, lot no.II of the same is the ancestral homestead originally recorded in the name of Hadibandhu and defendant no.15 though the ancestors of defendant nos.1 to 14 had half interest therein. Lot nos.I & III were purchased out of joint family nucleus wherein the branch of Jadumani has got half share and that of Jagannath and Dasarathi have jointly got half share. As per an amicable arrangement among the members of the joint family of the year 1917. Jagannath and Dasarathi possessed half of the ancestral house situated over plot no.281 & 286 and after their death their legal heirs & successors continued to possess the same. Due to increase of the members, the joint family constructed residential houses over plot nos.188, 191 & 192. The plaintiffs and defendant no.15 are in possession of half of the said houses whereas defendant 1 to 14 are in possession over the remaining half. The plaintiffs jointly claim 1/4th share out of Schedule C property.

2(d). The properties described in Schedule D of the plaint

are ancestral as well as purchased land of Jadumani, Jagannath and Dasarathi. So far as the ancestral property of the said Schedule is concerned, the plaintiffs have jointly got 1/4th share. The purchased property of the Schedule D were acquired in the name of Jadumani, Dasarathi, Jagannath, Anadi and Surendra out of the joint family nucleus under four R.S.Ds dtd.13-06-1950, 14-10-1950, 06-11-1950 and 11-12-1950. The said purchased properties measuring Ac.2.12 decimals in Plot no.885 under Khata no.18 of Mouza Chhotraypur was thrown into the common hotch potch and was enjoyed as such by all members of the joint family. Thus, the plaintiffs claim 1/4th interest out of the same.

2(e). It is further stated that during the consolidation operation none of the members of the joint family took any interest to record the suit properties in the name of the members of the joint family though each branch has been in peaceful possession over the same on the basis of their entitlement as per the R.O.R published in 1912. When there is no partition in the joint family by metes and bounds, preparation of Record of Rights by the consolidation authorities in the name of some individual members of the joint family properties situated in Mouza Haridaspur and Chhotraypur is without any basis. It is alleged that after the death of Hadibandhu, plaintiff no.1 repeatedly demanded for partition of the suit properties in order to carve out the 1/4th share of her deceased husband which was finally rejected by the defendants on 30-08-1998, hence the suit.

3. Defendant nos.1 to 3 have filed a joint written statement wherein they have challenged the maintainability of the suit on the ground of territorial jurisdiction of this Court. They have

challenged the genealogy of the plaint as not a correct one and according to them there is no joint family nor joint family properties for partition. Most of the properties as described in the plaint are either purchased individually or jointly by some of the parties. Dhani, the sister of Jadumani being a recorded tenant had alienated properties by registered sale deed for her legal necessity followed by delivery of possession. They have also challenged the claim of the plaintiffs to the extent of 1/4th share out of the suit schedule properties, as there was no joint family nor any joint family properties nor any joint family nucleus to purchase properties as claimed by the plaintiff. The consolidation authorities have correctly recorded the name of individual persons in respect of properties which they are entitled to, hence, the same cannot be challenged in the Civil Court as it lacks jurisdiction. They have also disputed construction of residential houses by members of the joint family and possession over the same as per the respective shares over plot nos.188, 191 & 192. It is their specific case that due to wrong recording of the properties in the settlement operation of the year 1927 there was dispute among the co-sharers for which a meeting of the local gentlemen was convened and the properties were divided as per their actual shares by metes and bounds and allotment sheets were prepared accordingly in the year 1940 which was signed by Jadumani, Gouranga and Jagannath. In the consolidation operation the R.O.Rs. have been prepared as per shares allotted and the properties purchased by each individual separated co-sharers.

4. Defendant nos.4 to 8 have been set ex parte.
5. Defendant nos.9, 10, 12 to 14 have also filed a joint written statement and defendant no.11 has filed a separate written

statement & wherein they have challenged the maintainability of the suit and the share claimed by the plaintiffs. They have also taken the plea that the suit is barred under the provisions of the Consolidation Act as consolidation operation is already over in the suit locality. They have also taken the plea of undervaluation and the suit being barred by law of limitation. They have questioned the correctness of the genealogy given by the plaintiffs. They have taken similar stand as that of defendant nos.1 to 3 but with a counter claim to the effect that Dasarathi Nayak had purchased properties separately out of his own fund from different persons by registered sale deeds as described in detail in their written statement which have been fraudulently included in the joint Khata during the consolidation operation by Hadibandhu and defendant no.15 but as a matter of fact defendant nos.9 to 14 being the legal heirs & successors of Dasarathi are exclusively entitled to the said property measuring an area of Ac.0.79 decimals out of consolidation Khata no.115 in Mouza Haridaspur.

6. Defendant nos.15 & 16 have filed their respective separate written statements wherein defendant no.16 has claimed the Schedule B property to be her exclusive property. She having purchased the same out of her Stridhan as such neither the plaintiffs nor the other defendants have got any interest therein. But defendant no.15 has pleaded that the husband of the plaintiff no.1 has only contributed Rs.500/- for purchase of Schedule B property as such the plaintiffs are not entitled to claim 1/4th share out of the same rather may be entitled to the extent of Ac.0.030 decimals only. He has admitted the genealogy of the plaintiff as well as the plea of the plaintiffs so far as the properties described under Schedule A, C & D and the respective shares therein.

7. The plaintiffs and defendant no.15 have filed their respective written statements to the counter claim of

defendant nos.9, 10 & 12 to 14 disputing the claim advanced by those defendants.

8. With the aforesaid pleadings of the parties the following issues have been framed:

ISSUES

1. Whether the suit / counter claim is / are maintainable ?
2. Whether the plaintiffs / counter claimants have the cause of action for the suit / counter claim ?
3. Whether, the Civil Court at Bhubaneswar has territorial jurisdiction to entertain the suit for partition of the suit property ?
4. Whether, there is any cause of action for suit in respect to 'B' schedule property ?
5. Whether, the suit / Counter claim is / are barred by time
6. Whether, there is unity of title to partition the suit property (subject matter of the suit / counter claim) ?
7. What are the shares of the parties ?
8. To what relief(s) the parties are entitled ?

9. During trial of the suit, plaintiff no.1 examined herself as P.W.1 whereas defendant no.10 examined herself as D.W.1 on behalf of defendant nos.9, 10 & 12 to 14. Defendant nos.1 to 3 have not

examined any witness from their side nor have proved any document to substantiate their claim. Similar is the case so far as defendant no.15 & 16 participated in the trial of the suit but they have neither examined any witness nor proved any document from their side.

In addition to oral evidence the plaintiffs have produced & proved several documents marked as exhibits 1 to 32 respectively. On the other hand, defendant nos.9, 10 & 12 to 14 have produced & proved documents marked as Exts.A to D respectively.

With the aforesaid evidence on record the issues as framed are to be decided.

FINDINGS

Issue Nos.3 & 4

10. Both these issues relate to the territorial jurisdiction of this Court so far as the property situated at Bhubaneswar and morefully described in Schedule B of the plaint. Undoubtedly this is a suit for partition and it is desirable that all the properties claimed to joint family properties should be brought to the hotch potch for a complete and effective partition. As per the claim of the plaintiffs late Hadibandhu had contributed 25% of the consideration money from his own income for purchase of Schedule B land at Bhubaneswar but defendant no.15 purchased the same in the name of his wife defendant no.16. Defendant no.15 in his written statement has admitted that Hadibandhu had contributed Rs.500/- only for the purchase of Schedule B property as such the plaintiffs are entitled to the extent of Ac.0.030 decimals only out of the same. Ofcourse defendant no.16 has very much disputed the

claim of 1/4th interest of the plaintiffs over the said property on the ground that she acquired the same out of her Stridhan. On the other hand, though defendant nos.9, 10 & 12 to 14 and defendant no.11 in their respective written statements have denied about existence of any joint family or joint family property or any nucleus from out of any joint family property to acquire Schedule B property, but in case the Court finds that the said property is part & parcel of joint family property the parties may be given their legitimate share out of the same.

Therefore, the question remains whether Schedule B property is part & parcel of joint family property and liable for partition. In that case, the said property must have to be included in the schedule of properties.

11. Section 16 & 17 of C.P. Code is clear with regard to territorial jurisdiction of Civil Courts to entertain suits in respect of immovable properties. According to Section 16, the suit for partition of immovable property is to be instituted where the subject matter situates subject to pecuniary or other limitations prescribed by any law. As per Section 17 of the said Code when immovable property is situated within the jurisdiction of different Courts the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. Therefore, considering the rival claims of the parties over Schedule B property and this being a suit for partition of properties situated within the jurisdiction of Bhubaneswar, Puri and in Mouza Haridaspur and Chhotraypur within the limits of Nimapara Civil Courts, any one Court within the said local limits has territorial jurisdiction to entertain suit for partition. Hence, this Court has territorial jurisdiction to entertain the present suit for partition with regard to the

property situated at Bhubaneswar. So, both these issues are answered in the affirmative.

Issue no.5

12. This issue relates to the question of limitation in filing the present suit for partition and the counter claim advanced by some of the defendants. To file a suit for partition there is no period of limitation. The cause of action for filing of such a suit only arises when the claim for partition before the co-sharers has been refused. As per the plaintiffs their last claim for partition was on 30-08-1998 which was finally rejected by the defendants which compelled them to file the suit in the same year. Similarly for filing a counter claim the cause of action must have arisen prior to filing of the written statement. The counter claim relates to Khata no.115 of Mouza Haridaspur covering an area Ac.0.20 decimals (from out of lot no.III of Schedule C of the plaint) on the ground that Dasarathi Nayak had purchased the same vide R.S.D dtd.30-09-1964 from Sri Krushna Mohan Kanungo and others which was his exclusive property. Similarly the counter claim relates to an area of Ac.0.59 decimals covered under consolidation khata no.115 which the said Dasarathi Nayak had purchased from Sankar Muduli vide R.S.D dtd.13-06-1955. According to the defendants only on 10-05-2006 they came to know about such wrong recording of the aforesaid properties jointly which was actually the exclusive property of Dasarathi Nayak. The counter claim is in the form of a declaration that Ac.0.79 decimals of land out of the suit properties is the exclusive property of Dasarathi Nayak and should be excluded from partition and to record the said property in the name of defendant nos.9 to 14 being the legal heirs & successors of the said Dasarathi Nayak. Ofcourse the

merits of the aforesaid claim of the defendants is to be considered under other issues but it cannot be said that the counter claim is barred by limitation as the same has been made in the Written Statement itself which was filed subsequent to the so called cause of action of the counter claim. Therefore, it cannot be said that the suit as well as the counter claim are barred by law of limitation.

Issue nos.6 & 7

13. Considering the nature of the suit and counter claim and the reliefs prayed for thereunder these two issues are the most vital ones, hence, both are taken up together for consideration. This being a suit for partition, the plaintiffs have to establish that there is unity of title and unity of possession over the suit properties. The property described in Schedule A of the plaint relates to property situate at Puri which has been purchased by Haramani Dei, defendant no.9 under the R.S.D. Ext.19. Plaintiffs claim that the same is part of the joint family property as because it was purchased out of joint family fund as well as by contribution of the members of the joint family which is denied by defendant nos.9 to 14. According to them, it is the exclusive property of defendant no.9 and liable to be excluded from partition. Law is well settled that the party who claims any property to have been acquired out of joint family nucleus must have to establish with clear evidence that the joint family had got sufficient property forming nucleus to acquire other properties. Law is also settled that when any property acquired in the name of a co-sharer or a member of a joint family has been claimed to be part of the joint family properties, the claimant must have to establish with convincing evidence that though the property stands in the name of one member of the joint family but actually the same belongs to

the entire family. But in this case the plaintiffs have failed to lead convincing evidence to establish the requirement of law to prove that the joint family properties formed nucleus and there was contribution by the members of the joint family for acquisition of Schedule A property. The plaintiff's evidence reveals that by the time this property was purchased she was not married. She heard that her father-in-law had paid consideration. On careful perusal of her entire, evidence, it is gathered that she is unable to prove that there was nucleus and that nucleus was contributed for acquisition of Schedule A property. It is alleged by the plaintiffs that Dasarathi who was working as an Advocate's Clerk at Puri got Schedule A property purchased in the name of his wife defendant no.9 instead of purchasing the same in the name of the members of the joint family.

14. On perusal of Ext.19, it is found that the consideration money was paid by defendant no.9 from out of her savings and Stridhan. There is nothing to infer from Ext.19 that the consideration money was paid from out of the joint family nucleus and contribution of the members of the joint family. Further, defendant no.9 after acquiring A Schedule property had alienated half of it to one Sabitri Dei W/o. Balaram Nayak under a R.S.D. marked as Ext.20. So, there is no evidence to establish that Schedule A was acquired from out of joint family nucleus and by contribution of members of the joint family. Moreover, the said property has been recorded in the name of defendant no.9 during settlement operation as per Ext.1 (not final R.O.R). Ofcourse no document has been produced and proved to show the final recording of the said property in the Settlement Operation. In view of the aforesaid discussions, it is held that Schedule A property is the exclusive property

of defendant no.9.

15. So far as Schedule B property is concerned, Ext.2 discloses that the same has been acquired by defendant no.16 from one Madhu Behera on 22-03-1983 for a consideration of Rs.1800/-. The plaintiffs claim that this item of property was also acquired by contribution of the members of the joint family and Hadibandhu Nayak, their predecessor-in-interest had contributed 25% of the consideration money. Though defendant no.16 has denied the same but her husband, defendant no.15 has admitted that Hadibandhu had contributed Rs.500/- for purchase of the said property and accordingly the plaintiffs are entitled to Ac.0.030 decimals of land out of the same. In view of the aforesaid admission the plaintiffs have got 25% i.e. Ac.0.030 decimals of land from out of Schedule B property. The remaining property of Schedule B would go to defendant no.16 as there is no evidence that the other members of the joint family had contributed for acquisition of the same.

16. Now coming to the properties described under Schedule C of the plaint, so far as Lot no.I is concerned, the plaintiffs claim the same to have been purchased from the joint family nucleus and Jadumani had half share while Jagannath and Dasarathi jointly had the other half. As already held, there is no evidence of joint family nucleus to acquire Lot no.I of Schedule C. Ext.15 is the consolidation R.O.R in respect of that property which has been recorded in the name of Jagannath Naik, S/o.Gourang Naik in the gharabari kisam. Law is well settled that the consolidation authorities are competent to decide conflicting claims of right, title, interest over landed properties which cannot be questioned in Civil Court. Therefore, the said authority having

recorded Lot no.I of Schedule C in favour of Jagannath Naik, the predecessor-in-interest of defendant nos.2 to 8 after deciding title in his favour this Court cannot reopen the same. Hence, Lot no.I of Schedule C is to be excluded from partition.

17. The plaintiffs' claim Lot no.II of Schedule C are the ancestral properties wherein Jadumani had half share and Gouranga & Nityananda had the other half though the said property was originally recorded in the name of Jadumani only. Ext.3 corresponds to Khata no.111 of Mouza Haridaspur recorded in the name of the predecessors of both the branches with non consolidable Plot no.264 and consolidable plot no.957 (part of Schedule-D property). As per the recording, the properties under Khata no.111 belong to both the branches though Plot no.264 is partible and therefore liable for partition but without creating fragmentation so far as consolidable lands are concerned.

18. Khata no.114 of Mouza Haridaspur as described in Lot no.II of Schedule-C as well as in Schedule-D has been recorded exclusively in the name of Jadumani Naik, the predecessor-in-interest of the plaintiffs with consolidable Plot no.1000 and non-consolidable Plot no.263. This recording exclusively in the name of Jadumani may not be correct in view of the admission of the plaintiffs that Lot no.II of Schedule-C is ancestral property but since it has been exclusively recorded in the name of Jadumani by the consolidation authority this Court is not competent to declare the said recording as incorrect.

19. Ext.5 corresponds to Khata no.11 of Lot no.II of Schedule-C with two non-consolidable plots recorded in the name of Jadumani, Jagannath and Dasarathi which are to be partitioned as per the respective shares of the parties.

Khata no.110 of Lot no.II of Schedule-C covering two non-consolidable plots has been recorded as per Ext.14. As per the recording, Jagannath and Dasarathi have got 2/3rd interest whereas Jadumani has got 1/3rd interest.

20. Now coming to Lot no.III of Schedule-C, Ext.7 relates to Khata no.115 with non consolidable Plot nos.190, 287 and 353 (part of Schedule-D) and consolidable Plot nos.959, 961, 999 and 1063 (also part of Schedule-D) has been recorded in the name of Jadumani and Dasarathi. The plaintiffs' claim this item of property to have been acquired from out of joint family nucleus. But in absence of any convincing evidence it cannot be held to have been acquired by joint family nucleus but in view of recording of the same in the name of Jadumani and Dasarathi, the lands recorded thereunder are liable for partition as per the respective shares of the parties.

21. Now coming to the Schedule ' D ' property, it is the case of the plaintiff that those are ancestral as well as the purchased property of Dasarathi, Jagannath & Jadumani over which the branch of Gobinda and Arta each has got half share so far as ancestral property is concerned. So far as the purchased properties are concerned, those were acquired from out of joint family nucleus in the name of Jadumani, Dasarathi, Jagannath, Anadi & Surendra both sons of Jagannath under four registered sale deeds but subsequently those properties were thrown into the joint family hotch pot and were enjoyed as such. So, each branch i.e. Gobinda & Arta has got half share over the entire Schedule ' D ' property. The aforesaid claim of the plaintiffs has been denied by the contesting defendants.

22. As per the schedule of the plaint, the properties

described in Schedule D are both consolidable and non consolidable land as per the R.O.Rs. prepared by Consolidation Authorities. As already stated, the said authorities are vested with the power to decide title and record the property accordingly in the name of the persons having title over the same. The Civil Court is not competent to reopen the question of title unless & until it is claimed that the consolidation authorities without following due process of law adjudicated the matter.

23. Consolidation Khata no.7 of Mouza Haridaspur has been recorded in the name of Jadumani S/o-Gobinda and Dasarathi & Jagannath both sons of Gouranga. So, the branch of Jadumani has got half share and each of the branch of Dasarathi & Jagannath has got 1/4th share out of the entire property recorded in the said Khata. Khata no.109 of the said mouza has been recorded in the name of Jagannath and Dasarathi. So, their respective branches have got half share each over the said property. Khata no.100 of Mouza Chhotaraypur has been exclusively recorded in the name of Jadumani Nayak but the plaintiffs admit that the said property is part of joint family property and is liable for partition as per the respective shares of the parties. Therefore, the said property is to be divided between the branches of Gobinda and Arta as per their respective shares. Khata no.102 of Mouza Chhotraypur has been recorded jointly in the name of Jadumani, Jagannath and Dasarathi. As already discussed, the branch of Jadumani will get half and the branches of Jagannath and Dasarathi will get the other half. Khata no.101 of Mouza Chhotraypur has been recorded in the name of Jadumani and Dasarathi. So, the respective branches have to divide the same equally. Khata no.96 has been recorded in the name of Jagannath & Dasarathi and accordingly their respective branches will divide the

same equally. Khata no.97 of Mouza Chhotraypur has been recorded in the name of Jagannath and his two sons Anadi and Surendra. So, the recorded tenants will exclusively take the said property without being partitioned among the parties.

24. It is next to be examined as to what are the respective shares of the parties out of the disputed properties which are held to be joint family properties. The contesting defendants have relied on Ext.D and D/1. Ext.D/1 is the signature of Jadumani Nayak on the original application in form no.II for being declared as a rayat under Clause (i) of Sub-Section (i) of Section-4 of the O.L.R Act. Jadumani Nayak, Jagannath Nayak and Dasarathi Nayak are the applicants and all of them have been shown as sons of Gouranga Nayak. Ext.D is the notice to the said persons in L.R. Case no.92 of 1965-66 in which Jadumani, Jagannath and Dasarathi are shown to be the sons of Gourang Nayak. Relying on the said documents, the learned Counsel appearing for the contesting defendants submitted that Jadumani or his branch cannot claim half share over the joint family properties showing him to be the son of Gobinda but they are entitled to 1/3rd share, Jadumani being one of the three sons of Gouranga. But except those two documents all other documents as filed by the parties and admitted into evidence in this case, Jadumani has been shown as the son of Gobinda. There are several R.O.Rs. filed in this case prepared by the consolidation authorities showing Jadumani as son of Gobinda which are not challenged by the defendants so far as his sonship is concerned. Therefore, it cannot be said that Jadumani is the son of Gouranga and the son of Gobinda. Further, except the sonship of Jadumani the defendants have not shown any genealogy in respect of the parties to differ from the genealogy

given by the plaintiffs. Ofcourse the plaintiffs have not mentioned the name of the common ancestor i.e. the father of Gobinda and Arta but in view of the documentary evidence available in this case it is abundantly clear that the parties hail from a common ancestor.

25. Basing on the genealogy given in the plaint, Dhani, the daughter of Gobinda and sister of Jadumani having died in 1970 had got a share in respect of the half property of Gobinda. Her share will be 1/4th out of half share of Gobinda. It is claimed by the defendants that Dhani during her lifetime had alienated some properties in favour of outsiders. But their said pleading is evasive in nature as they have neither stated definitely nor have filed any document in support of their aforesaid claim. If, during final decree proceeding any such claimant comes forward with document, the same will be considered as per law. But after death of Dhani her share would go to her brother Jadumani and ultimately towards the shares of the plaintiff and defendant no.15. Therefore, the plaintiffs have got 1/4th share out of the entire joint family properties whereas defendant no.15 will get 1/4th out of the entire joint family properties as discussed and held in the foregoing paragraphs. Similarly, the branch of Gouranga i.e. defendant nos.2 to 8 are jointly entitled 1/4th share out of the joint family properties whereas defendant nos.9 to 14 representing the branch of Dasarathi are entitled to 1/4th share out of the entire joint family properties. So, the joint family properties are liable for partition among the parties as per the aforesaid shares. Both these issues are answered accordingly.

Issue nos.1, 2 and 8

26. The suit and the counterclaim maintainable as discussed under issue nos.6 and 7 and there is cause of action for the

suit and counterclaim. Except the reliefs claimed by the parties they are not entitled for any other relief.

Hence, ordered.

ORDER

The suit be and the same is decreed preliminarily on contest against defendant nos.2, 9, 10 & 12 to 14 and exparte against defendant nos.4 to 8 but without any cost. Similarly counter claim of the defendant nos.9, 10, 12 to 14 is decreed on contest against plaintiffs to the extent as held under issue no.7. It is hereby declared that the properties described in Schedule ' A ' of the plaint is the exclusive property of defendant no.9. So far as Schedule ' B ' property is concerned, plaintiffs have got 1/4th share i.e. Ac.0.030 decimals of land out of the said property and the rest portion would go to defendant no.16. So far as Lot no.I of Schedule ' C ' property is concerned, it is to be excluded from partition in view of recording of the same by consolidation authority in favour of Jagannath Naik, predecessor-in-interest of defendant nos.2 to 8. In Lot no.II of Schedule ' C ' property in respect of Khata no.111, consolidable plot no.957 and non-consolidable plot no.264, plaintiffs have got 1/4th share, defendant no.15 has got 1/4th share, defendant no.9, 10, 12 to 14 jointly have got 1/4th share and defendant nos.2, 4, 5, 6, 7 and 8 jointly have got 1/4th share but without creating fragmentation so far as the consolidable lands are concerned. In khata no.114 of Lot no.II of Schedule ' C ' as well Schedule ' D ' is concerned, the plaintiffs have got half share and defendant no.15 has got half share. In khata no.11 of Lot no.II of Schedule ' C ' property each branch has got equal share, and, hence, the plaintiffs have got 1/4th share, defendant no.15 has got 1/4th share,

defendant nos.9, 10, 12 to 14 jointly have got $1/4^{\text{th}}$ share and defendant nos.2, 4, 5 and 6, 7 and 8 jointly have got $1/4^{\text{th}}$ share. In Khata no.110 of Lot no.II of Schedule ' C ' property the plaintiffs and defendant no.15 jointly have got $1/3^{\text{rd}}$ share and the other defendants i.e. branch of Jagannath and Dasarathi jointly have got $2/3^{\text{rd}}$ share. In Lot no.III of Schedule ' C ' property the plaintiffs have got $1/4^{\text{th}}$ share, defendant no.15 has got $1/4^{\text{th}}$ share, defendant nos.9, 10, 12 to 14 have got half share. In Khata no.115 of Mouza Haridaspur, the branch of Jadumani have got half share and branch of Dasarathi have got half share without causing fragmentation so far as consolidable plots are concerned. So far as Schedule ' D ' property is concerned, khata nos.7 of Mouza Haridaspur and 102 of Mouza Chhotraypur the plaintiffs have got $1/4^{\text{th}}$ share, defendant no.15 has got $1/4^{\text{th}}$ share, defendant nos.9, 10, 12 to 14 have jointly got $1/4^{\text{th}}$ share and defendant nos.4 to 6, 2, 7 and 8 have jointly got $1/4^{\text{th}}$ share. In khata no.109 of the said mouza the branch of Jagannath and Dasarathi have got half share each. In khata no.100 of said mouza the plaintiffs have got $1/4^{\text{th}}$ share, defendant no.15 has got $1/4^{\text{th}}$ share, branch of Jagannath i.e. defendant nos.4 to 6, 2, 7 and 8 jointly have got $1/4^{\text{th}}$ share and defendant nos.9, 10, 12 to 14 jointly have got $1/4^{\text{th}}$ share. In khata no.101 of the said mouza the branch of Jadumani have got half share i.e. plaintiffs have got $1/4^{\text{th}}$ share and defendant no.15 has got $1/4^{\text{th}}$ share whereas the branch of Dasarathi i.e. defendant nos.9, 10, 12 to 14 have got half share. In khata no.96 of said mouza the branch of Jagannath i.e. defendant nos.4 to 6, 2, 7 and 8 have got half share and the branch of Dasarathi i.e. defendant nos.9, 10, 12 to 14 have got half share. Khata no.97 being recorded in the name of Jagannath and his two sons Anadi and Surendra, it is their

exclusive property and not to be partitioned among the parties. The parties are directed to amicably partition the property by metes and bounds as per their respective shares as aforesaid within a period of three months hence failing which any of them is at liberty to approach the Court to make the preliminary decree final.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

The judgment is typed to my dictation by the typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on the 30th day of September, 2014 under my seal and signature.

*1st. Addl. Senior Civil Judge,
Bhubaneswar*

List of Witnesses examined for the Plaintiffs:

P.W.1 : Swarnalata Nayak

List of Witnesses examined for the Defendants :

D.W.1: Sandhyarani Nayak

List of Documents marked as Exhibits for the Plaintiffs :

Ext.1: Notification R.O.R of Khata no.776 of Daitapada Sahi ;

Ext.2: Certified copy of R.S.D no.2748 dtd.22-03-1983 ;

Exts. 3

to 8 : R.O.R of Khata nos.111, 114, 11, 7, 115, 109 of Mouza-Haridaspur ;

Exts.9

to 13 : R.O.R of Khata nos.102, 101, 96, 100, 97 of Mouza- Chhotraypur ;

Exts.14

- & 15: R.O.R of Khata nos.110 & 108 of Mouza- Haridaspur ;
- Ext.16 Series : Rent receipts ;
- Ext.17: Pre Sabik R.O.R of Khata no.86 of Mouza- Haridaspur ;
- Ext.18: 1912 Settlement R.O.R of Khata no.107 of Mouza- Haridaspur ;
- Ext.19: Certified copy of R.S.D no.10271-59 ;
- Ext.20: Certified copy of R.S.D no.11490-60 ;
- Ext.21: Sale deed bearing no.2143 dtd.13-06-1950 ;
- Ext.22: Sale deed bearing no.3387 dtd.06-11-1950 ;
- Ext.23: Sale deed no.3548 dtd.23-09-1985 ;
- Ext.23/a : Signature of vendor of P.W.1 on Ext.23 ;
- Ext.23/b: Signature of P.W.1 on Ext.23 ;
- Ext.24: Mutation R.O.R of Khata no.165/8 ;
- Ext.25 to
- 25/b: Rent receipts ;
- Ext.26: Certified copy of voter list of 1988 relating to Bhaga no.93 and
Ward no.16 ;
- Ext.27: R.S.D no.5418 dtd.26-10-1943 ;
- Ext.28: R.S.D no.863 dtd.17-04-1945 ;
- Ext.29: R.S.D no.8718 dtd.26-12-1967 ;
- Ext.30: R.S.D no.54 dtd.12-12-1970 ;
- Ext.31: R.S.D no.204 dtd.29-12-1970 ;
- Ext.32: R.S.D no.1469 dtd.29-03-1971 ;

List of Documents marked as Exhibits for the Defendants :

Ext.A: Certified copy of R.S.D no.3332 dtd.13-06-1955 ;

Ext.B: Certified copy of R.S.D no.11722 dtd.30-04-1964 ;

Ext.C: Information slip acquired from Deputy Director, Consolidation, Puri ;

Ext.D: Notice alongwith copy of application in L.R. Case no.92 of 65/66 ;

Ext.D/1: Signature of Jadumani Nayak on Ext.D ;

***1st. Addl. Senior Civil Judge,
Bhubaneswar***