

IN THE COURT OF THE CIVIL JUDGE SENIOR
DIVISION, NAYAGARH

P r e s e n t :

Smt. Annapurna Sarangi, LL.M.,
Civil Judge Senior Division,
Nayagarh.

[JO Code no. OD-00592]

Dated, this the 12th day of August, 2026

Civil Suit No. 121/2025
CIS no. CS 121/2025

Nityananda Maharana, aged about 60 years,
S/o- Late Sibaram Maharana, of village-
Lekhanpur, P.O.-Nabaghanpur, Dist.-Nayagarh.

.....PLAINTIFF

-Versus-

- 1. Biswanath Maharana**, aged about 70 years,
- 2. Hari @ Harihara Maharana**,
aged about 62 years,
- 3. Bijaya Maharana**, aged about 56 years,
- 4. Chandra Bhanu Maharana**,
aged about 50 years,
Sl. nos. 1 to 4 are sons of Late Sibaram
Maharana and all are of village-Lekhanpur,
P.O.-Nabaghanpur, Dist.-Nayagarh.

5. **Biranchi Mahapatra**, aged about 48 years,
S/o. Late Sibaram Maharana, of village-Near
Jagannath Temple, Old Town, P.O./P.S./Dist.
Nayagarh.

..... **DEFENDANTS.**

Appearance of the Counsels :

For the plaintiff : Asaf Alli Ahemad
Advocate.

For the defendants no.

1 to 4 : Sri Bijay Kumar Nayak,
Advocate.

For the defendant no.5 : Sri Malaya Gopinath Rath
& associates, Advocate.

Date of Argument : 11.08.2026

Date of Judgment : 12.08.2026

J U D G M E N T

The plaintiff has filed the present suit for partition of the suit schedule lands by metes and bounds and allotment of 1/6th share out of the suit schedule A land and 1/5th share out of the suit schedule B land in favour of the plaintiff and for carving out the same in favour of the plaintiff, for restraining the defendants not to alienate or construction any permanent structure over any portion of the suit

properties, for costs of the suit and for other equitable reliefs.

2. The plaintiffs' case is as follows:-

2.1. An area of Ac.0.39 dec. of land in plot no.11 under khata no.85/24 situates in mouza-Lekhanpur and an area of Ac.0.30 dec. of land in plot no.206/12 under khata no.295/148 situates in mouza-Muthagadia both under Tahasil/ Dist.-Nayagarh as described under the schedule A and B of the plaint are the subject matter of the present suit.

2.2. The suit properties are recorded in the name of the plaintiff and the defendants in the Hal settlement of Nayagarh and they are jointly possessed the suit land peacefully and paying rents thereon and obtained the the rent receipts. The suit lands measuring an area of Ac.0.39 dec. in plot no.11 under khata no.85/24 situates in mouza-Lekhanpur and suit land measuring an area of Ac.0.30 dec. in plot no.206/1203 under khata no.295/148 situates in mouza-Muthagadia, both under Nayagarh Tahasil, have never been partitioned between the parties by metes and bounds. The plaintiff and defendants are jointly possessing the suit lands to the knowledge of everybody.

2.3. The plaintiff approached the defendants on 12.01.2025 to divide the suit properties between the them and finally on 25.03.2025 when the plaintiff gave proposal to defendants for partition of the suit properties by metes and bounds, the defendants did not pay any heed, and therefore, the plaintiff is constrained to file this suit for partition against the defendants

Hence, the suit.

3. On being noticed, the defendants entered their appearance and the defendants 1 to 4 contested the suit without filing their written statement and defendant no.5 contested the suit by filing his written statement.

4. The defendant no. 5 filed his written statement admitting the contention of the plaintiff, but has mentioned that the plaint filed by the plaintiff is not legally maintainable in the eye of law and there is no cause of action to file this suit. It is further admitted by him that all the properties mentioned in the suit scheduled i.e. Ac.0.69 decimals situates in mouza Lekhanpur and Muthagadia under tahasil/Dist.-Nayagarh have never been partitioned between the plaintiff and defendants at any point of time by metes and bounds. It is further stated by the defendant no.5 that he has no objection, if the suit schedule-A property

mentioned in the plaint will be partitioned in 1/6th share and suit schedule-B property will be partitioned in 1/5th share by metes and bounds through the Court of law among the plaintiff and defendants.

Denying the facts mentioned in paragraphs 5 and 6 the plaint as false one, it stated by the above defendant that the plaintiff had not come to the defendant no.5 on the alleged dates, i.e. on 12.02.2025 and 25.03.2025 and gave him proposal for partition.

5. In view of the averments made in the plaint, written statement and documents relied on by the parties, the following issues have been framed for determination:-

- I. Whether the suit is maintainable?
- II. Whether the plaintiff has got any cause of action to file this suit?
- III. Whether the suit properties are joint properties of both the parties and are liable for partition? If so, what is the extent of shares of both the parties ?
- IV. Whether the plaintiff is entitled for 1/6th share from Schedule-A properties and 1/5th share from schedule-B properties of the suit schedule land

and the same may be delivered by the process of the Court through Civil Court Amin Commissioner?

- V. Whether the defendants can be restrained to alienate and to construct any permanent structure over the suit land ?
- VI. Whether the plaintiff is entitled to the costs of the suit?
- VII. To what other reliefs the plaintiff is entitled for ?
- VIII. To what other reliefs the plaintiff is entitled for?

6. In order to substantiate his case, the plaintiff has examined himself as PW1 and adduced certain documentary evidences which have been marked as Exts. 1 and 2. Ext. 1 is the certified copy of RoR bearing khata No.85/24 of mouza-Lekhanpur and Ext.2 is the certified copy of RoR bearing khata No.295/148 of mouza-Muthagadia.

On the other hand, the defendant no.5 has examined himself as DW 5, but no documentary evidence has been adduced by the defendants to substantiate their case.

7. In view of available evidence, the learned counsels appearing for the parties put forth their arguments submitting in court that since the plaintiff

has clearly established his claim by adducing sufficient oral and documentary evidence to the express admission of the defendants, he is entitled for the relief as sought for.

FINDINGS

8. Issue No. III and IV:

Since these issues are vital issues, both are taken up together at the outset for adjudication.

It is pertinent to mention here the decision of Hon'ble Apex Court in ***Shub Karan Bubna @ Shub Karan Prasad Bubna Vs. Sita Saran Bubna & Ors*** pronounced on 21 August, 2009 in Special leave petition No.17932 of 2009, where at para-4 it has held that:

“Partition” is a re-distribution or adjustment of pre-existing rights, among co-owners-coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty. A partition of a property can be only among those having a share or interest in it. A

person who does not have a share in such property cannot obviously be a party to a partition. "Separation of share" is a species of "partition". When all co-owners get separated, it is a partition. Separation of shares refer to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only separation of the share of one brother. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiffs share in the suit properties, but also division has a share by metes and bounds. This involves three issues; (i) Whether the person seeking division has a share or interest in the suit property/properties; (ii) Whether he is entitled to the relief of division and separate possession; and (iii) how and in what manner, the property/ properties should be divided by metes and bounds?"

Keeping in view the aforesaid principles in mind, I have perused the evidence both oral and documentary as adduced by both the parties of the suit. It would not be prudent to reproduce the evidence of plaintiff (P.W.1), who has fully corroborated the material facts averred in the plaint. It is the specific evidence of PW1 that the suit lands have been jointly possessed by the plaintiff and defendants to the knowledge of everybody and the suit lands have never been divided by metes and bounds in any manner between them. The plaintiff, in his plaint has mentioned the properties in khata No. 85/24 as the schedule 'A' properties and the properties in khata No. 295/148 has been mentioned as schedule 'B' properties and in support of his contention the plaintiff proved the certified copy of ROR bearing khata no.85/24 of Mouza-Lekhanpur vide Ext.1 which stands recorded in the name of Biswanath Maharana, Bijaya Maharana, Hari @ Harihar Maharana, Chandrabhanu Maharana, Nityananda Maharana and Biranchi Maharana and the original ROR bearing Khata no. 295/148 of mouza-Muthagadia vide Ext. 2 which stands recorded in the name of Biswanath Maharana, Bijaya Maharana, Chandrabhanu Maharana, Nityananda Maharana and

Biranchi Mahapatra. All the documents tendered by the plaintiff have been marked without any objection from the side of the defendants. So also the above testimony of P.W.1 has not been rebutted or challenged in any manner. On the other hand the defendant No.5 has also been examined as D.W.1 wherein he has admitted regarding the jointness of the suit schedule 'A' and 'B' properties. Admission is the best piece of evidence that the adversary can rely upon and the admission being proof itself, no further proof is necessary. Section 58 of the Indian Evidence Act, 1872 stipulates that 'facts admitted need not be proved. Based on Section 58 of the evidence Act, the followings facts stand proved by admissions made by defendant no.1. Further he has stated in his cross-examination that he does not have any objection if the suit schedule 'A' properties are partitioned into 1/6th share in between the parties and the suit schedule 'B' properties are partitioned into 1/5th share. As far as the defendants No. 1 to 4 are concerned, though they have not filed any written statement but have appeared in the suit, participated in the trial and have cross-examined the witnesses. However nothing contrary to the claims of the plaintiff has been elicited during cross-examination.

The oral evidence coupled with the documentary evidence of the plaintiff has been left unshaken. The unchallenged and unshaken testimony of P.W.1 finds complete support from the evidence of D.W.1 and documentary evidence i.e. Ext.1 and Ext.2. In view of foregoing discussions, this court find nothing substantial to defy the claim of the plaintiff as regard to his property right over the suit land as of co-owner. He possesses equal right of inheritance over every plots or every inch of their joint family suit land which is admittedly not yet partitioned by metes and bounds. So the plaintiff is entitled for a preliminary decree of partition.

Accordingly, the suit schedule 'A' land bearing khata No. 85/24, plot No. 11 for an area of Ac. 0.39 dec. which is recorded in the name of Biswanath Maharana, Bijaya Maharana, Hari @ Harihar Maharana, Chandrabhanu Maharana, Nityananda Maharana and Biranchi Mahapatra is partitioned into $\frac{1}{6}^{\text{th}}$ share each in between the plaintiff and the defendants. Accordingly the plaintiff is entitled to $\frac{1}{6}^{\text{th}}$ share and the defendant Nos. 1 to 5 Biswanath Maharana, Bijaya Maharana, Hari @ Harihar

Maharana, Chandrabhanu Maharana and Biranchi Mahapatra are entitled to a share of $1/6^{\text{th}}$ each.

As far as the suit schedule 'B' property is concerned recorded in khata No. 295/148, plot No. 206/1203 for an area of Ac. 0.30 dec. in the name of Biswanath Maharana, Bijaya Maharana, Chandrabhanu Maharana, Nityananda Maharana and Biranchi Mahapatra is partitioned into $1/5^{\text{th}}$ share each. Accordingly the plaintiff is entitled to a share of $1/5^{\text{th}}$ from the suit schedule 'B' properties and the defendants namely Biswanath Maharana, Bijaya Maharana, Chandrabhanu Maharana and Biranchi Mahapatra are entitled to a share of $1/5^{\text{th}}$ each.

Accordingly the issues are answered.

9. Issue No. V:

9.1. The averment of the plaint so also the evidence led from the side of the plaintiff is conspicuously silent with regard to the alleged interference in the peaceful use and enjoyment of the suit schedule property by the plaintiff. Furthermore, since the suit schedule properties are jointly recorded and the division of shares has not yet been effected in metes and bounds,

such kind of bald plea without referring to the specific plot as well as manner in which the alleged interference is being made by the defendants does not hold ground. The said position of law is no more res intergra and has been well crystallized in the leading Judgment of Hon'ble Apex Court in ***Annatula Bucchi Reddy vrs. State of Andhra Pradesh, reported in (2008) 4 SCC 594.***

Accordingly the above issue is answered.

10. Issue Nos. I, II, VI and VII:

It has been specifically pleaded in the plaint that the cause of action arose on 12.01.2025 when the plaintiff approached the defendants and on 25.03.2025 when the plaintiff finally demanded for fresh partition of the suit land. This has not been disputed by the defendants. Since the dispute arose with regard to the earlier settlement, the plaintiff instituted this suit. Therefore, this court is of the view that the plaintiff had a valid cause of action to institute this suit for partition by metes and bounds. There is nothing on record that would suggest that the jurisdiction of this court is ousted under any law. It is found that the suit has been instituted within the period of limitation and this court

is competent to grant the relief claimed. Thus, the suit is maintainable in its present form. However the plaintiff is not entitled to cost or any other reliefs apart from the reliefs prayed for.

Accordingly, all the issues are answered.

Hence, it is ordered.

ORDER

The suit is decreed preliminarily on contest against the defendants but considering the relationship among the parties, no order as to cost has been passed. The suit schedule “A” and “B” lands be divided among the plaintiff and defendants.

Accordingly the suit schedule ‘A’ land bearing khata No. 85/24, plot No. 11 for an area of Ac. 0.39 dec. which is recorded in the name of Biswanath Maharana, Bijaya Maharana, Hari @ Harihar Maharana, Chandrabhanu Maharana, Nityananda Maharana and Biranchi Mahapatra is partitioned into 1/6th share each in between the plaintiff and the defendants. Accordingly the plaintiff is entitled to 1/6th share and the defendant Nos. 1 to 5 Biswanath Maharana, Bijaya Maharana, Hari @ Harihar

Maharana, Chandrabhanu Maharana and Biranchi Mahapatra are entitled to a share of $1/6^{\text{th}}$ each.

As far as the suit schedule 'B' property is concerned, which is recorded in khata No. 295/148, plot No. 206/1203 for an area of Ac. 0.30 dec. in the name of Biswanath Maharana, Bijaya Maharana, Chandrabhanu Maharana, Nityananda Maharana and Biranchi Mahapatra is partitioned into $1/5^{\text{th}}$ share each. Accordingly the plaintiff is entitled to a share of $1/5^{\text{th}}$ from the suit schedule 'B' properties and the defendants namely Biswanath Maharana, Bijaya Maharana, Chandrabhanu Maharana and Biranchi Mahapatra are entitled to a share of $1/5^{\text{th}}$ each.

The parties are to carve out their respective shares amicably within three months from passing of this judgment taking into account their convenient possession over the suit property as far as practicable, failing which either of the parties would be at liberty to make such partition final through the process of court at the expenses of the party applying for to make partition of the suit land by metes and bounds, as per the shares defined above, and in such event, the Civil Court Commissioner shall do well to give respect to

the present possession of the parties over the suit schedule land as far as practicable.

In view of the decision of **Kattukandi Edathil Krishnan and another vrs. Kattukandi Edathil Balsan and others, reported in 2022 (II) CLR) (SC)-31**, the record to be posted in time for taken steps by the plaintiff under Order-XX, Rule-18 of the C.P.C.

Pleders' fees are at contested scale.

Sd/-

**Civil Judge Senior Division,
Nayagarh**

The judgment has been prepared as per my dictation on the office computer, corrected and pronounced by me in the open Court today i.e., on the **12th day of August, 2026** under my signature and seal of this Court.

Sd/-

**Civil Judge Senior Division,
Nayagarh.**

List of witnesses examined on behalf of the plaintiff:

P.W 1 : Nityananda Maharana

List of witnesses examined on behalf of the defendants:

D.W 1 : Biranchi Maharana

List of exhibits marked on behalf of the plaintiff:

Ext. 1 : Certified copy of RoR bearing khata No.85/24
of mouza-Lekhanpur

Ext.2 : Certified copy of RoR bearing khata
No.295/148 of mouza-Muthagadia

List of exhibits marked on behalf of the defendants:

NIL

Sd/-
Civil Judge Senior Division,
Nayagarh.