

IN THE COURT OF THE CIVIL JUDGE, NIMAPARA

Present:Smt. Somya Rao, LL.M.,
Civil Judge, Nimapara
[JO Code: OD0724]

Civil Suit No. 168/2022

Pranaya Kumar Mohanty,aged 55 years,
S/o-Purna Chandra Mohanty,
Of Vill-Gadapadanapur Samili Kantabania,
PO-Bhanapur,PS-Balanga,Dist-Puri.

...Plaintiff

-Versus-

1.Prafulla Kumar Mohanty,aged 81 years,
S/o-Late Raghunath Mohanty,
Of Vill-Gadapadanapur Samili Kantabania,
PO-Bhanapur,PS-Balanga,Dist-Puri.

.....Defendant

2.Gobinda Ballav Mohanty,aged 35 years,
3.Samara Ballav Mohanty,aged 32 years,
both sons of Subash Chandra Mohanty,
4.Pankajini Mohanty,aged 33 years,
W/o-Late Pradyumna Kumar Mohanty,
5.Dibyajyoti Mohanty,aged 11 years,
Minor represented through his mother
guardian,Pankajini Mohanty,
all are of Vill-Gadapadanapur Samili Kantabania,
PO-Bhanapur,PS-Balanga,Dist-Puri.

.....Proforma Defendants

Counsel for Plaintiff:- Adv. Sri S.K. Mohanty

Counsel for Defendant No.1,2,3,4 & 5 :- Adv. Sri B.N.
Pradhan

Date of Argument: - 21.08.23

Date of Judgment: - 26.08.23

JUDGMENT

1. This is a suit for declaration.
2. The case of the plaintiff in brief is that the plaintiff and the defendants are governed by Hindu Mitakshar School of law, belongs to one family and their common ancestors are Late Raghunath Mohanty and Late Somanath Mohanty. The suit property in Mouza:Baliasasan, PS-Balanga, Dist-Puri, Khata No.153 stands recorded in the name of Maheswar Mohanty, Prafulla Kumar Mohanty, Sons of Late Raghunath Mohanty, Nisamani Mohanty, W/o-Late Raghunath Mohanty, Purna Chandra Mohanty, Subash Chandra Mohanty, Sons of Late Somanath Mohanty. In respect of non-consolidable plots, Maheswar Mohanty after death of his mother, Nishamani Mohanty, the said Maheswar Mohanty transferred his share to Pranaya Kumar Mohanty and Subash Chandra Mohanty vide registered sale deed. The defendant Prafulla Kumar Mohanty has transferred his share from non-consolidable land to the plaintiff and proforma-defendants No.1 & 2 and Pradyumna Kumar Mohanty vide Regd. Sale Deed No.11521101109,dtd.21.06.2011

and delivered possession thereof. Since from the date of purchase, the suit land i.e. khata No.153 of mouza: Baliasasan, plot No.536, Ac.0.05 $\frac{1}{3}$ decimal out of Ac.0.16 decimals. Plot No.537, Ac.0.08- $\frac{2}{3}$ decimal out of Ac.0.26 decimal and plot No.538, Ac.0.05 decimals. Out of Ac.0.15 decimal and plot No.540, Ac.0.07 $\frac{1}{3}$ decimal. Out of Ac.0.22 decimal. Total Ac.0.26 decimals. The plaintiff and the proforma defendants are possessing the same. As the proforma defendants are residing outside, they became unable to join as plaintiff in the suit for which they are made proforma defendants in the suit. Hence, the plaintiff has made following prayers in this suit:-

- i) to declare the right, title, interest and possession of the plaintiff over the suit property including proforma defendants.
- ii) cost of the suit be decreed in favour of the plaintiff.
- iii) any other relief or reliefs be awarded to the plaintiff, to which the plaintiff is entitled.

3. On the other hand, defendant No.1 filed his written statement and stated that the suit is not maintainable as framed. It is a fact that the defendant No.1 has transferred his share from non-consolidable land to the plaintiff, proforma defendant No.1 and 2 and Late Pradyumna Kumar Mohanty, vide Regd. Sale deed No.11521101109,dtd.21.06.2011. After execution of sale deed, the plaintiff and proforma defendants are

possessing the suit property. After death of Pradyumna Kumar Mohanty, the proforma defendant No.4 is his wife and proforma defendant No.5 is his sons enjoying the property along with plaintiff and proforma defendant No.2 and 3. Hence, in the above circumstances, the suit filed by the defendants be decreed in favour of the plaintiff and proforma defendants No.2,3,4 & 5.

4. Considering the pleadings of the parties the following points were taken up for consideration:-

- (i) Whether the suit maintainable in present form?
- (ii) Whether there is any cause of action to bring the present suit?
- (iii) Whether the plaintiff has right, title, interest and possession over the suit property?

5. In order to establish his case the plaintiff has adduced one witness on his behalf by examining himself as P.W.1. The plaintiff has also filed registered sale deed No.11521101109,dtd.21.06.11 which is marked as Ext.1 and certified copy of ROR of khata No.153 of mouza Balia Sasan which is marked as Ext.2. On the other hand, defendants have examined one witness i.e. D.W.1 who is the son of Prafulla Mohanty and not adduced any documentary evidence

in support of their case.

Points (ii) and (iii)

6. Since these points for determination are vital in nature and interlinked with each other they were taken of together for consideration from the pleadings of both the parties. It is not disputed that both the plaintiff and the proforma defendants are related to each other. After thorough perusal of the plaint it is ascertained that the suit property in Mouza Balisasan, PS-Balanga, Dist : Puri khata No.153 stands recorded in the name of Maheswar Mohanty, Prafulla Kumar Mohanty, Sons of Late Raghunath Mohanty, Nisamani Mohanty, W/o- Late Raghunath Mohanty, Purna Chandra Mohanty, Subash Chandra Mohanty, Sons of Late Somanath Mohanty. In respect of non-consolidable plots, Maheswar Mohanty, after death of his mother Nishamani Mohanty, the said Maheswar Mohanty transferred his share to Pranaya Kumar Mohanty and Subash Chandra Mohanty vide registered sale deed. That the defendant Prafulla Kumar Mohanty has transferred his share from non-consolidable land to the plaintiff and proforma defendants No.1 and 2 and Pradyumna Kumar Mohanty vide Regd. sale deed No. 11521101109, dtd. 21.06.11 which is marked as Ext. 1. The plaintiff in his cross examination affirmed that he along with the proforma defendants are in possession

of the suit property and the suit property was purchased by them which is corroborated with his plaint averments and evidence affidavit. The defendant No.1 who is the son of Prafulla Mohanty has admitted that his father has 1/3rd share to the suit property. His father has sold the property to the plaintiff and proforma defendants by registered sale deed. Hence, there is no doubt that the plaintiff has the right, title, interest and possession over the suit schedule property.

7. So far as the cause of action for filing of the present suit for right, title and interest and possession by the plaintiff is concerned, the cause of action arose on 01.07.22 when the defendants attempted to dispossess the plaintiffs and proforma defendants from the suit property. Accordingly, this issue is decided in favour of plaintiff as he has a valid cause of action to file the present suit. Accordingly, the issues are decided in favour of the plaintiff.

Point. (i)

8. So far as this issue is concerned, since the above issues are decided in favour of the plaintiff the present suit is maintainable both law and fact. Hence, the issue is decided accordingly.

ORDER

The suit be and the same is decreed on contest in favour of the plaintiff but without any order as to costs. As per the findings of this judgment the plaintiff has the absolute right, title, interest and possession over the suit property including proforma defendants.

Civil Judge, Nimapara

The judgment has been typed and corrected by me and pronounced in the open Court today i.e. on the 26th day of August, 2023 under my signature and seal of this Court

Civil Judge, Nimapara

List of witnesses examined on behalf of the plaintiff

P.W.1 Pranaya Kumar Mohanty

List of witnesses examined on behalf of the defendants

D.W.1 Nrusingha Prasad Mohanty

List of exhibits marked on behalf of the plaintiff

Ext. 1 Registered sale deed
No. 11521101109, dtd.21.06.11

Ext.2 Certified copy of ROR of khata
No.153 of mouza Balia Sasan

**List of exhibits marked on behalf of the
defendants**

Nil

Civil Judge, Nimapara