

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK
S.A. No.324 of 1989

(In the matter of an appeal under Section 100 of the Code of Civil Procedure)

Khemi Bewa and others ***Appellants***

-versus-

Sambhu Mohanta and others ***Respondents***

Appeared in this case by Hybrid Arrangement

(Virtual/Physical Mode):

For Appellants - Mr. M. Mishra,
Sr. Advocate.
Ms.J. Sahoo,
Advocate.

For Respondents - Mr. S. D. Das,
Sr. Advocate.
Mr. M. Faradish,
Advocate.

CORAM:
MR. JUSTICE A.C.BEHERA

Date of Hearing :23.11.2023 :: Date of Judgment :16.01.2024

A.C. Behera, J. This Second Appeal has been preferred by the Appellants against the reversing judgment.

2. The Respondents of this Second Appeal were the plaintiffs in the suit vide T.S. No.34 of 1984-I and they were the respondents in the First Appeal vide T.A. No.10 of 1986-I.

The Appellants of this Second Appeal were the defendants in the suit vide T.S. No.34 of 1984-I and they were the appellants in the First Appeal vide T.A. No.10 of 1986-I.

3. The suit of the plaintiffs (Respondents in this Second Appeal) against the defendants (Appellants in this Second Appeal) was a suit for declaration and permanent injunction.

4. The case of the plaintiffs (those are the Respondents in the Second Appeal) as per the averments made in their plaint in T.S. No.34 of 1984-I was that, the suit properties were acquired by two brothers i.e. Ganesh Mohanta and Manasa Mohanta. The said Ganesh Mohanta and Manasa Mohanta are the sons of Late Mangala Mohanta. They (Ganesh Mohanta and Manasa Mohanta) had acquired the suit properties prior to 1911-12 settlement. During 1911-12 settlement operation, Manasa Mohanta died leaving behind his only son i.e. Gora Mohanta and at the time of death of Manasa Mohanta, Gora Mohanta was minor.

The first son of Mangala Mohanta i.e. Ganesh Mohanta had no son. But, he had five daughters. The wife of Ganesh Mohanta was Sukurmani Mohanta. As Ganesh had no son, for which, Ganesh Mohanta adopted to the son of Manasa Mohanta i.e. Gora Mohanta as his son as per their caste and customs.

The suit properties were recorded in the name of Ganesh Mohanta son of Mangala Mohanta. But, subsequent thereto i.e. after adopting Gora Mohanta as son, Ganesh Mohanta got the suit properties recorded in the name of his adopted son Gora Mohanta in the year 1920-21 as per Mutation Case No.3 of 1920-21. After adopting Gora Mohanta as the son of Ganesh Mohanta, he (Ganesh Mohanta), his wife Sukurmani and his five daughters resided jointly/unitedly. But, prior to 1930-31 settlement operation, Ganesh Mohanta died leaving behind his widow wife Sukurmani, his adopted son Gora Mohanta and his five daughters. Gora Mohanta had married at village Rasantala. As the wife of Gora Mohanta was the only child of her father, for which, Gora being the only son-in-law, he was looking after the properties of his father-in-law.

5. Surprisingly, during 1930-31 settlement operation, Sukurmani (widow wife of Ganesh Mohanta) raised dispute before the Settlement Authorities to record the suit properties in her name exclusively without recording the same in the name of Gora Mohanta. But, after hearing the objection of Sukurmani Mohanta, the Settlement Authorities passed order to record the note of possession of Sukurmani in respect of the suit properties, though the Settlement Authorities had no power to pass such type of order. Even though the note of possession in respect of the suit properties was mentioned in favour of Sukurmani Mohanta, but Gora

Mohanta continued his possession over the suit properties as a lawful owner thereof and he (Gora Mohanta) performed the marriages of the five daughters of Ganesh Mohanta, those are called as sisters of Gora Mohanta. But, Gora Mohanta died on dated 18.10.41 leaving behind his two sons, namely, Palhu Mohanta and Bhalu Mohanta. After the death of Gora Mohanta, there was partition of their all joint properties including the suit properties between Palhu Mohanta and Bhalu Mohanta and in such partition, the suit properties fell into the share of Bhalu Mohanta (second son of Gora Mohanta). The plaintiffs are the wife and daughters of Bhalu Mohanta. After the death of Bhalu Mohanta, the suit properties devolved upon his widow wife and children i.e. upon the plaintiffs by way of succession. So, after the death of Bhalu Mohanta, the plaintiffs possessed the suit properties as the owners of the same. During the last settlement of the year 1975-76, though Parcha was issued in respect of the suit properties only in favour of the plaintiffs, but the names of the defendants were also recorded in the R.o.R. jointly with them.

The defendants are the children of the first daughter of Ganesh Mohanta and Sukurmani Mohanta i.e. Budhuni Bewa. The said defendants have no interest over the suit properties and they have not possessed the suit properties at any point of time. But, the plaintiffs are

the owners thereof. The defendant No.1-Sambhu Mohanta is residing at Sukindagarh in the District of Cuttack. So, taking the advantage of the joint recording of the names of the defendants with the plaintiffs in the Hal R.o.R. of the suit properties, surprisingly on dated 28.04.1982, the defendants trespassed into the suit properties. For which, the plaintiffs instituted a complaint case against them vide I.C.C. No.29/84, which was ended in acquittal as per judgment dated 24.08.1984. So, again on 21.03.1983, the defendant Nos.2, 5 & 6 trespassed into the suit properties. For which, the plaintiffs again filed another complaint case vide I.C.C. No.17/83, which is sub judice. As the defendants tried to take away the crops raised by the plaintiffs over the suit properties forcibly, for which, the plaintiffs approached the civil Court by filing the suit vide T.S. No.34 of 1984-I against the defendants praying for declaration of their right, title and interest over the suit properties and to injunct them (defendants) from entering into the suit properties and also to declare that, entry of the names of the defendants Nos.1 and 5 jointly with them (plaintiffs) in the R.o.R. as wrong and illegal.

6. Having been noticed from Court in T.S.No.34 of 1984-I, the defendants filed their joint written statement taking their stands *inter alia* therein that, the suit lands were the self acquired properties of two brothers i.e. Ganesh Mohanta and Manasa Mohanta and the suit

properties were recorded jointly in the name of Ganesh Mohanta and Manasa Mohanta in Sabik Settlement.

Gora Mohanta was the only son of Manasa Mohanta. Ganesh Mohanta had no son, but he (Ganesh Mohanta) had five daughters, namely, Budhuni, Sagri, Gangei, Sani and Chetei. Gora Mohanta was never adopted by Ganesh Mohanta. Sukurmani Mohanta was the wife of Ganesh Mohanta. After the death of Ganesh Mohanta, his half share over the suit properties had devolved upon his wife Sukurmani Mohanta. Therefore, the self acquired properties of Ganesh and Manasa i.e. suit properties along with their other properties were partitioned between Sukurmani Mohanta and Gora Mohanta and on the basis of such partition, the suit properties had fallen into the share of Sukurmani Mohanta (wife of Ganesh Mohanta). Accordingly, Sukurmani Mohanta was in exclusive possession over the suit properties being the exclusive owner thereof. Since, Ganesh Mohanta and Sukurmani Mohanta had no son, for which, they (Ganesh and Sukurmani) had kept their eldest daughter i.e. Budhuni Mohanta and her husband in their house in order to look after them and their all properties including the suit properties. The defendant Nos.1 and 5 i.e. Sambhu Mohanta and Bauri Mohanta are the two sons of Budhuni Mohanta. As the suit properties are the ancestral properties of the defendants, which has devolved upon them

through their mother Budhuni Mohanta, for which, the plaintiffs have no right, title, interest and possession over the suit properties. They (defendants) are in peaceful possession over the same. For which, the suit of the plaintiffs for declaration and permanent injunction is not maintainable under law for non joinder of necessary parties i.e. to the other four daughters of Ganesh Mohanta and as such the suit of the plaintiffs is also barred by law of limitation. The plaintiffs have no cause of action to file the suit. Therefore, the suit of the plaintiffs is liable to be dismissed with costs.

7. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether six numbers of issues were framed by the Trial Court in T.S. No. 34 of 1984-I and the said issues are:-

Issues सत्यमेव जयते

- i. *Is the suit maintainable in its present form?*
- ii. *Is the suit bad for mis joinder and non-joinder of parties?*
- iii. *Whether Gora Mohanta was the adopted son of Ganesh Mohanta, the husband of Sukurmani Bewa?*
- iv. *Whether the plaintiff No.1 being the wife and plaintiff Nos.2 & 3 being the daughters of Bhalu Mohanta had inherited the suit properties and are in possession thereon?*
- v. *Whether the suit lands fell into the share of Sukurmani Bewa on a partition with Gora Mohanta and the defendants being the descendants of Sukurmani have acquired title over the suit land and are in continuance possession of the same?*
- vi. *To what relief, the plaintiffs are entitled?*

8. In order to substantiate the aforesaid reliefs sought for by the plaintiffs against the defendants in T.S. No.34 of 1984-I, they (plaintiffs)

examined four witnesses from their side including the plaintiff No.1 as P.W.1 and relied upon series of documents on their behalf vide Exts.1 to 9. But, on the contrary, the defendants examined two witnesses on their behalf including the defendant No.1 as D.W.2 without relying upon any document.

9. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the Trial Court answered all the issues in favour of the plaintiffs and against the defendants and basing upon the findings and observation made by the Trial Court in the issues, the Trial Court decreed the suit of the plaintiffs on contest against the defendants vide its judgment and decree dated 23.01.1986 and 30.01.1986 respectively assigning the reasons that, Gora Mohanta was the adopted son of Ganesh Mohanta and after the death of Ganesh Mohanta, the suit properties had devolved upon Gora Mohanta and accordingly, the plaintiffs being the successors of Gora Mohanta, they are the owners of the suit properties and they are in possession over the same. For which, the defendants are injuncted permanently from interfering into the possession of the plaintiffs over the same.

10. On being dissatisfied with the aforesaid judgment and decree dated 23.01.1986 and 30.01.1986 respectively passed in T.S. No.34 of 1984-I in favour of the plaintiffs against the defendants by the Trial

Court, they (defendants) challenged the same by preferring the First Appeal vide T.A. No.10 of 1986-I being the Appellants against the plaintiffs by arraying them (plaintiffs) as respondents.

11. After hearing from both the sides, the First Appellate Court allowed that First Appeal vide T.A. No.10 of 1986-I preferred by the defendants vide its judgment and decree dated 22.07.1989 and 05.08.1989 respectively and set aside the judgment and decree dated 23.01.1986 and 30.01.1986 respectively passed by the Trial Court in T.S. No.34 of 1984-I and dismissed the suit vide T.S. No.34 of 1984-I of the plaintiffs on contest by assigning the reasons that, the materials, documents and evidence available in the Record are not sufficient to establish that, Gora Mohanta was the adopted son of Ganesh Mohanta. Rather on the basis of the documents, it is established that, Gora Mohanta is the son of Manasa Mohanta and Gora Mohanta was not adopted by Ganesh Mohanta and as such, Gora Mohanta is not the adopted son of Ganesh Mohanta. For which, Gora Mohanta has never succeeded to the properties including the suit properties left by Ganesh Mohanta. But, after the date of Ganesh Mohanta, the properties including the suit properties left by him (Ganesh Mohanta) has devolved upon his widow wife Sukurmani Mohanta and his daughters including the defendants. For which, the suit of the plaintiffs for declaration of

their title over the suit properties along with permanent injunction is not maintainable under law. The suit of the plaintiffs is also bad for non joinder of necessary parties i.e. to all the daughters of Ganesh Mohanta and Sukurmani Mohanta.

12. On being aggrieved with the aforesaid judgment and decree passed by the First Appellate Court in T.S. No.34 of 1984-I on dated 22.07.1989 and 05.08.1989 respectively against the plaintiffs and in favour of the defendants dismissing the suit of the plaintiffs, they (plaintiffs) challenged the same preferring this Second Appeal being the Appellants against the defendants by arraying them (defendants) as Respondents.

13. This Second Appeal was admitted on formulation of the following substantial questions of law i.e.:—सत्यमेव जयते

i. *Whether the learned lower Appellate Court has clearly gone wrong by not accepting the entry made in the R.o.R. (Ext.1), which stood in the name of Gora but, he came to the conclusion that, this entry was not sufficient to hold that Gora was the son of Ganesh.*

ii. *Whether the learned lower Appellate Court has erred in law in interpretation of the documents and also has further erred in law by not taking into consideration the application filed by the adoptive father for the purpose of mutation in the name of Gora Mohanta as the said application was conclusive proof of the fact that Gora Mohanta was adopted by Ganesh.*

iii. *Whether learned Appellate Court has failed to appreciate that, adoption in question was ancient and there were materials on record come to a finding that Gora Mohanta was adopted by Ganesh Mohanta.*

14. I have already heard from the learned counsels of both the sides.

15. According to the plaintiffs, as per their pleadings, their predecessor Gora Mohanta was the son of Manasa Mohanta .But, prior to 1920-21 settlement, while, Gora Mohanta was minor after the death of his father Manasa Mohanta, he (Gora Mohanta) was adopted by Ganesh Mohanta (who is the elder brother of Gora's father) as his adopted son, as Ganesh Mohanta had no son, but he had only five daughters, to which, the defendants have seriously disputed/denied. So, according to the plaintiffs, the aforesaid so called adoption of Gora Mohanta by Ganesh Mohanta prior to the year 1920-21 settlement was an ancient adoption. For which, no document was available in support of the same.

16. The modes and manner of proving of an ancient adoption has already been clarified by the Hon'ble Courts in **2015(2) CCC 446 (A.P.)** on the basis of the guidelines formulated by the Apex Court in the decision reported in **AIR 1970 (S.C.) page 1286; L. Debi Prasad (Dead) by L.Rs. vrs. Smt. Triveni Devi and others**. So, the said decision along with others on this aspect is referred hereunder:-

(i) **AIR 1959 (SC) 504—Kishorilal Vrs. M.T. Chaltibai—** Adoption—Manner of Proof—when adoption results in changing the course of succession depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations, it is necessary that, the evidence to support it should be such that, it is free from all suspicions of fraud and so consistent and probable as to leave no occasion for doubting its truth.

The performance of funeral rites will not sustain an adoption unless it clearly appears that, adoption itself was performed under circumstances as would render it perfectly valid.

*(ii) 2015 (2) CCC 446 (A.P.)—Maremanahalli Nariyappa and others Vrs. Kadirempalli Thippaiah and others—(Paragraph 24)—*An Adoption—Ancient Adoption—when adoption is ancient, the best evidence is treatment of the adopted boy and adoptive father, as father and son by the friends and relatives etc. and the burden upon the person, who is disputing the adoption, since the positive oral evidence is lacking in most of the ancient adoptions.

*(iii) AIR 1985 Orissa 171—Sitaram Naik and Purnamal Sonar and others—Ancient adoption—Manner of proof—*No definite formula can be applied as to the number of years to find out whether the adoption is an old adoption or not.

But, where on account of lapse of time, it is not possible to give evidence of persons for proving the ceremony giving and taking, then a party can take recourse to the theory of ancient adoption, provided of course, there has been a sufficient lapse of time between the date of alleged adoption and the date on which, the same is challenged.

So, in view of the principles of law enunciated in the ratio of the above decisions of Hon'ble Courts and Apex Court, when adoption results in changing the course of succession depriving the wives and daughters of their rights and transferring properties to comparative strangers or more remote relations, then at this juncture, it is necessary to see by the Courts that, the evidence to support the adoption must be free from all suspicions of fraud and the same must be so consistent and probable so as to leave no occasion for doubting its truth.

17. Here in this suit at hand, the own documents relied upon by the plaintiffs vide Exts.3, 4 & 5 itself are creating suspicion to their

pleadings and evidence regarding the adoption of Gora Mohanta by Ganesh Mohanta depriving the right of succession of the wife and daughters of Ganesh Mohanta. Because, the plaintiff No.1 (P.W.1- wife of Gora Mohanta) has been examined as P.W.1 and she (P.W.1) has deposed in her evidence by stating that, she had heard that, Ganesh Mohanta had adopted Gora Mohanta without stating, from whom, she (P.W.1) had heard the same and without examining anybody on their behalf, who had told about the same to P.W.1. So, the aforesaid evidence of the P.W.1 is inadmissible under law being hit and barred under Section 60 of the Indian Evidence Act, 1872 as hearsay evidence. For which, the said evidence of the P.W. 1 regarding the adoption of Gora Mohanta by Ganesh Mohanta cannot be taken into the zone of consideration being inadmissible evidence.

Ext.3 has been filed and approved on behalf of plaintiffs. Ext.3 is the certified copy of the R.o.R., in which, it has been reflected that, Gora Mohanta is the son of Manasa Mohanta.

Ext.4 is the certified copy of the disputed list during settlement operation in respect of the properties in Mouza Kunjia.

It appears from Ext.4 that, Sukurmani Mohanta wife of Ganesh Mohanta had claimed before the settlement authority to record the suit properties in her name. In that objection case vide Ext.4, Gora Mohanta

being the second party member had filed objection stating him as the son of Manasa Mohanta, but not as the adopted son of Ganesh Mohanta.

Ext.5 is the certified copy of the daily register of death in the Police Station of Karanjia during the month of June, 1941 vide serial Nos.31 and 56, wherein the name of Gora Mohanta has been reflected as the son of Manasa Mohanta.

18. When the aforesaid own documents of the plaintiffs vide Exts.3, 4 & 5 (those have been prepared by the public authorities much prior to the filing of the suit vide T.S. No.34 of 1984-I by the plaintiffs and after the death of Ganesh Mohanta) are showing that, Gora Mohanta is the son of Manasa Mohanta and he (Gora Mohanta) is not the son of Ganesh Mohanta, then at this juncture, it cannot be held that, Gora Mohanta is the adopted son of Ganesh Mohanta. Because, the said documents, vide Exts.3, 4 & 5 (those were prepared much before the controversies between the parties i.e. much before the filing of the suit by the plaintiffs) reflecting Gora Mohanta son of Manasa Mohanta have more probative value having considerable importance to decide the matter.

19. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

- (i) **35 (1969) CLT 1084—Tarini Sahu Vrs. Bharat Sahu and others—Document prepared long before controversy—Evidentiary value—Ext.C** is the document, which came into existence at a time, when there was no dispute between the parties and as such it is a

document of considerable importance to decide the true nature of Ext.3.

(ii) *114 (2012) CLT 799 & 2012 (II) CLR 358—Sanjukta Mallick Vrs. Bharati Sethi—(Paragraph 8)—Document before cause of action and document after cause of action—*The Court must give importance to those materials, which came into existence prior to the rising of cause of action.

But, a document, which came into existence after the cause of action arose, then such document should be viewed with suspicion & such documents have far less probative value than the materials, which have come into existence much prior to the time, when the cause of action arose in the case.

(iii) *AIR 1956 (S.C.) 305—Harihar Prasad Singh and another Vrs. Deonarain Prasad and others—(Paragraph 5)—*When documents are ‘ante litem motam’, and as some of them are interparties and extend over a considerable period of time, they form cogent and strong evidence that, the lands are private lands.

(iv) *82 (1996) CLT 44—Kshitish Chandra Mishra Vrs. Smt. Sara Sahu & another—(Paragraph-11)—*ordinarily, a document which comes into being during the pendency of a litigation is of very little value for the party relying upon such document.

20. When in this suit at hand, the own documents of the plaintiffs vide Exts.3, 4 & 5 having more probative value are showing that, Gora Mohanta is the son of the Manasa Mohanta, but not the adopted son of Ganesh Mohanta, then at this juncture, the findings and observations made by the First Appellate Court placing much reliance on Exts.3, 4 & 5 disregarding the findings and observations of the Trial Court holding that, Gora Mohanta is not the adopted son of Ganesh Mohanta, but he is the son of Manasa Mohanta, are not unreasonable and improper in any manner.

The Trial Court had given its finding in issue No.5 that, the deceased Ganesh Mohanta was a member of the joint and undivided family at the time of his death. For which, the same is technically called as coparcenary. So, his undivided interest in the coparcenary properties i.e. in the suit properties left by Ganesh Mohanta has devolved upon his coparceners by survivorship. For which, the interest of Ganesh Mohanta over the suit properties had devolved only upon Gora Mohanta, to which, the First Appellate Court had negated by relying upon Articles 34 and 43 of the old Mulla Hindu Law by holding that, as the suit properties were acquired by Ganesh Mohanta and Manasa Mohanta, for which, the suit properties were the self acquired properties of Ganesh Mohanta and Manasa Mohanta, in which, Ganesh Mohanta had half share and Manasa Mohanta had half share. So, after the death of Ganesh Mohanta, his self acquired half share over the suit properties had devolved by way of succession upon his widow wife Sukurmani Mohanta, but not by way of survivorship upon Gora Mohanta.

Now, it will be seen, whether the aforesaid findings and observations made by the First Appellate Court is acceptable under law?

21. It is the own case of the plaintiffs, as per their pleadings that, the suit properties were acquired/purchased by two brothers i.e. Ganesh Mohanta and Manasa Mohanta. Therefore, according to the plaintiffs,

the suit properties were the self acquired properties of Ganesh Mohanta and Manasa Mohanta. Because, Ganesh Mohanta and Manasa Mohanta both had purchased the same through one transaction.

22. The law on that aspect has already been clarified by the Hon'ble Courts in the ratio of the following decision:-

1989 (I) OLR 94—Indumati Dibya Vrs. Sashimani Dibya and others—T.P. Act, 1882—Section 45—Two persons, who jointly purchased property shall be presumed to have equal share in the same.

So, in view of the above principles of law enunciated by the Hon'ble Courts through the application under Section 45 of the T.P. Act, 1882, it is held that, due to acquisition of the suit properties through one transaction by Ganesh Mohanta and Manasa Mohanta, they (Ganesh Mohanta and Manasa Mohanta) had half share each over the suit properties.

23. As per the Article 34 (2) of the chapter IV of the Mulla Hindu Law (15th Edition) “even if deceased was joint at the time of his death, he might have left self-acquired or separate property. Such property goes to his heirs by succession according to the order given in Article 43 and not to his coparceners”

When in this suit at hand, Ganesh Mohanta had left self acquired suit properties having his half share therein and when, he (Ganesh Mohanta) had expired while he was in joint with Gora Mohanta, for

which, as per law, his half share in the suit properties left by him (Ganesh Mohanta) had devolved upon his successors by way of succession according to the order given in Article 43 of the said old Hindu Law, but the same had not devolved upon his coparceners by way of survivorship.

24. According to Article 43 of the old Hindu Law, the half share left by Ganesh Mohanta in the suit properties had devolved upon his widow Sukurmani on the death of Ganesh Mohanta, but the same had never devolved upon Gora Mohanta. Because, Gora Mohanta is the son of his younger brother i.e. Manasa Mohanta.

So, after the death of Sukurmani (wife of Ganesh Mohanta), her interest in the suit properties had devolved upon her five daughters and on the death of her any daughter, the share of her that deceased daughter shall devolve upon her successors, but not upon any of the successors of Gora Mohanta i.e. plaintiffs. For which, the findings and observations made by the First Appellate Court disregarding the observations made by the Trial Court holding that, the suit properties were not the coparcenary properties of Gora Mohanta and the suit properties had not devolved upon by way of survivorship, but the self acquired half share of Ganesh Mohanta in the suit properties had devolved upon his wife Sukurmani Mohanta after the death of Ganesh Mohanta and after the

death of Sukurmani, the same had devolved upon her five daughters and after the death of any daughter of Sukurmani, the share of her deceased daughter shall devolve upon the successors of that deceased daughter of Sukurmani, but not upon any of the successors of Gora Mohanta i.e. defendants are not erroneous in any manner.

25. When all the daughters of Sukurmani Mohanta being her successors have definite interest in the suit properties by inheriting the same from Sukurmani after the death of Sukurmani and when the plaintiffs have prayed for declaration of title over the suit properties, for which, the First Appellate Court has rightly held that, the suit of the plaintiffs was not maintainable in absence of the impletion of all the daughters of Sukurmani Mohanta and the successors of the deceased daughters of Sukurmani, as they have definite share/interest in the suit properties and as they are the co-owners of the suit properties. In their absence, the suit of the plaintiffs is not entertainable under law. Because, they are the necessary parties to the suit.

26. On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) *AIR 1971 (S.C.) 240—Ch. Surat Singh (dead) & others Vrs. Manohar Lal and others*—Specific Relief Act, 1963—Section 34, 38 & 5—Property of a person cannot be dealt with behind his back.

(ii) *2011 (3) Apex Court judgments 0001 (S.C.) & 2011 (4) Supreme-546—J.S. Yadav Vrs. State of U.P. & another*—CPC, 1908—

Order 1 Rule 9—Necessary Party—Impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, plaintiff may not be entitled for the relief sought by him.

(iii) *2012 (2) CCC 36 (Patna)—Bhagyamani Devi and others Vrs. Sheo Kashara Devi and others*—CPC, 1908—Order 1 Rule 9—If necessary party is not added, the suit is liable to be dismissed on that score alone.

(iv) *AIR 2010 (S.C.) 2617 & 2010 (2) Apex Court judgments—The District Collector, Srikakulam & Ors. Vrs. Bagathi Krishna Rao & Anr.*—CPC, 1908—Order 1 Rule 9 (proviso)—Necessary party—Non-joinder of necessary party is fatal.

(v) *AIR 1934 (Madras) 293—Manapragada Swarnapathi Vrs. Krovvidi Suryaprakasa Rao*—Specific Relief Act, 1963—Section 34—The Court will refuse relief, if necessary parties are not impleaded.

(vi) *AIR 1963 Supreme Court 1019—Mahendra Lal Jaini Vrs. State of U.P. and others & AIR 1965 Supreme Court 271—Kanakarathanammal Vrs. V.S. Loganatha Mudaliar and another*—Specific Relief Act, 1973—Section 34 & 5—In a suit for declaration of title and recovery of possession, all co-owners are necessary parties. For non-joinder of necessary parties, such a suit becomes incompetent.

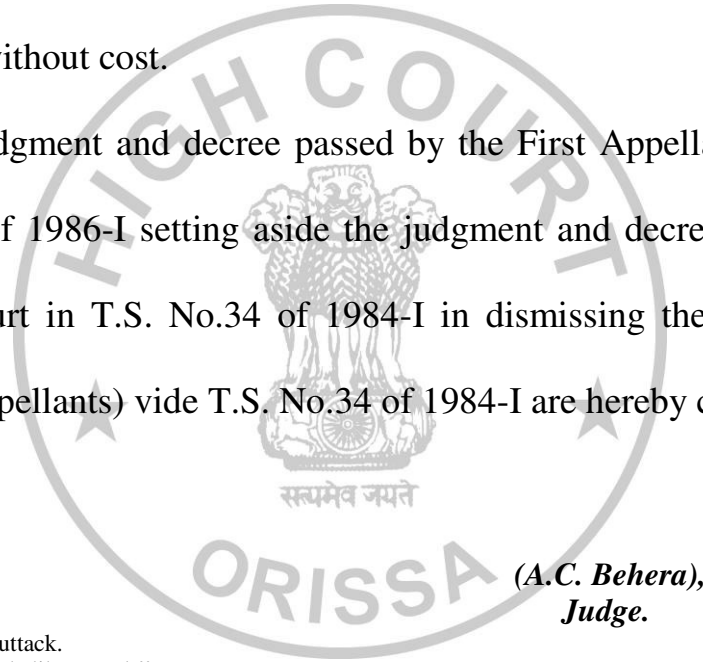
27. As per the discussions and observations made above, when it is held that, all the successors of Sukurmani Mohanta have definite interest over the suit properties and the defendants being some of the successors of Sukurmani Mohanta have their joint interest over the suit properties, then, at this juncture, they (defendants) cannot be enjoined at the instance of the plaintiffs, as they (defendants) are the co-owners of the suit properties.

28. On analysis of the materials, documents and evidence available in the Record as per the discussions and observations made above, when it is held that, the findings and observations made by the First Appellate

Court discarding the findings and observations made by the Trial Court in dismissing the suit of the plaintiffs are not illegal or improper in any manner, then at this juncture, the question of interfering with the same through this Second Appeal filed by the Appellants does not arise. As such there is no merit in the Appeal of the Appellants (plaintiffs), the same must fail.

29. In the result, the Appeal filed by the Appellants is dismissed on contest, but without cost.

The judgment and decree passed by the First Appellate Court in T.A. No.10 of 1986-I setting aside the judgment and decree passed by the Trial Court in T.S. No.34 of 1984-I in dismissing the suit of the plaintiffs (Appellants) vide T.S. No.34 of 1984-I are hereby confirmed.



**(A.C. Behera),
Judge.**

Orissa High Court, Cuttack.
16th January, 2024//Utkalika Nayak//
Junior Stenographer