

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

# R.S.A. NO.285 OF 2015

In the matter of an appeal under Section-100 of the Code of Civil Procedure has assailed the judgment and decree passed by the learned District Judge, Kendrapara in RFA No.56 of 2013 by dismissing the judgment and decree passed by the learned Civil Judge (Junior Division), Kendrapara in Civil Suit No.136 of 2009.

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*Surenderanath Kar*



***Appellant***

*-versus-*

*Rajkishore Swain*

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*Respondent*

**Appeared in this case by Hybrid Arrangement  
(virtual/physical mode)**

*For Appellant*

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M/s.Arijeet Mishra, S.K. Jena,  
S. Biswal, R. Mahato,  
Advocates.

***For Respondent***

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**CORAM:**

**MR. JUSTICE D.DASH**

**DATE OF HEARING::06.07.2022, DATE OF JUDGMENT:: 18.07.2022**

**D.Dash, J.** The Appellant by filing this Appeal under Section 100 of the Code of Civil Procedure 1908 (for short, ‘the Code’) have assailed the judgment and decree passed by the learned District Judge, Kendrapara in RFA No.56 of 2013.

By the same, the Appeal filed by the present Appellant (Defendant) under Section-96 of the Code questioning the judgment and decree passed by the learned Civil Judge (Junior Division), Kendrapara

in Civil Suit No.136 of 2009, decreeing the suit filed by the Respondent (Plaintiff) and thereby restraining the Appellant (Defendant) for altering the suit land or portions thereof and causing any damage or obstruction over the same for the Plaintiff to use it as passage and ingress and egress for his house to approach the Municipal road has been dismissed.

The Appellant (Defendant) thus having suffered from the judgments and decrees passed by the Courts below is now in Appeal before this Court.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.

3. Plaintiff's case is that the land under Plot No.1402 measuring an area Ac.0.65 decimals under Khata No.60 and Plot No.1406 measuring area of Ac.3.49 decimals under Khata No.266 of mouza Madhial belong to the Defendant and his co-sharers and they are the recorded tenants of the same as per the Hal Settlement Record. It is stated that one Shantilata Kar one of the co-sharers filed the suit for partition i.e. Title Suit No.346 of 1997 against Chaturbhuja Kar and others. The suit came to be disposed of in terms of the compromise between the parties. In that compromise, an area of Ac.1.28.1 links of land out of Plot No.1406 was allotted to the Defendant. With such settlement, the Defendant remained

in exclusive possession of the said allotted land. Being the owner in possession of the same, he sold portions of both the plots to different persons by executing registered sale-deeds. It is stated that on 14.12.2005, the Defendant sold Ac.0.06 decimals of land to the Plaintiff for a valuable consideration of Rs.30,000/- and executed a sale-deed which stood registered. Pursuant to the same, he delivered possession of the said land to the Plaintiff and the Plaintiff claims to be such as in possession of the said purchased land from that day onwards. It is stated that in the recital of the very sale-deed executed by the Defendant, the Plaintiff's right of passage over the balance land lying to the southern of Plot No.1402 has been recognized. According to the Plaintiff, the said balance land measures an area 60X20 links coming to Ac.0.102 links. The Plaintiff after purchase got his purchased land mutated in his name by Mutation Case No.497/278 being assigned with Plot No.1406/2118. He converted the status of that land to 'Gharabari' in accordance with the provisions of section-8A of the OLR Act by order in OLR Case No.107 of 2006. The Plaintiff then constructed his residential house over the said land with the doors and windows facing towards the suit land. It was so done after obtaining permission from the Competent Authority. The Plaintiff and his family members thus used the suit land as their passage to come to the Municipal road from their purchased land and house constructed thereon. It is further stated that the

Defendant had sold the entire area of Plot No.1402 allotted in his share in the partition save and except, the suit land and this was for the reason of being so left for user of passage by the Plaintiff and his family members which is the only way of ingress and egress for them to approach the Municipal road. On getting the information that the Plaintiff is going to sale the suit land to outsiders, which would ultimately close the path way for the Plaintiff to come out of their house to go to the Municipal road, the suit for the reliefs as stated above has been filed.

4. The Defendant in his written statement denied the assertion of the Plaintiff that he and his family members are using the suit land as passage for coming out of their house to approach the Municipal road. It is specifically stated that the Plaintiff and his family members have been using the eastern side road for coming to the Municipal road. It is stated by the Defendant that there is no such passage on the southern side of the Plot No.1406 as claimed by the Plaintiff. So, it is said that the Plaintiff has no right of passage over the suit land and the suit for the reliefs claimed is liable to be dismissed.

5. The Trial Court on the rival pleadings framed in total four issues. Answering the crucial issues which were issue nos. 1 & 3; examination of evidence and upon their evaluation, the answers have been returned

in favour of the claim/case of the Plaintiff. This answer has practically led the Trial Court to decree the suit.

The Defendant having suffered from the above judgment and decree having carried the First Appeal has been successful.

6. Learned Counsel for the Appellant (Defendant) submitted that the Courts below are not at all right and justified in restraining the Defendant by issuing the permanent injunction not to create alienate the suit land or any portion of thereof, cause any obstruction and damage to the suit land posing problem for the Plaintiff and his family members to use the suit land as passage to have ingress and egress from their house to the Municipal road. He further submitted that the Courts below on the basis of the evidence on record ought to have held that the Plaintiff have been using eastern side portion of the land as their path way from their own land to go to the Municipal road. He submitted that when the evidence are at galore on the above score, the Courts below have fallen in grave error in decreeing the suit of the Plaintiff in restraining the Defendant from selling the suit land and using it in any manner as he likes.

7. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

8. It is not in dispute that the Plaintiff had purchased Ac.0.06 decimals of land from out of the land under Plot No.1406. The sale-deed has been admitted in evidence and marked Ext.2. The boundary of the land sold to the Plaintiff has been very much described therein. It has been noted in the said sale-deed that southern boundary that the same is rest portion of the Plot No.1402 left for being used by the purchaser (Plaintiff) as road since it connects the Municipal road. The source of the claim of the Plaintiff is the aforesaid description in the sale-deed in so far as the purchased land is concerned. It is stated by the Defendant that the Plaintiff and his family members have been using the existing eastern side road for their ingress and egress to approach the Municipal road by coming out of their house and they have never used the suit land as their passage. The Defendant although now wants to wriggle out of this specific description of the sold land as given in the sale-deed with regard to existence of the suit land as the passage for user of the suit land by the family members of the Plaintiff, he is not offering any such explanation so as to withdraw from the admission made in the document i.e. Ext.2 against his proprietary right over the suit land being burdened with the liability of user by the Plaintiff and others. The Defendant having himself while selling the land to the Plaintiff since has conferred the right upon the Plaintiff and his family members to use the suit land as passage for the user of the purchased land so as to have ingress and

egress from his house to the Municipal road, the same has to be taken as the clear intent of the parties in the said transaction that in that transaction for the land sold; the suit land was burdened with the user as stated. In the given situation, the stand of the Defendant to deny the Plaintiff of the reliefs as claimed as because he is using the eastern portion as path way has been rightly whittled down by the Courts below.

9. In the wake of the aforesaid, the submission of the learned Counsel for the Appellant that the Appeal merits admission to answer the substantial questions of law as stated fails.

10. Resultantly, the Appeal stands dismissed. No order as to cost.

**(D. Dash),  
Judge.**