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Date of Argument – 21.08.2014

Date of Judgment – 05.09.2014
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JUDGEMENT

1. The plaintiff has filed this suit with a prayer for permanent injunction, restraining the defendants along with his representatives to not enter upon the suit land and from creating any mischief or nuisance over the same along with passing of a decree confirming the possession of the plaintiff's over the suit land.

2. The plaintiffs' case in a nut shell is that;

The plaintiff has purchased the suit land as a owner in possession of the schedule properties . The plaintiff's have purchased some landed properties situated in Mouza Sarua under Khata No.154, plot No.1041 and plot No.1042/2180 and also from Khata No.1174, plot No.1041/2179, plot No.1042 in different sale deeds. The original suit land was recorded in the name of Narasingha Narendra and others. After the death of Narasingha, his son Narendra became the owner in possession over the properties and executed a power of attorney in favour of one Sanatan Singh, vide document No.2781 /dtd.22.09.2008 and on the strength of such power of attorney sold the property of Khata No.154, plot No.1041 and 1042/2180 of an area of Ac 0.261 decimal and Ac 0.080 decimal in favour of plaintiff No.1 and one Gopinath Moharana of Baghamari vide registered sale deed No.3374/

dtd.10.11.2008. Gopinath Moharana again sold his share to the plaintiff No.1 vide deed No.11141203672, dtd.18.07.2012 and delivered possession to the plaintiff No.1 as it has been jointly delivered to them by the attorney holder. Another Santosh Kumar Narendra who was a purchaser from the original vide registered sale deed has executed a general power of attorney in favour of Sanatan Singh, vide document No.2448/ dtd.19.08.2008 for an area of Ac 0.166 2/3 decimals for the land in Khata No.174, plot No.1041/2179 for an area of Ac 0.113/3 decimal along from plot No.1042 an area of Ac 0.053 1/3 decimal. The said power of attorney holder sold the property to the plaintiff No.2 and one Gopinath Moharana of Baghamari vide registered sale deed No.2718/ dtd.11.09.2008 and again the said Gopinath Moharana transferred his interest in favour of plaintiff No.1 Kabita Harichandan vide registered sale deed No. 11141203672 / dtd.18.07.2012 and all the vendors delivered possession of the property and the plaintiff became the absolute owner of the suit properties. After transaction the plaintiffs had filed a mutation proceeding before Tahasildar, Begunia to mutate the properties in their names vide mutation case No.633/2010 and 668/2010. while the plaintiff's are in peaceful possession over the suit properties, all of a sudden on 16.07.2012 the defendant came to the suit plot and tried to break the boundary of the plaintiff's through some labourers. The plaintiff No.2 protested the activities of the defendants and during that time the defendant disclosed that he had the right over the suit land and also was in possession over the same. The defendant have no manner of right , title , possession or interest over the suit properties and are a complete stranger to the sale. If any other document is prepared in

favour of anybody including the defendant, the same is void.

3. The cause of action for this suit arose on 19.08.2008,11.09.2008,10.11.2008,16.07.2008 and on 18.07.2012 within the jurisdiction of this court. Hence the plaintiff has prayed to pass a decree for permanenet injunction and restrained the defendants along with his agents, representatives , servants and power of attorney holders to enter upon the suit land and from creating any mischief or nuisance and from raising any construction over the same. Further more to pass a decree confirming the possession of the plaintiffs over the suit properties.

On the other hand the defendant have neither appeared nor has filed his show cause in this suit for which they were set ex-parte and the suit proceeded thereon.

4. To prove its case the plaintiffs have examined two witnesses on his behalf and has exhibited 7 documents which included the affidavit evidence of P.W.1 & P.W.2 as Ext.1 and Ext.4, registered sale deed No. 2718,3672 & 3374 as Exts. 2,3 & 7 respectively. Registered power of attorney bearing No.2448,2781 is marked as Ext.5 and Ext.6 respectively.

5. P.W.1 who is the plaintiff No.2 in the suit has in his evidence corroborated his entire plaint and has stated that while the plaintiffs were in peaceful possession over the suit properties all of a sudden on 16.07.2012. the defendants came over the suit plots and tried to break

the boundary of the plaintiffs through some labourers and on their protest the defendant disclosed that he has right over the properties but was unable to show any document to enter into the possession over the suit land. In fact it is they who have purchased the land from his original owners through their attorney holder to their knowledge. The said transaction was taken place during the period of existence of the power of attorney . The defendants have no manner of right, title , possession or interest over the suit properties, hence the defendnats be permanently restricted from over the suit land and a decree is be passed confirming the possession of the plaintiff over the suit properties and to also pass a decree declaring that if any other document is prepared during pendency of the suit the same be declared as void.

6. P.W.2 has in his evidence corroborated the evidence of P.W.1 and has added that he is the power of attorney holder of Santosh Kumar Narendra and Khetrabasi Narendra. While the power of attorney were in force he had sold the suit properties to one Dillip Kumar Harichandan that the plaintiff No.2 and to Gopinath Moharana vide registered sale deed No.2718 , dtd.11.09.2008 and to one Smt. Kabita Harichandan and Gopinath Moharana vide registered sale deed NO.3374 , dtd. 10.11.2008 and delivered possession of the suit properties to the vendees accordingly. After execution of the sale deed he got full consideration over the same. From the date of execution of the sale deed the vendees are in peaceful possession over the same.

7. Ext.2 is the registered sale deed executed by Sanatan Singh in favour of Dillip Kumar Harichandan and Gopinath Moharana

8. From the above oral and documentary evidence and there being no contradictory evidence filed by the defendants it is quite clear that the plaintiffs have possessing over the suit property. The plaintiff have also prove with respect to the cause of action about the threat given by the defendants to enter upon the suit land and thereby to cause irreparable loss and injury to the plaintiff. Hence the plaintiff has proved that the defendant intend to enter upon the suit land and hence need to be permanently enjoined. The plaintiff has also prayed for passing of a decree declaring that if any document is prepared in favour of the defendant during pendency or before institution of the suit the same be declared as void, but the plaintiff has not averred under any such claims. Hence ordered.

ORDER

The suit be and the same is decreed on ex parte against the defendants but without costs. The plaintiffs possession is hereby confirmed over the suit land. The defendants are permanently enjoined and restrained along with their agents , servants, representatives and power of attorney holders to enter upon the suit land and from creating any mischief over the same.

(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 5th day of September , 2014.

**(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.**

List of witnesses examined on behalf of Plaintiff :-

P.W.1: Dillip Kumar Harichandan

P.W.2: Sanatan Singh

List of witnesses examined on behalf of Defendants. :-

None

List of documents proved on behalf of the Plaintiff :-

Ext.1 Affidavit evidence of P.W.1

Ext.1/1 to 1/5 Signature of P.W.1 on Ext.1

Ext.2 R.S.D No.2718/ dtd.11.09.2008

Ext.2/1 & 2/2 Signatures of P.W.1 on Ext.2

Ext.2/3 to 2/23 Signature of P.W.2 on Ext.2

Ext.3 R.S.D No.3672/ dtd.18.07.2012

Ext.3/1 to 3/9 Signature of P.W.1 on Ext.3

Ext.3/10 & 3/11 Signature of Kabita Harichandan on Ext.3

Ext.4 Affidavit evidence of P.W.2

Ext.4/1 & 4/2 Signature of P.W.2 on Ext.4

Ext.5 Registered power of attorney bearing No.2448.

Dtd.19.08.2008

Ext.5/1 & 5/2 Signatures of P.W.2 on Ext.5

Ext.6 Registered power of attorney bearing No.2781/
dtd.22.09.2008

Ext.6/1 & 6/2 Signature of P.W.2 on Ext.6

Ext.6/3 to 6/21 Signature of Khetrabasi Narendra on Ext.6

Ext.7 R.S.D No.3374/ dtd.10.11.2008

Ext.7/1 to 7/20 Signature of P.W.2 on Ext.7

List of documents proved on behalf of the Defendants :

Nil

**(ABHILASH SENAPATI)
CIVIL JUDGE(JR.DIV), KHURDA.**