

**HEADING OF A DECISION IN A CIVIL SUIT  
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

Sri Abhilash Senapati,LL.B  
Civil Judge (Jr. Divn.), Khurda.

Dated the 10<sup>th</sup> day of September, 2014

**C.S.179/2012**

1. Harmohan Behera, aged about 52(fifty two)years,

S/o: Indramani Behera

Vill/P.O: Soran, P.S; Tangi, Dist: Khordha

..... Plaintiff.

-Versus-

1. Dhoi Behera, aged about 55 years,

S/o: Banambara Behera

Vill/P.O: Soren, P.S: Tangi, Dist: Khordha

..... Defendants.

Counsel for Plaintiffs

... Sri B.K Patra,Advocate  
& Associates

Counsel for Defendants

... Sri B.D Mohapatra, Advocate  
& Associates.

.....  
Date of Argument – 25.08.2014

Date of Judgment – 10.09.2014  
.....

## **JUDGEMENT**

1. The plaintiff has filed this suit with a prayer for recovery of possession along with permanent injunction over the suit land against the defendants.

2. The plaintiffs' case in short is as follows;

That he is the owner of the suit land situated in Mouza Manasinghapur under mutation Khata No.1002/143, and plot No.1775/3012 of an area of Ac 0.006 decimal which has been purchased by the plaintiff from the defendants and others through a registered sale deed NO.730/ dtd.19.07.2004. The defendants has his residential house over the rest of the land which is situated on the east side of the case land. After purchase of the same the plaintiff has constructed his dwelling house over the suit land constituting of three rooms and his remaining area over the same . In the mean time the defendant created mischief with the plaintiff and gathered building materials in front of the house towards the western side to construct a house over the same. It was opposed by the plaintiff and Misc. Case No.458/2012 U/s.144 Cr.P.C was initiated. All of a sudden the defendants and his family members broke the lock and key forcefully to enter into the suit house and remained there. When the plaintiff came to know about it, he objected to the illegal act of the defendant, who did not pay any head.

3. The cause of action for this suit arose on 20.12.2012 when all of a sudden the defendants and his family members occupied the suit

house forcefully after breaking the lock and key and resided thereon. Hence the plaintiff has prayed to direct the defendants to vacate the suit house and give delivery of possession in favour of the plaintiff.

4. The defendants have appeared and have filed their W.S stating therein that the allegations made by the plaintiff are all false. The registered sale deed NO.730 / dtd.19.07.2014 alleged to be executed by the defendant in the favour of the plaintiff is a sham , nominal and void sale deed. The land covered under the aforesaid sale deed has not been alienated by the defendant. The plaintiff were never in possession over the suit land. The plaintiff has got no manner of right, title, interest and possession over the suit land, rather the defendants is in possession over the suit land having his right, title and interest over it. The defendant has not alienated the suit land as he is residing over the same , having his dwelling house since the time of his ancestors . The defendant has not gathered any building materials in front of plot NO.1775 to construct a house on it. The plaintiff with an aim to harras the defendant has filed a false proceeding against the defendant.

5. From the rival contention of the parties in their pleadings and hearing the following issues are drawn up for consideration.

**ISSUES :-**

- i. Whether the plaintiff has any cause of action to file the suit ?
- ii. Whether the suit is maintainable according to law ?
- iii. Whether the suit is liable to be dismissed for non-joinder of

necessary parties ?

- iv. Whether the sale deed executed is a fraudulent one ?
- v. Whether the plaintiff has got title over the suit land ?
- vi. Whether the defendant is in possession over the suit land ?
- vii. Whether the possession of the defendant is valid ?
- viii. To what relief, is the plaintiff entitled ?

6. In order to prove its case the plaintiff has examined only one witness and has exhibited 5 documents which includes , Ext.1 the affidavit evidence of P.W.1. Ext.2 being a registered sale deed NO.730/ dtd.19.07.2004. Ext.3 being the mutation R.O.R of Khata No.1002/143 . Ext.4 being the rent receipts . Ext.5 being the certified copy of sketch map. While to disprove the averments of the plaintiff the defendants have adduced four witnesses and have not exhibited any document.

7. **Issue No.4 :-**

As this issue is most important it is taken up at first for consideration. The plaintiff has stated that he has purchased the suit land from the defendant Dhoeia Behera vide registered sale deed No. 730/ dtd.19.07.20001, the said being a valid document , thereby confirming title and possession on him. The defendant has denied to the documents in R.S.D No.730 by stating that the same is a void document. The plaintiff has shown that after execution of a registered sale deed No.730/ dtd.19.07.2004, delivery of possession was done and consideration was paid. However the defendant has denied that no such execution took place as the defendant has denied to the allegation

about execution of sale deed and the said document being a forged document , it is up to the defendant to now prove that the said document is a fraud and sham transaction. P.W.1 has in his cross-examination stated that he is in possession over the suit land by virtue of the sale deed. In para-16 he states that out of Ac 0.120 decimal he had purchased Ac 0.006 decimal . He has also stated that the said document for sale is a valid transaction. While on the other hand the defendant have examined four witnesses . D.W.4 being the alleged tenant , D.W.s 1,2 &3 being the co-villagers. The defendant has not examined any witness to the sale deed or any other person to deny the said transaction.

Section 17 of the Indian Contract Act defines fraud as “ fraud means and includes any of the act committed by a party to a contract or , by his agents with an intention to deceive any party thereto or his agent to or to induce him to enter into the contract ,

- (i) To suggest as to a fact of that which is not true by one, who does not believe it to be true
- (ii) The act of concealment of a fact by one having knowledge or belief of the fact.
- (iii) A compromise made with not intention of performing it.
- (iv) Any other act fitted to deceive
- (v) Any such any or omission as law specifically declarations to be fraudulent.

8. The essentials of fraud are

- (i) There should be false statement of a fact by a person who does not himself believe the statement to be true.

- (ii) The statement should be made with wrongful intention of deceiving another party thereto and inducing him to enter into the contract of that basis.

In *Kamala Kanta Vs. Prakash Devi AIR 1976 Rajasthan 79* , it was held that the plaintiff, Kamalakanta filed a suit against his mother Prakash Devi and some others seeking cancellation of a trust deed on the ground that his signatures to it were obtained by fraud by falsely telling him that it was a general power of attorney . The deed in this case was executed by the plaintiff's father and an Advocate. The plaintiff had all the means to know the contents of the documents, under these circumstances it was held. There was no fraud in this case.”

A burden of proof to show that the alleged document is a fraudulent one lies on the defendant. Defendant has not filed any documentary evidence nor any oral evidence in that regard. Furthermore the defendant has also not examined himself to cast any doubt with respect to the execution of the said document. To add to it corroboration of the plaintiff's evidence to his plaint story and exhibiting his signature and the sale deed and non filing of any evidence by defendant to negate the sale deed and also non examination of principal defendant casts a doubt on the plea of the defendants. Hence in view of the above scenario it can be clearly said that the defendant has miserably failed to show that the said transaction is a fraudulent one.

9. **Issue NO.5 &6 :-**

These issues being interlinked are taken up together for consideration. On careful scrutiny of the above analysis with regard to

registered sale deed No.750 it is seen that the plaintiff has already proved the same. The plaintiff has filed Ext.3 which shows that the suit land is recorded in his name. The defendant not being able to prove that the alleged sale deed is a fraudulent one and thereafter the plaintiff proving his title through the registered sale deed and through the R.O.R it can be clearly said that the plaintiff has got title over the suit land.

Coming into the question of right and interest it is seen that all the witnesses adduced by the defendant have clearly stated that the plaintiff is not in possession over the suit land and further more the defendant has given one of the rooms over the suit land in rent to one Sek Aktar. The said D.W.4 Sekh Akhtar has been examined as D.W.5. He has clearly in his evidence stated that he has no document to show that he is living on the suit land on rent basis. D.Ws. 1,2 &3 have clearly stated that the defendant had allotted one room on rent basis to Sekh Akhtar. Further their being no document, with respect to rent, it can be clearly said that although Sekh Akhtar is at present residing in one of the room but he is not a valid tenant of the same. D.W.1 has in his evidence stated that the suit house is in existence over the suit land . He has also stated that since his childhood he has been seeing the suit land. D.Ws. 1 &2 have denied their knowledge with respect to the Khata No., plot No. and area of the suit land. D.W1 has also denied to the area of the suit land and has stated since 50 years he has seen a house over the suit land. It is the case of the plaintiff that the defendant is possessing the suit house. All the corroborative evidence of the defendant clearly shows that at present as per the allegation of the

plaintiff the defendant has taken over possession of the suit land . Although illegally as the defendant has no right and authority to remain present over the same.

10. **Issue No.7 : -**

As the defendants has not been able to prove his right, title or interest over the suit land and the plaintiff has been clearly able to prove his right and title and as to how the defendant came into forcible possession over the suit land it can be said that the possession of the defendant is not valid and hence he has to vacate the suit land.

11. **issue No.2**

The plaintiff has clearly in his evidence stated that the cause of action for filling this suit arose on 20.12.2012 when all of a sudden the defendant and his family members occupied the suit house forcefully. The defendant have denied to the cause of action stating that they have been in possession of the suit house since many years. Cause of action is a bundle of rights alleged by one party and denied by another hence in view of the rightful claims of the parties it can be said that the plaitniff has got cause of action to file this suit.

12. **Issue No.1**

The defendants have stated that at present the suit is not maintainable as the plaintiff has prayed for a prayer of permanent



injunction but they have denied the title from the very beginning. In the above scenario, in view of the denial of the title the plaintiff has to amend his plaint and to seek at first a declaration of title and then for permanent injunction. Defendant have also filed citation in *1995(2) OLR 348* wherein it has been held that a true owner or a person having possessory title can file a suit for injunction against the trespassers, but where the defendant refutes the title of the plaintiff their the plaintiff has to seek a declaration of title and thereafter prayer for injunction by amending the plaint. On careful scrutiny of the document present in the record, it is seen that the plaintiff has prayed for a prayer of permanent injunction. The defendant has clearly denied title of the plaintiff and after hearing both the parties this court had framed issues with respect to the title and interest in issue NO.5. In respect of their being an issue in the above matter and provision of Order 14 being clearly carried out , it can be said that the suit is maintainable.

13. **Issue No. 3& 8. :-**

As no specific prayer has been made in this regard hence no order needs to be passed. Hence ordered.

**ORDER**

The suit be and the same is decreed on contest against the defendants, but without costs. The defendant are directed to vacate the suit house and give delivery of possession in favour of the plaintiff in a period of 3 months. Failing which the plaintiff is at liberty to take the help of the process of the court for execution of this order. The

defendants are further restrained to enter into the suit land.

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

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 10<sup>th</sup> day of September , 2014.

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

**List of witnesses examined on behalf of Plaintiff :-**

P.W.1: Hara Mohan Behera

**List of witnesses examined on behalf of Defendants. :-**

D.W.1 Bikram Pradhan  
D.W.2 Nirakar Behera  
D.W.3 Rankanath Pradhan  
D.W.4 Dhoi Behera  
D.W.5 Sekh Akhtar

**List of documents proved on behalf of the Plaintiff :-**

Ext.1 Affidavit evidence of P.W.1  
Ext.1/1 &1/2 Signature of P.W.1 on Ext.1  
Ext.2 R.S.D NO.730/ dtd.19.07.2004  
Ext.2/1 to2/11 Signature of D.W.4 on Ext.2  
Ext.3 Mutation R.O.R of Khata No.1002/143 of Mouza

Mansinghpur

Ext.4 Rent receipts

Ext.5 Certified copy of sketch map

**List of documents proved on behalf of the Defendants :**

Ext.A Affidavit evidence of D.W.1

Ext.A/1 & A/2 Signatures of D.W.1 on Ext.A

Ext.B Affidavit evidence of D.W.2

Ext.B/1 & B/2 Signatures of D.W.2 on Ext.B

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

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