

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

PRESENT :-

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

**Dated the 14<sup>th</sup> day of August, 2014**

**C.S. 98/ 2010.**

*Raghunath Khandayataray*, aged about 51 yrs, S/o- Nabaghana Khandayataray of Vill./P.O.- Sundarpur, At/ present of Vill./P.O.- Badapari, P.S.- Tangi, Dist- Khordha.

..... *Plaintiff.*

-Versus-

*Ajay Kumar Sundaray*, aged about 32 yrs, S/o- Baidyanath Sundaray of Vill./P.O.- Badapari, P.S.- Tangi, Dist- Khordha.

..... *Defendant.*

Counsel for Plaintiffs                    ...    Sri T. Baral, Advocate  
& Associates.

Counsel for defendant                    ...    Sri B.D. Mohapatra,  
Advocate & Associates.

Date of Argument –    30.07.2014

Date of Judgment –    14.08.2014

**JUDGEMENT**

The plaintiff has filed this suit with a prayer for declaration that the registered sale deed No. 11151001126 dt.

20.07.2010, be executed by the plaintiff in favour of the defendant in respect of the suit land be declared as a void one and a decree of permanent injunction be passed against the defendant prohibiting him from entering upon the suit land.

02. The plaintiff's case in a nut-shell is that :

The plaintiff is the manager and KARTA of a joint hindu MITAKHYARA family and has brought this suit in the same category. The landed properties appertaining to khata No. 438, plot No. 1474/1886 with an area of Ac. 0.013 decimals is the subject matter of this suit (herein after called the suit land). The plaintiff is the owner in peaceful possession over the suit land having his right, title and interest over the same. The plaintiff had constructed two pucca rooms over the suit land since last 10 years and had given the house on rent to different persons for his livelihood. Further the defendant is a co-villager and visited the house of the plaintiff on regular occasions. Looking into the nature and behavior of the defendant the plaintiff had good faith on him and recognized the defendant as a member of his family. Taking advantage of the simplicity and innocent nature of the plaintiff the defendant persuaded him to to execute a power of attorney in his favour for management of the house, standing over the suit land. The plaintiff had executed the said power of attorney as most of the time the plaintiff was remaining outside of his family. The defendant agreed to the said proposal and accordingly both of them went to the office of the Sub-Registrar, Tangi for execution of a power of attorney, in favour of the defendant for management of the suit land. As per the

instruction of the defendant, the scribe collected the signatures of the plaintiff on different stamp papers along with his photo with an impression that the plaintiff has executed a power of attorney on dt. 20.07.2010 in favour of the defendant. The plaintiff however did not go through the contents of the said document prepared by the scribe at the instruction of the defendant. After execution of such document the defendant tried to avoid the plaintiff and did not visit the house of the plaintiff in spite of the request of the plaintiff. On 30.10.2010, while the plaintiff was present in his house, the defendant went to the house of the plaintiff and expressed his desire for purchase of the suit land, but when the plaintiff did not agree, the defendant claimed his ownership over the suit land by showing the plaintiff a registered sale deed, which was allegedly executed by the plaintiff in his favour on dt. 20.07.2010, in respect of the suit land. The defendant informed the plaintiff that the plaintiff had executed a power of attorney in his favour. The plaintiff became perturbed with the claims of the defendant about ownership over the suit land by virtue of a registered sale deed and when he inquired about the matter, he came to know that on 12.11.2010 the defendant had managed to obtain a registered sale deed instead of a power of attorney in respect of the suit land by putting false impression on him. Hence the registered sale deed No. 11151001126 executed by the plaintiff in favour of the defendant is completely fraudulent document and in fact, a void sale deed. The plaintiff has neither received any construction amount from the defendant nor has delivered the possession of the suit land in favour of the defendant. The plaintiff is still in possession over the suit land of the defendant and has not derived any title over the suit land in any

manner. The total valuation of the suit land with pucca house on it would be more than two lakh rupees, but the defendant, who is a very cunning person has managed to obtain such an illegal sale deed at a very low price by influencing different persons of the office of the Sub-Registrar, Tangi. The plaintiff has no necessity for alienation of the suit land in favour of the defendant. In fact the defendant has managed to obtain such an illegal and void sale deed in his favour in respect of the suit land by creating a false impression that the plaintiff has executed a power of attorney in favour of the defendant for management of the suit land. The defendant has neither got delivery of possession of the suit land from the plaintiff nor he is in possession of the suit land in any manner. The cause of action in this suit arose on 30.10.2010, when the plaintiff claimed his ownership over the suit land and on 12.11.2010, the date which the plaintiff came to know that the defendant had managed to obtain a sale deed No. 11151001126 in his favour. The defendant has made this document through fraud and thereby has created this false transaction, but the defendant had never been in possession over the suit land. Hence the plaintiff has prayed for declare the registered sale deed No. 11151001126 dt. 20.07.2010 executed by the plaintiff in favour of the defendant in respect of the suit land as sham transaction. The plaintiff has also prayed for passing a decree of permanent injunction against the defendant prohibiting him from entering upon the suit land and from creating any sort of disturbances in the possession of the plaintiff over the same.

03. The defendant has filed his written statement stating therein that the plaintiff has no cause of action to file this suit. The

plaintiff is not in possession over the suit property since 20.07.2010 and has no right, title or possession over the suit land as he has alienated the suit property to the defendant on dt. 20.07.2010 bearing registered sale deed No. 11151001126 before the Sub-Registrar, Tangi. The plaintiff has sold the suit property for his legal necessity and has received the consideration amount before the registering authority and after execution of the sale deed has delivered possession to the defendant on the same day. The defendant has constructed two pucca rooms over the suit property in the front side towards public road for business purpose. The plaintiff has never constructed room over the suit plot before execution of registered sale deed. At the time of execution of the suit land in his favour, the same was lying vacant and after purchase the defendant had constructed two pucca rooms for his business purpose. The plaintiff is not an illeterate man and works as a Senior Assistant in the office of Chief Post Master General at Bhubaneswar and knows everything regarding registration affairs as he is an educated person. The allegation of taking advantage of simplicity and innocence of the plaintiff and the defendant persuading him to execute the power of attorney for management of his house is completely false and imaginary one. The wife of the plaintiff is also an educated lady, who is serving as a government upper primary teacher in a nearby school. The averments, by the plaintiff are false and concocted. Furthermore, the defendant has never instructed to the scribe for collection of any signature along with the photographs of the plaintiff in different stamp papers. Hence the plaintiffs allegations are all meant to create a false case in his favour before this court. In fact the plaintiff knowing all the facts regarding alienation of the suit

property had executed the sale deed in favour of the defendant and had purchased the stamp papers from the stamp vendor and by his instruction the scribe had scribed and prepared the document after reading over the same. The plaintiff had given his photograph and thumb impression on the body of sale deed as per requirement. The sale document had been produced before Sub-Registrar, Tangi and the plaintiff had received the consideration amount before the registering authority after complying to all the registration formality of the document and been executed bearing registered sale deed No. 11151001126 dt. 20.07.2010. The plaintiff had delivered possession to the defendant. The allegation showing the sale deed dt. 20.07.2010 by the defendant to the plaintiff in para – 10 and 11 of the pleading regarding the same being of fraudulent transaction are all false. The plaintiff in fact knowing all the facts and circumstances executed the aforesaid sale deed in favour of the defendant and delivered possession to the defendant from the date of purchase of the defendant. At present the defendant is in peaceful possession over the suit land and has constructed two pucca rooms over the same. The sale deed is a genuine document and the defendant is in peaceful possession over the suit land. The plaintiff has received consideration amount from the defendant and has delivered possession to him and that the defendant at present is a genuine title holder of the suit land. The allegations in para – 14 regarding cause of action, i.e. 30.10.2010 & 12.11.2010 are false and imaginary. In para – 12 the plaintiff has admitted that the suit land along with the house would be of more than two lakhs of rupees. Hence the suit is not properly valued as per his allegation. Hence the suit is liable to be dismissed. Hence the suit may be dismissed and the

title of the plaintiff be declared over the suit land and the plaintiff be directed not to create any disturbance in the peaceful possession of the defendant and the cost of the suit be decreed in his favour.

4. Taking into account the rival pleadings of both the sides, the following issues have been framed in this case for adjudication of the real dispute between the parties.

**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 plaintiff had executed a registered sale deed in favour of the defendant with respect to the suit land?
- iv. Whether the said registered sale deed is a fraudulent document?
- v. Whether the plaintiff is in possession over the suit land?
- vi. To what other reliefs, is the plaintiff entitled?

05. In order to prove his case the plaintiff has examined five witnesses and has exhibited six documents, which includes the affidavit evidence of P.W. 1 to 5 as Ext. 1 to 5 and Ext. 6 being the certified copy of registered sale deed No. 11151001126/2010.

On the other hand the defendant has examined six witnesses and has exhibited seven documents in his favour. Ext. B, C, D, E being the affidavit evidence of D.W. 1 to 4 respectively. Ext. A is the original sale deed bearing No. 11151001126 dt. 20.07.2010 and

Ext. F is the ROR of khata No. 438/317 of mouza Badapari, Ext. G is the rent receipt filed by the defendant.

## **FINDINGS**

### **Issue Nos. iii & iv.**

06. These two issues are taken up together for consideration as they deal with the most important dispute and are inter linked with each other. The plaintiff has alleged that the defendant has caused fraud upon him by stating that he intends to execute a power of attorney, but with a malafide intention took away his signatures on a registered sale deed. Sec. 17 of Indian Contract Act defines fraud :-

*“Fraud means and includes any of the following acts committed by a party to a contract or , by his agent with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract,*

- (1) The suggestion as to a fact of that which is not to by one, who does not told it to be true.*
- (2) the act concealment of a fact by one having knowledge or belief of the fact.*
- (3) A promise made with any intention of performing it.*
- (4) Any other act fitted to deceive.*
- (5) Any such act or omission as the law special declare to be fraudulent”.*

The essentials of fraud are :-

1. there should be a false statement of fact by a

person, who himself does not believe the statement to be true.

2. The statement should be made with a wrongful intention of deceiving another party thereto and inducing him to enter into the contract on that basis.

In this case the plaintiff, i.e. P.W. 5 has in his evidence clearly stated that he had given a power of attorney to the defendant to look after the suit property, but later he got to know that in the shape of power of attorney the defendant had actually got a sale deed executed in his favour. He had never voluntarily sold the suit property. On the other hand the defendant has vehemently supported the registered sale deed and has quite clearly stated that all the witness to the sale, i.e. Trinath Sahoo and Biswanath Das have all supported him. Further more he has also clearly stated that the contents of the registered sale deed clearly shows about sale and in fact the nature of the deed No. 11151001126 dt. 20.07.2010 also clearly reflect that it is a sale deed. The plaintiff being an educated person along with his wife being an educated person, it would be quite impossible to carry fraud on them. The defendant has also been corroborated by D.W. 1 & 3, who are the attesting witnesses. The plaintiff lastly alleged about the consideration money in the alleged registered sale deed being of very meagre amount, which would state that fraud was carried out and secondly he had signed on the alleged document thinking it to be a general power of attorney.

On perusal of the plaint it is quite clear that the plaintiff has argued about gross meager consideration in the registered sale deed

which could show the carrying out of fraud, whereas the defendant clearly denied about the same and has stated that as per the direction of the registration authority and consent of the plaintiff the consideration was paid. In my opinion as the document of registered sale deed is in favour of the defendant it is the duty of the plaintiff to file valuation of the land nearby the suit land to show that the consideration amount in the registered sale deed was very meager. The plaintiff not being able to file the valuation of nearby lands clearly shows that the plaintiff has no objection in that regard.

In *Nedungadi Band Limited Vrs. M/s E. Agri Products AIR 2004 KERALA 62*, it was held that “though under valuation by itself cannot be sufficient to infer fraud, however where there was gross under valuation coupled with a peculiar circumstances in the case, i.e. one of the purchasers being the son of one of the judgment debtor and another one being a relevant of one of the judgment debtors and the enthusiasm executed by the judgment debtor in having the sale and their own property confirmed. Such facts should be taken about as a circumstance indicating fraud”.

In this case the plaintiff has not filed the valuation of nearby lands. Further more he has also specifically not stated the reason as to why as per his allegation he had intended to execute a power of attorney just to look after the house. More specifically, when he used to reside in side Orissa and not a very far place. Hence in my opinion the question of gross under valuation and thereby fraud on that context does not have merit as the burden of proving the same lies on the plaintiff and he has miserably failed to prove the same.

Coming into the next point of signing on the power of

attorney in place of registered sale deed by fraud, it is seen that the plaintiff has himself admitted that he is a very simple and innocent person and works as a Postal Assistant in PMG, Bhubaneswar. This clearly shows that he is an educated person. Furthermore in the WS the defendant has stated that, the wife of the plaintiff is serving as a Govt Upper Primary Teacher. The above two assertions have not been denied. In my opinion if it appears from the fact that even though there was false statement, but the other party had means to know the correct position and ought to have known the truth there is no fraud.

In *Kamal Kanta Vrs. Prakash Devi AIR 1976 RAJASTHAN 79*, it was held that the plaintiff "Kamala Kanta 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 attested by the plaintiffs father and an advocate. The plaintiff was an educated man and had all the means to know the contents of the document, under this circumstances it was held that there was no fraud in this case".

Going through the above citation it is quite clear that the plaintiff, who is an educated person would have signed on the sale deed after going through the same and further more when the contents of the sale deed are quite clear enough and wherein, it has been clearly written, that it is a registered sale deed, I donot think any inference for fraud on the ground of misrepresentation can be taken into account. Lastly, the deed was executed before a Government official in presence of witnesses who have corroborated the same in evidence. Hence in my

opinion it can be clearly said that the registered sale deed executed by the plaintiff suffers no infirmity and is valid in that count.

**Issue Nos. v.**

07. This issue is taken up prior to other remaining issues because it deals with the crux of the suit. Let us now analyze the evidence with respect to the above issues.

P.W. 1 has clearly in his evidence stated that he could not say the khata number, plot number and exact area of the suit land. P.W. 1 is a co-villager and has in his examination in chief stated that he had seen the plaintiff being in right, title and interest over the suit land and having possession over the same. He had also added that he is not a tenant of any house standing over the suit land. In para – 8 he has also stated that a house has been standing over the suit land since 15 years. P.W. 2 with respect to the above issue has stated that the plaintiff had two pucca rooms over the suit land out of which he has taken one room from the plaintiff on monthly rent basis and he is running his variety store for the last five years over the same. In his cross-examination at para – 10 he states that he could not produce any document to show that he had been given a room standing over the suit land on rent by the plaintiff. He also could not say about the khata number, plot number and area of the suit land. P.W. 3 is another co-villager, who has also stated that the plaintiff is the owner in peaceful possession of the suit land and has constructed two pucca rooms over the suit land since last 12 years. In his cross-examination he has stated that the plaintiff is a native of Udayagiri Village, who has settled in village Badapari after

purchasing some landed properties. P.W. 3 has denied to the suggestion that the defendant has been possessing the suit land. P.W. 4 also a co-villager knowing both the parties has in his evidence stated that the plaintiff has right, title, interest over the suit land and since 12 years has constructed two pucca rooms over the suit land, which has been given on rent basis. The defendant have got no right, title, interest over the suit land. He has given boundary details of the suit land in para – 8 being bounded on east by land of Arati Biswal, on west by Sesadeb Baral, on north by a Government road and on south by land of Asha Bewa. He could not say if the defendant had purchase the suit land vide registered sale deed No. 11151001126 dt. 20.07.2010. P.W. 5, who is the plaintiff in this case has corroborated his plaint in his examination in chief and has in his cross-examination with respect to the above issue stated that he had never delivered possession of the suit property to the defendant and the defendant had never been in possession over the suit land. After around one month of fraudulent execution of Ext. A he came to know that in fact the defendant had got a sale deed executed giving him the impression that he was executing a power of attorney. On his inquiry defendant could not give any rational answer and finding no other way around two to three months after execution of Ext. A this suit was filed.

D.W. 1 has in his evidence stated that the defendant is in possession over the suit land and after registration of the sale deed and till date the defendant has constructed two pucca rooms over the suit land. In his cross-examination he has stated that the R.C.C Roofed house is present over the suit land and the said is in existence for the last 3 years. The defendant is residing in the suit house and has opened

a stationary article shop over the said land. Raghunath has delivered possession of Ac. 0.013 decimals of land without any such measurement. The plaintiff had identified the suit land to the defendant and had stated to him that he would possess the same thereof. The said deed was scribed at the sub-registrar office. D.W. 2 has also corroborated the evidence of D.W. 1, but has in para – 8, interestingly stated that he could not say if possession of the transacted land had been delivered at the time of execution of Ext. A. He also said that the factum of existence of such house over the transacted land had not been mentioned in the deed. D.W. 3 has in his cross-examination at para – 13 stated that he could not say the khata number, plot number of the suit land in respect of which this case has been filed. He also could not say as to because of what necessity the vendor sold the suit land. D.W. 4 has in his cross-examination stated that he could not say the day, date, month and year when he had gone to the suit land for construction of a house. In para – 9 he states that the plaintiff is the owner of the suit land and Ajay must have purchased suit land from the plaintiff. D.W. 5 has corroborated the evidence of the defendant and has stated in para – 7 that he was a labourer during construction of the house over the suit land. He was given money by defendant for being a labour for construction of the said house. He could not say the exact day or period in which he was the labour. D.W. 6, who is the defendant in this case has corroborated the entire written statement and has in his cross-examination stated that he had taken permission from Tahsildar, to construct a house over the suit land. He did not know the present KISAMA(nature) of the suit land in the ROR. He took possession of the suit land on 20.07.2010 in presence of the plaintiff, Trinath

Subudhi and Parsuram Baral. The land was measured in his presence by one Ananda Patra. He had a shop room over the suit land.

The defendant has already proved the execution of registered sale deed and while execution of the registered sale deed the defendant has also proved the delivery of possession. All the witnesses to the registration have also admitted about the delivery of possession. The contents of the registered sale deed also states that possession has been delivered to the defendant. The witnesses adduced by the defendants have all corroborated each other with respect to the possession. Hence in view of the above scenario and the contents of sale deed clearly stating about the delivery of possession, it is quite clear that the defendant is in possession over the suit land.

**Issue Nos. i & ii.**

08. The plaintiff has clearly stated that cause of action to file this suit arose on 30.10.2010, the day on which he claimed his ownership over the suit land and on 12.11.2010 when he came to know that the defendant had managed to obtain a void registered sale deed in his favour. The defendant has clearly stated that the plaintiff does not have any cause of action to file this suit. In my opinion as the plaintiff has failed to prove the fraudulent transaction or fraud by misrepresentation or gross under valuation of the registered sale deed, hence it can be clearly said that the plaintiff has neither got a cause of action to file this suit and hence the suit is not maintainable according to law.

**Issue No. vi.**

09. As no specific prayer has been made in this respect by either of the parties, hence ordered.

**ORDER**

The suit be and the same is dismissed on contest against the defendants, but without cost.

Advocate's fees at uncontested scale.

(ABHILASH SENAPATI)  
CIVIL JUDGE, KHURDA.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 14<sup>th</sup> day of August, 2014.

(ABHILASH SENAPATI)  
CIVIL JUDGE, KHURDA.

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

P.W.1	Krushna Chandra Majhi.
P.W. 2	Ramakanta Biswal.
P.W. 3	Laxmidhar Behera.
P.W. 4	Jayanta Mohapatra.
P.W. 5	Raghunath Khandayatray.

**List of witnesses examined on behalf of Defendant no.1 :-**

D.W. 1	Trinath Sahoo.
D.W. 2	Basudev jena.
D.W. 3	Biswanath Das.
D.W. 4	Prafulla Sahoo.
D.W. 5	Kesab Sahoo.
D.W. 6	Ajay Kumar Sundaray.

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

Ext.1	Affidavit evidence of P.W. 1.
Ext. 1/1	Signature of P.W. 1 on Ext. 1.
Ext. 2	Affidavit evidence of P.W. 2.
Ext. 2/1	Signature of P.W. 2 on Ext. 2.
Ext. 3	Affidavit evidence of P.W. 3.
Ext. 3/1	Signature of P.W. 3 on Ext. 3.
Ext. 4	Affidavit evidence of P.W. 4.
Ext. 4/1	Signature of P.W. 4 on Ext. 4.
Ext. 5	Affidavit evidence of P.W. 5.
Ext. 5/1 to 5/3	Signature of P.W. 5 on Ext. 5.
Ext. 6	Certified copy of RSD No. 11151001126 dt. 20.07.10.

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

Ext. A	Original Rsd bearing No. 11151001126 dt. 20.07.10.
Ext. A/1 to A/12	signatures of D.W. 5 on Ext. A.

Ext. A/13 to A/18	signatures of D.W. 1 on Ext. A.
Ext. A/19	Signatures of D.W. 2 on Ext. A.
Ext. A/20 to A/24	Signatures of D.W. 3 on Ext. A.
Ext. A/25	Signatures of D.W. 4 on Ext. A.
Ext. B	Affidavit evidence of D.W. 1.
Ext. B/1 & B/2	Signature of D.W. 1 on Ext. B.
Ext. C	Affidavit evidence of D.W. 2.
Ext. C/1 & C/2	Signature of D.W. 2 on Ext. C.
Ext. D	Affidavit evidence of D.W. 3.
Ext. D/1	Signature of D.W. 3 on Ext. D.
Ext. E	Affidavit evidence of D.W. 4.
Ext. E/1 & E/2	Signature of D.W. 4 on Ext. E.
Ext. F	ROR of khata No. 438/317 of mouza Badapari.
Ext. G	Rent receipts.

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