

IN THE COURT OF THE SENIOR CIVIL JUDGE BANPUR.

PRESENT:-

Sri Satya Ranjan Pradhan,  
Senior Civil Judge, Banpur.

C.S. No 189/2014

Sumitra Dei, aged about 45 years, W/o Raja Jena,  
Vill: Brundabanpur, Po: Badasireipur, P.S: Banpur,  
Dist: Khordha

... Plaintiff.

-Versus-

1. Kailash Chandra Jena, aged about 48 years, S/o Late Sinkuli jena.
2. Sushila Jena, aged about 26 years, S/o Kailash Chandra Jena.
3. Sukanta Jena, aged about 22 years, S/o Kailash Chandra Jena.
4. Samira Jena, aged about 20 years, S/o Kailash Chandra Jena.
5. Satyamanjari Jena, aged about 45 years, W/o Kailash Chandra Jena.  
All are of Vill: Brundabanpur, Po: Badasereipur, P.S: Banpur, Dist:  
Khordha.
6. Dharitri Pratap Narendrajit Sing, aged about 46 years, S/o  
Ramakrushna Narendrasingh of Vill: Bhatapada, Po: Harichandanpur,  
P.S: Khordha.

.... Defendants.

7. Rudrapratap Narendrajit Singh , aged about 55 years, S/o Late  
Ramachandra Narendrasingh.
8. Surapratap Narendrajit Singh @ Chitta, aged about 52 years, S/o Late  
Ramakrushna Narendrasingh.  
Sl. No. 7 & 8 are of Vill: Bhatapada, Po: Harichandanpur, P.S: Banpur,  
Dist: Khordha.
9. Minakhi Harichandan, aged about 50 years, W/o Bijaya Kumar  
Harichandan of Vill/Po: Malipada, P.S/Dist: Khordha.

.....Proforma Defendants.

Counsel for Plaintiffs ... Sri S.S.Mishra, Advocate  
and associates.

Counsel for defendants ... None.

Date of Exparte Argument – 27.10.2014.  
Date of Exparte Judgment – 01.11.2014

EXPARTE JUDGMENT

The property measuring an area of Ac.0.013 decimals situated in Mouza Brundabanpur under Khata No.169, Plot No.267 is described as the suit property. The said suit property stood recorded in the name of Rama Chandra Narendrasingh, as per the ROR published in the year 1991. The plaintiff and her family members have their ancestral residential house over Plot No. 263 in the said mouza Brundabanpur. The said property over which their house is there stands recorded in the name of their father in-law. Since the time of his ancestors the suit property was used by the family members of the plaintiff as a part and parcel of their house more specifically as their bari. The recorded owner of the said property Rama Chandra Narendrasingh had cordial relationship with the family of the plaintiff. On account of his legal necessity and good relationship he proposed to sale the suit land to them. After negotiation Rama Chandra Narendrasingh sold and transfer the suit property to the plaintiff for a consideration of Rs.90/-. On receipt of the consideration money Rama Chandra Narendrasingh delivered the possession of the suit property to the plaintiff who was continuing possession of the suit property previously along with their family members. Thereafter Rama Chandra Narendrasingh executed an unregistered sale deed in favour of the plaintiff on 22.03.1994. Since the date of purchase the plaintiff possessing the suit property along with their family members and also had constructed a soak pit of the latrine over it. Some time after sale of the suit property said Rama Chandra Narendrasingh died leaving behind his successors such as

defendant No.6 and pro- forma defendant No.7 to 9. The defendant No.1 is a mischievous person of the locality and with an intention to grab the suit property had initiated a proceeding U/s 144 of the Cr.P.C. against the plaintiff and her family members bearing No.744/13. The said Misc case was dropped after lapse of time. During pendency of that proceeding it was learnt by the plaintiff that the defendant No.1 had managed to obtain a sale deed in respect of the suit property and its adjoining property in his favour from defendant No.6 vide sale deed No. 1873 dated 01.07.2013. It was alleged by the plaintiff that the said sale deed is a nominal and void one because defendant No.6 had no right, title, interest and possession over the suit property at the time of execution. That apart defendant No.6 was not the sole successor of Rama Krushna Narendrasingh. It was claimed by the plaintiff that taking advantage of the said sale deed defendant No.1 to 5 are creating various mischief and offences against the plaintiff such as on 21.10.2013 the defendant Nos. 1,3 and 4 damaged the boundary fence of the suit plot and also molested her for which G.R.Case No.493/13 is pending against them. Similarly on 14.11.13 those defendants damaged the soak pit of the plaintiff and also molested her for which G.R.Case No. 415/13 is pending. Citing the aforesaid facts the plaintiff had filed this suit praying to declare her right, title & interest over the suit property and to declare the R.S.D No.1873 dated 01.07.2013 executed by defendant No.6 in favour of defendant No.1 as illegal and void and not binding on the plaintiff along with a prayer for passing perpetual injunction against defendant No.1 to 6 restraining them from entering into the suit property.

3. Being summoned the defendant Nos.1,3,4 & 5 had appeared but subsequently did not appear or file their W.S. Accordingly on 01.08.2014 they were set ex-parte. The other defendants also did not appear. Hence they were also set ex-parte and the suit was heard in their absence.

4. No issue was framed as the defendants did not appear in the suit.

5. Only three witnesses were examined on behalf of the plaintiff. The plaintiff examined herself as P.W.1 and two other witnesses as P.W.2 & P.W.3. Some documents are marked on her behalf as Ext.1 to 4.

6. Here in the suit the plaintiff had prayed to declare her right, title, interest over the suit land basing upon the delivery of possession of suit land by Late Ramakrushna Narendrasingh i.e. the father of defendant No.6. In addition to that she relied upon the unregistered documents executed by said Ramakrushna Narendrasingh in her favour as an evidence of that delivery of possession. To prove the aforesaid fact of delivery of possession and execution of document she had examined herself as P.W.1 the scribe as P.W.2 and the attesting witness as P.W.3. While being examined as P.W.1 Plaintiff had stated that the suit property was originally owned by Ramakrushna Narendrasingh in whose name ROR was recorded. The said suit property situates adjoining to her plot bearing No.263 over which her residential house was constructed and they are using the suit property as their bari since the time of their forefathers. On 22.03.1994 the said Ramakrushna Narendrasingh for his legal necessity sold the suit property to her for a sum of Rs.90/- and delivered formal possession thereof. In evidence of such sale said Ramakrushna Narendrasingh had executed a unregistered plain paper sale deed. After going through the contents of the sale deed all the parties had put their signatures over it. The said sale deed was produced and marked on behalf of the plaintiff as Ext.1. After taking such formal possession as she was claiming to be in possession of that property peacefully. She also had constructed a soak pit of the latrine and planted trees thereon. In the mean time Ramakrushna Narendrasingh had died and was succeeded by his

legal heirs i.e. defendant No.6 and pro-forma defendant Nos. 7 to 9. After his death defendant No.6 illegally executed a registered sale deed bearing No.1873 dated 1.7.2013 in favour of defendant No.1. The defendant Nos. 1 to 5 with the help of that sale deed creating mischief over the suit property on various occasions. The other two witnesses i.e. the scribe P.W.2 an attesting witness P.W.3 during their examination in the court have categorically supported the claim of the plaintiff regarding the execution of sale deed and about the receipt of the consideration money by Ramakrushna Narendrasingh. In addition to that P.W.3 claims that the plaintiff is possessing the suit property till now. So as revealed from the statement of the aforesaid witnesses and the documents marked as Exts. 1 & 2 the previous owner/original owner of the suit land Ramakrushna Narendrasingh had delivered the possession of land after receipt of Rs.90/- towards consideration. Additionally he executed an unregistered document in presence of P.W.2 & 3. As Ext.1 is not a registered document question will arise whether the alleged sale is a valid one or not. Section 54 of the T.P.Act provides made in which transfer of immovable of property can be made. Section 54 of the Transfer of Property Act- "sale how made"- "Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.....". So as per the above definition when a property valued less than one hundred rupees is transferred, such transfer can be effected (i) either by a registered documents or (ii) by simple delivery of the property. So that means registering of documents is optional. In case the property is valued less than Rs.100/-. Section 17 & 18 of the Registration Act, 1908 provides the list of documents which are compulsorily registrable and whose registration is optional. And as per Section 18(1)(a) of the said act registration of document in case of a

instruments which purport or operate to create, declare assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property the registration is optional. So on the basis of the fact that it is an unregistered document it can not be said to be void. That apart this case after payment of Rs.90/- the vendor Ramakrushna Narendrasingh had put the plaintiff in formal possession of the suit property as she was peacefully occupying the suit property. Though the document marked as Ext.1 was produced it can not be taken into consideration as a proof of the transfer of property simple because it was not a registered documents. However the same can be looked into and received evidence for any co-lateral purpose such as terms of contract and manner of transaction etc. So when the plaintiff claims that she was put into possession by the vendor after receipt of consideration of money and it was also supported by P.Ws 2 and 3, there is no scope to disbelieve the same as the defendants also did not appear and challenged the aforesaid statements made by the plaintiff and her witnesses. There is another hindrance in the way of declaring the right, title and interest of the plaintiff over the suit land and that is the so called R.S.D No.1873 executed by Defendant No.6 in favour of Defendant No.1. During her examination in the court the plaintiff stated that defendant No.6 had illegally executed a sale deed bearing No. 1873 dated 1.7.13 in favour of defendant No.1 although he has no right, title, interest or possession over it. Similarly it was mentioned in the plaint that the said sale was made without the consent and knowledge of the co-sharers. Even though such claim was made by the plaintiff no such documents was produced before the court for the perusal of the court. If it is accepted that such a document exist then it will be a question whether that document being as registered document will prevail over the claim of the plaintiff. It is a settled principle of law that a registered document always gets preference over an unregistered document. Here in this case plaintiff is in possession of such

property since 1994 and the present registered sale deed is said to be executed on 1.7.13. In this regard reference can be made section 50 of the Registration Act which reads as follows:- "(1) Every document of the kinds mentioned in clauses (a), (b),(c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.....". So as per the afroesaid provision of law a subsequent purchaser of the property under a registered instrument will get a preference over a purchaser of the property valued less than 100/- under an unregistered instrument. But such a preference can be available if the subsequent purchaser could able to prove that he is a bonafide purchaser and had no 'notice' about the previous sale. In an other cases a sale of immovable property worth less than Rs.100/- under an unregistered instrument but accompanied by delivery of possession undoubtedly confers a good title on the purchaser and such purchaser will be entitled to hold his title as against a subsequent purchaser of the same property under a registered instrument. Here in this case although it was stated by the plaintiff that such an registered documents exist but the same was not produced. In addition to that the defendants who were said to be purchaser of the property under registered sale deed did not file their W.S or contested the suit, for which the statement so made by the plaintiff remained unchallenged and her statements accepted as it is. She further could able to establish the said sale of the property within the purview of the section 54 of the T.P. Act. Accordingly the prayer made by the plaintiff for declaration of her right, title and interest over the suit property is allowed along with the prayer for confirmation of possession and decree for perpetual injunction against Defendant Nos. 1 to 6 restraining them to enter into the suit property. So far as the prayer for declaring the alleged sale deed bearing No.1873 dated 1.7.13 executed

by Defendant No.6 in favour of Defendant No.1 as illegal and void is concerned the same can not be allowed because the same (either original or copy) was not produced before the court for perusal. In absence of its production how can it be believed that such a sale deed exist. Accordingly the prayer so made is rejected. Hence it is ordered.

**Order**

The suit be and the same is decreed in part exparte against the defendants but without cost.

The right, title, interest and possession of the plaintiff over the suit property of the plaintiff is hereby confirmed. The defendant Nos. 1 to 6 are hereby permanently restrained from entering into the suit property of the plaintiff.

Advocate's fee is at the exparte scale.

Sr. Civil Judge, Banpur.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 1<sup>st</sup> day of November,2014.

Sr. Civil Judge, Banpur.

List of witnesses examined on behalf of Plaintiffs :-

P.W.1	Sumitra Dei @ Jena.
P.W.2	Siba Kumar Pradhan.
P.W.3	Sukanti Palei

List of documents proved on behalf of the Plaintiffs :-

Ext.1	Unregistered sale deed.
Ext. 1/a	Signature of vendor on Ext.1.
Ext.1/b & 1/c	Signature of Kulamani on Ext.1
Ext. 1/d	Signature of the scribe on Ext.1.
Ext. 1/e	Signature of P.W.3 on Ext.1.
Ext.2	ROR
Ext.3	F.I.R.
Ext.4	F.I.R.

Sr. Civil Judge, Banpur.