

IN THE COURT OF CIVIL JUDGE(SR. DIVN.), BHUBANESWAR

Present : **Sri Sitikantha Samal**
Civil Judge(Sr. Divn.)
Bhubaneswar.

C.S No. 708/2010

Smt. Bishnupriya Mohanty, aged about 55 years
W/o Sri Prafulla Kumar Pattnaik
House No. F-7/38, M.I.G-II, BDA Colony
At/Po/Ps-Chandrasekharapur
Bhubaneswar, Dist-Khurda
At present Qrs No. 2RA-31, Unit-2
Bhubaneswar, Dist-Khurda.

..... Plaintiff

- Versus -

1. Mrs. Subhashree Mohanty, aged about 34 years
W/o G. Swarup Kumar
Plot No. 2935, Gouri Nagar
Bhubaneswar-2, Dist-Khurda.

..... Defendant

2. Sri Dillip Kumar Das, aged about 50 years
S/o late Hari Charan Das
House No. F-7/25, MIG-II, BDA Colony
At/Po/Ps-Chandrasekharapur,
Bhubaneswar, Dist-Khurda.

..... Prof. Defendant

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s D.C Mohanty & Associates
For the deft.no.1 : M/s N. Satpathy & Associates
For the deft.no.2 : M/s S.C. Acharya & Associates

DATE OF ARGUMENT : 13.10.2014

DATE OF JUDGMENT : 21.10.2014

J U D G M E N T

The plaintiff has filed the suit for eviction, damage

and other consequential reliefs including cost.

- 2.** The case of the plaintiff in brief is that in the year 1986, she has purchased the suit schedule property which is a house bearing no. 7/38, M.I.G-II under the Chandrasekharpur scheme and after purchase, she deposited the required amount with the BDA and thereafter the lease-cum-sale agreement has been executed between the BDA and the plaintiff. On 07.01.1987, the BDA had physically handed over the possession of the house to the plaintiff. As it was not possible on her part to look after the suit house physically, she inducted the house Sri Dillip Kumar Das, the deft.no.2, an employee of BDA, who happens the friend of her brother with the understanding that the deft.no.2 will reside in the suit house as a tenant and shall deposit the outstanding amount in the BDA as on 30.06.1998 in respect of the suit house and he also paid some amount at a time to the plaintiff to adjust the same towards rent. Further it was agreed in between them that the deft.no.2 will pay a monthly rent of Rs. 2,000/- excluding the electricity and water charges in respect of the suit house. But on 15.01.2010, when the plaintiff visited the suit house found that the deft.no.1 is in possession of the same. On being asked, the deft.no.1 replied to contact the deft.no.2 for the real fact. When the plaintiff tried to contact the deft.no.2, he avoided her. When the plaintiff requested the deft.no.1 to vacate the suit house, she denied to vacate the same for which the plaintiff through her advocate issued a notice to her requesting her to vacate the suit house within 5 days from the date of receipt of the notice. But the deft.no.1 did not vacate the suit house. The plaintiff stated that the deft.no.1 has no right, title and interest over the suit premises and she is illegally and unauthorisedly remaining in possession of the same and hence, she should

be evicted. It is also the case of the plaintiff that as her married son is residing in a rented house by paying a monthly house rent of Rs. 5000/- and accordingly, she is in badly need of the suit house for the accommodation of her son. Hence, finding no alternative, she is compelled to filed the present suit for eviction and damages against the defendants.

- 3.** Both the defendants appeared and filed their separate written statements. The deft.no.1 filed her W.S challenging the suit on the grounds of maintainability and cause of action. The case of the deft.no.1 is that her elder brother namely Debasis Mohanty, Dillip Kumar Das and one Kedarnath Mohanty (the brother of the plaintiff) were good friends since their school career. The deft.no.2 who is Kedarnath Mohanty and the plaintiff in September, 2002 approached to Debasis Mohanty for sale of the suit house and accordingly, the plaintiff through his brother Debasis Mohanty expressed her willingness to purchase the suit house and there was a negotiation between the plaintiff and the deft.no.1 in presence of deft.no.2 Debasis Mohanty and Kedarnath Mohanty on 04.10.2002 and the consideration amount of the suit house was fixed to Rs. 3,50,000/- and on the same day, she paid Rs. 2,00,000/- to the plaintiff as part consideration money. As per the instruction of the plaintiff, the deft.no.2 received the amount and executed an agreement on the same day. It was also agreed between the parties that the plaintiff and deft.no.2 would clear up all the outstanding dues, such as electricity, water charges, holding tax and BDA dues by 15.10.2002 and there after, the suit house would be handed over to the deft.no.1 and in case the plaintiff and deft.no.2 would not comply the same, the deft.no.1 would do the same and deduct the amount so paid from the

balance consideration amount. The deft.no.2 delivered the possession of the suit house to the deft.no.1 in presence of the plaintiff Debasis Mohanty and Kedarnath Mohanty. The deft.no.1 also handed over Rs. 15,000/- to the plaintiff on 03.07.2003 towards the processing charges and transfer fee of the BDA and signed the application for transfer of the suit premises filled by the brother of the plaintiff. The deft.no.1 also paid the balance consideration money of Rs. 1,25,000/- to the deft.no.2 in presence of the plaintiff and the deft.no.2 also granted money receipt for the same and explained that the file for grant of permission in BDA office was processed and reached in final stage. All of a sudden on 04.12.2009, the deft.no.1 knew that the plaintiff has mortgaged the suit house with the Orissa Rural Housing Development Corporation on availing one loan and by such, the plaintiff committed fraud with the deft.no.1 and when the deft.no.1 tried to contact the plaintiff and the deft.no.2, they avoided. However, on 11.01.2010, the brother of the plaintiff demanded a further amount of Rs. 7,00,000 from the deft.no.1 for transferring the suit house in favour of the deft.no.1. Thereafter the deft.no.1 on the same day made an application before the Vice-Chariman, BDA enclosing the photo copies of all the transferring documents and attended the grievance cell on 16.01.2010 and basing upon her complaint, the frauds committed by the deft.no.2 and the plaintiff was proved for which the employer of the deft.no.2 issued order on dt. 26.03.2013 for compulsory retirement of the deft.no.2. Submitting the above, the deft.no.2 submitted that she is not possessing the suit house unauthorisedly and as such, she is not liable to be evicted from the suit house as well as for any damages and the suit may be dismissed.

The deft.no.2 filed his W.S stating inter-alia that after

taking over possession of the suit house by the plaintiff, the plaintiff could not able to pay the outstanding amounts in time for which the allotment of the suit house was in a stage of cancellation. Finding no alternative, the plaintiff contacted the deft.no.2 to occupy the suit house on rent and to pay her Rs. 3,25,000/- as advance. In lieu thereof, this deft.no.2 had paid Rs. 2,55,789/- in advance to the plaintiff and also paid Rs. 69,211/- to the BDA towards outstanding arrear in the name of the plaintiff. Thereafter, the deft.no.2 met with an accident for which he needed money for his treatment at Kalinga Hospital and hence requested the plaintiff to pay back his amounts, but when the plaintiff denied, the deft.no.2 contacted the deft.no.1 who paid him the amounts and in lieu thereof, the deft.no.1 occupied the suit house in consultation with the plaintiff. Submitting the above, he also prays for dismissal of the suit. Though the deft.no.2 filed the W.S, but he did not choose to contest the suit and accordingly, has been set exparte.

4. On the basis of the aforesaid rival pleadings of the parties, the following issues have been framed for consideration.

ISSUES

- (i) Is the suit maintainable ?
 - (ii) Whether there is any cause of action to file the suit ?
 - (iii) Whether the plaintiff is entitled to a decree of eviction in respect of the suit house against the defendants ?
 - (iv) Whether the plaintiff is entitled for damages against the deft.no.1 ?
 - (v) To what other reliefs, the parties are entitled ?
5. In support of their case, the plaintiff has examined herself as the only evidence who is referred as P.W.1 hereinafter. She has also exhibited certain documents vide

Ext.1 to Ext.11. On the other hand, the deft.no.1 has adduced her own evidence who is referred to as D.W.1 hereinafter. The deft.no.1 has exhibited various documents vide Ext.A to Ext.H. All the oral and documentary evidences adduced on behalf of the parties have been reflected in detail at the foot of this judgment.

FINDINGS

6. **Issue No. (iii)**:- Since this issue is the main crux of the suit, it is taken up first for its discussion. It remains admitted by both the parties that the suit house bearing no.F-7/38 at Chandrasekharpur has been allotted in favour of the plaintiff vide Ext.1 and the possession of the same was delivered on 07.01.1987 vide Ext.2. The Ext.3 & 4, the rent receipt and the holding tax receipt respectively in respect of the suit house are also in the name of the plaintiff. It further evident from the pleadings and evidences of the parties that all the parties to this suit are educated and conscious persons as to their rights and duties. It also remains admitted that the deft.no.2 now is in physical occupation of the suit house. The evidence and pleading of the plaintiff is that in the year 1998, she inducted the deft.no.2 as a tenant in the suit house with the understanding that the deft.no.2 will pay the rest of the dues of the B.D.A in a suit house and will also pay Rs. 2000/- per month towards the monthly rent excluding the electricity and water charges and also to pay some amount at a time to her. After that when she contacted the deft.no.2 about the suit house, the deft.no.2 avoided her. But on 15.01.2010 when she visited the suit house, she for the first time found that the deft.no.1 is in occupation of the same. So finding the occupation of the deft.no.1 in the suit house on 17.01.2010, she approached the deft.no.1 to vacate the same and ultimately sent a notice on 05.02.2010 for vacation of the said house. As the deft.no.1 did not

vacate the plaintiff has come up with the suit for eviction. It may be stated here that the deft.no.2 though appeared, filed his W.S and cross-examined the P.W.1 who is the plaintiff of this suit, did not choose to participate in the further proceeding of this suit. On the other hand, the deft.no.1 adduced evidence in consonance to her pleadings that the brother of the plaintiff namely Kedarnath Mohanty, the deft.no.2 and her brother Debasis Mohanty being the friends in the year 2002 when the plaintiff wanted to sell away the suit house, there was negotiation amongst the plaintiff, deft.no.2 and deft.no.1 in presence of Kedarnath and Debasis and in that negotiation, it was agreed that she will purchase the suit house for a consideration of Rs. 3,50,000/- and accordingly, on 04.10.2002 he paid Rs. 2,00,000/- to deft.no.2 in presence of the plaintiff and the deft.no.2 entered into an agreement with the deft.no.1 for such transaction at the instruction of the plaintiff. The said agreement is admitted in evidence as Ext.A. The D.W.1 who is the deft.no.1 in this case in his evidence has categorically stated that on 31.10.2002, the deft.no.2 handed over the key of the suit house to her in presence of the plaintiff and since then she is in occupation over the same. The deft.no.1 further adduced evidence that on 03.10.2003, he paid Rs. 1,25,000/- to the deft.no.2 towards the rest of the consideration amount and even paid Rs. 15,000/- to the deft.no.2 for obtaining necessary permissions for the change of allotment and execution of documents in her favour in respect of the suit house in presence of the plaintiff. It is the further evidence and plea of the deft.no.1, she has also incurred expenses of Rs. 5 lakhs for the renovation of the suit house with the knowledge and consent of the plaintiff. She has also stated that on 04.12.2009, she for the first time came to know that the suit house has been mortgaged

to Rural Housing Development corporation by the plaintiff. The deft.no.1 in his W.S has specifically taken the stand that he occupied the suit house in the year 1998 not as a tenant, but as he paid some money to the plaintiff for the higher study of her son and deposited Rs. 69,211/- in BDA towards the payment for the suit house and he also admitted in his W.S that he has received Rs. 2,00,000/- from the deft.no.1 and even executed the Ext.A. Now taking into consideration the aforesaid pleading and the evidences adduced by the P.W.1 and D.W.1 who are the parties to this suit, it is found that though it is the specific case of the deft.no.1, all the transactions have been made in presence of the plaintiff and her brother Kedarnath, but there is no scrap of paper to show that either the plaintiff has received the money from the deft.no.1 or executed any document in respect of the suit house in favour of the deft.no.1. In this case, neither the brother of the plaintiff namely Kedarnath Mohanty nor the brother of deft.no.1 Debasis Mohanty has been examined and no explanation is given from either side as to their non-examination. Though the deft.no.1 has stated that the deft.no.2 handed over the key of the suit house to her in the presence of the plaintiff but the deft.no.1 in her pleading or evidence has not stated a single instance of the entire episode where the plaintiff directly and actively participated as to the alleged agreement for sale of the suit house in favour of the deft.no.1. Admittedly the Ext.A, the agreement has not been executed by the plaintiff and the plaintiff has not executed any other document accepting or consenting the said Ext.A. As per the pleading and evidence of deft.no.1, it is found that she ran from post to pillar for the suit house and even on her allegation the deft.no.2 got the compulsory retirement from the BDA after being found guilty in the departmental proceeding concerning the suit house. If

at all it is held that the deft.no.1 paid the consideration amount to the deft.no.2 believing that the deft.no.2 is accepting the money and executing the document i.e. Ext.A on behalf of the plaintiff and even if in the presence of the plaintiff that itself can not create any title or right over the suit house in her favour. The deft.no.1 might have been cheated concerning the suit house, but her innocence or helplessness can not create any interest over the suit house. The deft.no.1 in her evidence affidavit at para-14 has clearly admitted that on 31.10.2002, she took over the possession of the suit house being delivered by the deft.no.2 on behalf of the plaintiff. The mere presence of the plaintiff at the time of the transactions if at all held to be accepted that itself can not termed as an agreement for sale in between the plaintiff and deft.no.1 and can not be legally recognised. The deft.no.1 being a conscious and educated lady ought to have reached the agreement with the plaintiff for the transfer of the suit house. The deft.no.1 even has not preferred any counter claim in this suit. When no right is created in respect of the suit house in favour of the deft.no.1, for the sake of argument if it is held that she is the victim of cheating and fraud, the Court is unable to give her protect in respect of the immovable property i.e the suit house in which she has got no manner of right, title, interest. So it can be safely concluded that the deft.no.1 since having not entered into any legal and valid agreement with the plaintiff in respect of the suit house has got no right or authority to occupy or possess the same and his possession over the same is unauthorised and illegal. Hence, the plaintiff is entitled to the relief of eviction of the deft.no.1 from the suit house as prayed for. This issue is answered in favour of the plaintiff.

7. **Issue No.(iv)** :- So far the relief of damages is concerned,

the plaintiff's case is that her son is residing in a rented house and paying a monthly rent of Rs. 5,000/- and accordingly, she is claiming damages @ Rs. 5000/- per month. Except this plea so also evidence to that effect, there is no other material to show what is the damage caused to her and how? As discussed in the foregoing issue, the plaintiff has allowed the deft.no.2 to occupy and possess the suit house who ultimately allowed the deft.no.1 to possess the same on receiving Rs. 3,25,000/- towards the consideration money to transfer the suit house to her and also executed the agreement i.e. Ext.A to that effect. When the plaintiff has not whispered that she inducted the deft.no.1 as tenant and specially when it is her plea that she for the first time on 15.01.2010 came to know about the possession of the deft.no.1 over the suit land, the deft.no.1 is not liable to pay any damages, if caused to the plaintiff in respect of the suit house more particularly when the deft.no.1 is possessing the suit land with a bonafide belief that the possession of the suit house has been delivered to her by or on behalf of the plaintiff through deft.no.2 in pursuance to Ext.A. Had it been the case of the plaintiff that the deft.no.1 is in possession over the suit house in the active collusion with the deft.no.3, the matter would have otherwise. The plaintiff has not claimed any damages against the deft.no.2 and termed him as proforma defendant in the cause title of the plaint who seems to have cheated the deft.no.1. Accordingly, the plaintiff is not entitled to the damages as claimed. This issue is answered against the plaintiff.

8. **Issues No. (i), (ii) & (v)** :-As discussed and held above in the foregoing issues, the suit is maintainable and the plaintiff has a cause of action to file the present suit. The plaintiff is not entitled for any other relief.

Hence, ordered

ORDER

The suit be and the same is decreed in part on contest against the defendants, under the above circumstances without any cost. The deft.no.1 is directed to hand over the vacant possession of the suit house to the plaintiff within three months from the date of this order failing which the plaintiff is at liberty to get the decree executed through the process of Court. So far as the claim of damages is concerned, the suit is dismissed.

Advocate's fees be assessed at the contested scale.

Civil Judge(Sr.Divn.)
Bhubaneswar.

The judgment is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 21st day of October, 2014 under my seal and signature below.

Civil Judge(Sr.Divn.)
Bhubaneswar.

List of witnesses examined for the plaintiffs:

P.W.1 Smt. Bishnupriya Mohanty

List of witnesses examined from the side of defendants:

D.W.1 Smt. Subhashree Mohanty

List of documents exhibited on behalf of the plaintiff:

Ext.1 Allotment letter dt. 10.09.1986

Ext.2 Possession letter in respect of F/J-38

Ext.3 Rent Receipt

Ext.4 Holding Tax receipt

- Ext.5 Office copy of notice dt. 05.02.2010 in Gouri Nagar address.
- Ext.6 Postal A.D
- Ext.7 Postal receipt
- Ext.8 Office copy of notice dt. 05.02.2010 in Chandrasekharapur address.
- Ext.9 Retirement order dt. 29.11.2010
- Ext.10 Pay slip
- Ext.11 Pension paper.

List of documents exhibited on behalf of the deft.no.1:

- Ext.A Agreement dt. 04.10.2002 executed in between the deft.no.1 and deft.no.2.
- Ext.A/1 Signature of deft.no.1 on the agreement.
- Ext.A/2 Signature of deft.no.2 on the agreement.
- Ext.B Money receipt for Rs. 2,00,000/- dt. 04.10.2002.
- Ext.B/1 Signature of deft.no.2 on the money receipt
- Ext.C Money receipt dt. 03.10.2003
- Ext.C/1 Signature of deft.no.2 on Ext.C
- Ext.D Copy of the letter dt. 06.01.2010 sent to the Managing Director, ORHDC
- Rxt.D/1 Endorsement of the office of the addressee over Ext.D
- Ext.E Copy of the letter dt. 11.01.2010
- Ext.E/1 Endorsement of the office of the addressee over Ext.E
- Ext.F Copy of the letter dt. 19.01.2010
- Ext.F/1 Postal receipt of Ext.F
- Ext.G Information supplied vide letter no. 17068 dt. 04.05.2013 by the BDA
- Ext.H Letter dt. 21.04.2010 issued to the deft.no.1

Civil Judge(Sr.Divn.)
Bhubaneswar.