

HEADING OF DECISION IN THE ORIGINAL SUIT.
DIST: KHORDHA.
IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA

PRESENT :-

*Sri Raj Kishore Lenka
Senior Civil Judge, Khurda.*

Dated this the 14th day of May, 2014

C.S. 34/ 2009

SMt Bilasini Chhotaray, aged about 35 yrs,
W/o- Upendra Chhotaray, of Vill.- Dudhiahara-Patana,
P.O.- Kamaguru, P.S.- Jankia, Dist- Khordha.

..... Plaintiff.

-Versus-

1. Purna Chandra Chhotaray, aged about 53 yrs.
2. Bichitra Chhotray, aged about 47 yrs.

Both are sons of Late Kubera Chhotray of Vill.- Dudhiahara-patana,
P.O.- Kamaguru, P.S.- Jankia, Dist- Khordha.

..... Principal Defendants.

3. Rangabati Chhotaray, aged about 71 yrs, W/o- Kubera Chhotaray,
of Vill.- Dudhiahara-patana, P.O.- Kamaguru, P.S.- Jankia, Dist-
Khordha. (Abated on 29.02.2012)

..... Prof. Defendant.

Counsel for Plaintiff	...	Sri D. Kar and associates Advocates, Khordha
Counsel for defendant	...	Sri M. Ahmad and associates, Advocates, Khordha

Date of Argument – 24.04.2014

Date of Judgment – 14.05.2014

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JUDGMENT

The plaintiff has instituted the suit for declaration and permanent Injunction against the defendants.

02. The plaintiff's case is that defendant No. 1 & 2 are her brother in law, i.e. the brothers of her husband. Proforma defendant No. 3 is her mother in law. The disputed property which stands recorded under khata No. 279, plot No. 148 measuring Ac. 480 decimals of mouza Belapada (hereinafter referred to be suit land) was the self acquired property of her mother in law namely Rangabati Chhotray, deceased Proforma defendant No. 3. She has purchased the same out of her "STRIDHANA", for a consideration amount of Rs. 4,000/- from one Arnanda Sankar Bhramarabar Ray on 11.04.1984 through a registered sale deed and was all along in possession of the same. Subsequently the said Rangabati Chhotray for her legal necessity sold the suit land to the plaintiff on 25.11.2008 through a registered sale deed after receiving the consideration amount and immediately delivered possession of the suit land to the plaintiff. From the date of purchase, the plaintiff has been in possession of the suit land peacefully and in token of her possession she has been paying land revenue to the state. The specific case of the plaintiff is that the defendants who have no manner of right, title, interest or possession over the suit land are on false pretest claiming their right over the suit land. On 20.12.2008,

the defendants threatened the plaintiff to exercise their right over the suit land and also threatened the plaintiff to file a false case unless their demand is accepted by the plaintiff. Therefore, the present suit is filed for declaration of the title and possession of the plaintiff over the suit land, permanent injunction against the defendants not to interfere with the peaceful possession of the plaintiff as well as cost.

03. The defendant No. 1 and 2 appeared before the court and submitted their joint written statement. They have to say that the suit is not maintainable as the plaintiff has no *locus standi* to file the suit and the suit is also not maintainable due to non-joinder of necessary parties. While disputing the whole contention of the plaint the contesting defendants have to say that even though the suit land has been purchased by their mother Rangabati Chhotray, the same has been purchased out of the income of defendant No. 1. The said defendant No. 1 being a government servant was unable to purchase the suit property in his name and as such the same was purchased in the name of their mother. But, in fact, all the defendants and the husband of the plaintiff have been in joint possession over the suit land. The defendant No. 1 is serving at Puri, defendant No. 2 and the husband of plaintiff are residing at village 'Dudhijhara Patana'. Their Mother Rangabati Chhotray was residing with them. The husband of the plaintiff and defendant No. 2 have been cultivating the suit land jointly and the income of the suit land goes to the account of Rangabati Chhotray for her maintenance. In the

year 2009, due to differences of opinion, mis-understanding between the brothers cropped up, as a result a meeting was convened at village Dudhiahara Patana. In the said meeting, it was held by the defendant No. 1 & 2 and the husband of the plaintiff, who are three brothers that, the husband of the plaintiff will enjoy the out turn of the suit land crops for the maintenance of Rangabati Chhotray till her death. After her death the suit land will be divided in to three equal sharers among the three brothers namely Purna Chandra Chhotray (D-1), Upendra chhotray (husband of the plaintiff) and Bichitra Chhotray (D-2). Thereafter, the suit land was entrusted to the husband of the plaintiff for his enjoyment on behalf of Rangabati Chhotray. The specific case of the defendants is that taking advantage of such negotiation the plaintiff and her husband influenced their mother Rangabati Chhotray and executed the sale deed in favour of the plaintiff without the consent of other co-sharers such as the defendants. The further case of the defendants is that in the year 2009, the husband of the plaintiff created disturbances with the defendants and the defendants filed a misc. case U/s 144 Cr.P.C before the Executive Magistrate, Khordha and the Executive Magistrate was please to pass an order of status-quo over the suit land and ultimately it was order that both the parties can take shelter of the proper forum. But, the plaintiff without intimate Rangabati Chhotray filed the present suit against the defendants, which is not maintainable as because the sale deed basing on which the plaintiff claims her title and

possession is void one, because of existence of a previous agreement between the parties dt. 01.11.2005 over the suit land. Advancing their claim over the suit land the defendants have prayed that the suit is liable to be dismissed with cost.

Rangabati Chhotray, who is the mother in law of plaintiff and mother of defendant No. 1 & 2 is made as proforma defendant No. 3. But, during pendency of the suit she died and as such the suit against defendant No. 3, Rangabati Chhotray was abated on 29.02.2012

04. In response to the rival pleadings of both the parties, the following issues have been settled.

I S S U E S.

1. Is the suit maintainable, as framed?
2. Is there any cause of action for the plaintiffs to file this suit?
3. Whether the defendants are in possession over the suit land?
4. Whether the plaintiff has title and possession over the suit land?
5. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for?
6. What relief, if any, the plaintiff is entitled to?

05. In order to prove her case, plaintiff adduced the evidence of four witnesses in all, out of whom, P.W. 1, Upendra Chhotray is the husband of the plaintiff, P.W. 2 is the plaintiff herself, P.W. 3 Sudarsan Behera is one independent witness and P.W. 4 Bichitra Bhusana Samantara the scribe of

the sale deed vide document No. 3543/2008, wherein the suit land has been transferred by Rangabati Chhotray in favour of the plaintiff Bilasini Chhotray.

Four documents have been relied upon by the plaintiff and exhibited in this case. Ext. 1 is the registered sale deed No. 3543 dt. 25.11.2008, Ext. 2 is the ROR in khata No. 275 of mouza Belapada, Ext. 3 is the rent receipt dt. 21.01.2009 and Ext. 4 is registered sale deed bearing No. 3103 dt. 11.09.1989.

06. On the other hand similar number of witnesses has been examined on behalf of the defendants, out of whom D.W. 1 is the defendant No. 1 himself, D.W. 2, Laxdmidhar Chhotray, D.W. 3 Rajakishore Mohanty and D.W. 4 Prasanta Kumar Swain are the relations to the defendants.

The defendants have also relied upon two documents such as the certified copy of the Misc. Case No. 10/2009 U/s 144 Cr.P.C as Ext. A and the unregistered agreement dt. 11.01.2005 as Ext. B.

FINDINGS.

Issue Nos. 3 &4.

07. Both the issues are dealing with the most pivotal question relating to title and possession of the parties over the suit land and as such both are taken up together for consideration.

It is not disputed that the suit land was recorded in the name of Rangabati Chhotray. The plaintiff's claim is that the suit land is the exclusive property of Rangabati Chhotray, who purchased the same out of

her "STRIDHANA" property from Arnanda Sankar Bhramarabara Ray and as such she got her all right to transfer the same and accordingly for her legal necessity she sold away the suit land to the plaintiff. The plaintiff herself in her evidence in chief in support of such claim admitted the sale deed executed by Rangabati Chhotray in her favour as Ext. 1 as well as the sale deed executed in favour of Rangabati Chhotray by her vendor Arnanda Sankar Bhramarabara Ray as Ext. 4. The record of right pertaining to the suit land also stands in the name of Rangabati Chhotray, which is admitted as Ext. 2. At this stage the defendants disputed the claim of the plaintiff by saying that the suit land is not the exclusive property of Rangabati Chhotray as the same has been purchased out of the income of defendant No. 1. Before arriving into the discussion it is worthwhile to mention that the execution of the sale deed vide Ext. 1 has not been disputed by the defendants on the question of fraud or manipulation. Rather they claim their right over the suit land on the ground that the same was purchased only in the name of Rangabati Chhotray, but out of the income of defendant No. 1. Therefore, the onus of proving the said fact completely rest on the defendants and as such it is their legal obligation to proof the same before this court.

08. As stated earlier, four witnesses have been examined on behalf of the defendants. D.W. 1, who is the defendant No. 1 himself is the most vital witness to manifest the said claim. He in his evidence in chief

deposed that while he was in government service, he purchased the suit land in the name of her mother Rangabati Chhotray out of his own income. Providing further clarification, he again deposed that as he was in government service he could not purchase the suit land in his name. His evidence has been supported by other witnesses.

Firstly, the plaintiff has to establish that there is an impediment for a government servant to purchase any property in his name. The pleading and the evidence of the defendants to that effect appears to be completely silent.

At this stage, the plaintiff urged that the plea taken by the defendants if accepted, the same will adversely hit the provision U/s 3 of "The Benami Transactions (prohibition) Act, 1988. The sale deed vide Ext-Ext-4 reveals that the same was executed in the year 1984, whereas the "The Benami Transactions (prohibition) Act", came into force in the year 1988 and as such the said act is not applicable to the present case, so far as Ext. 4 is concerned.

09. It is now worthwhile to mention that scope was also available for the defendants to prove their case by establishing the other facts regarding payment of consideration amount, source of income as well as the relevant transaction wherein the defendant No-1 has been involved in payment of the consideration amount for purchase of the suit property. It is not disputed that defendant No. 1 at the time of preparation of Ext. 4 was in

service. But, there is no whisper on Ext. 4 that the consideration amount was paid by defendant No. 1 and the suit land has been purchased in the name of his mother by defendant No-1. Neither any document has been prepared after or before preparation of the sale deed vide Ext. 1 nor any evidence is adduced to establish that the consideration amount was actually handed over by defendant No. 1 either to the vendor of his mother or to her mother.

Coming to the evidence, defendant No. 1, who is examined as D.W. 1, in his cross-examination, has admitted that he has no document to prove that the suit property has been purchased by him in the name of his mother. He was at his service place at the time of execution and registration of the sale deed (Ext. 1). The most surprising fact is that D.W. 1 came to know about the execution of the subsequent sale deed wherein their mother Rangabati has alienated the suit land to the plaintiff, in the year 2008, but he has not challenged the same before any forum till date as admitted by him in the cross-examination in para – 18. The other witness from the side of the defendants got no personal knowledge about payment of any consideration amount by Defendant No. 1 in respect of purchase of the suit property and the said fact has been very much admitted by the witness from the side of the defendants and as such the same needs no further discussion. So, there is no scope for the court to hold that the suit property was initially purchased by defendant No. 1 in favour of her mother.

10. Challenging the subsequent alienation of the suit land vide Ext-1, the defendants again took a plea by saying that in the year 2005, due to difference of opinion, misunderstanding developed between the brothers such as the husband of the plaintiff and defendant Nos. 1 & 2. Thereafter, one unregistered agreement was executed between the three brothers on 11.11.2005 in a meeting, wherein it has been decided among the three brothers that their mother Rangabati will reside with the plaintiff and during the life time of their mother, she will enjoy the same along with the plaintiffs family and after her death the suit property will be distributed in three equal share among the three brothers. The said agreement is exhibited by the defendants as Ext- B. The plaintiff challenged the said unregistered agreement saying that the said document is forged one having no legal sanctity and not enforceable in the eye of law.

Coming to the said fact, it may be noted Ext-B is an unregistered document claims by the defendants to be executed between the three brothers, who have no manner of title over the suit property, which is the subject matter of the agreement. Very surprisingly, by the time of execution of Ext-B, the owner of the suit land, their mother Rangabati was alive. The most surprising fact is that defendant No. 1 in his cross-examination has admitted that at the time of execution of the agreement their mother was alive, but they have not cited her as a witness. D.W. 2 in the cross-examination again stated that at the time of execution of Ext. B, he

was present there but he has not put his signature on it. D.W. 3 in his cross-examination has stated that Rangabati Chhotray was present in the said meeting but he does not remember as to why Rangabati did not put her signature or LTI over the said agreement (Ext. B). It is again learnt that none of the defendants witnesses including the defendant No. 1 has stated the name of the person who drafted the agreement. Rather all of them have admitted that they do not know the person who drafted the said deed. Therefore, the whole contention of the said agreement could not be proved before this court as the scribe of the said document is unknown to the parties to the said agreement. Another surprising fact is that Rangabati Chhotray was very much present in the said meeting as advanced by the defendants, but her consent was not obtained at the time of execution of Ext-B. The parties to the said agreement have no right to execute any agreement over a property, which is not belongs to them. The said so called agreement, which is admitted as Ext. B, even if accepted, is a document having no legal sanctity and the same is not enforceable in the eye of law. Such an agreement is void *ab-initio*.

11. Lets now come to the question over possession of the suit land. The plaintiff's claim is that the suit land was in exclusive possession of Rangabati Chhotray and she duly delivered the title and possession to the plaintiff. Coming to the evidence from the side of the defendants, D.W. 1 in his cross-examination has deposed that the husband of Rangabaty was

cultivating the suit land during his lifetime, who died in the year 2003. He again admitted in his evidence that their mother Rangabati Chhotray was residing with the family of the plaintiff and defendant No. 2. Both the husband of plaintiff and defendant No. 2 were cultivating the suit land. But, in the year 2005 as per the agreement vide Ext. B, the suit land was entrusted to the husband of the plaintiff. D.W. 4 in his cross-examination also stated that he cannot say the manner of possession of the parties over the suit land. If the admitted case of both the parties is taken into count, it is not under dispute that defendant No. 1 was serving elsewhere and as such their father was cultivating the same till 2003 and from the year 2005, the suit property was entrusted to the husband of the plaintiff. In the mean time, i.e. on 2008, the vendor of the plaintiff namely Rangabati Chhotray alienated the suit land in favour of the plaintiff. Therefore, the defendants cannot claim their possession over the suit land as they have admitted that the suit land was not in joint possession or in exclusive possession of the defendants. Rather by admitting the possession of the husband of defendant No. 1, they have admitted that the suit land was not in their active possession. Even though such a possession by the husband of the plaintiff, if accepted, is a permissive possession. The defendants are not the true owners or in exclusive possession of the suit land, therefore they are not entitled to give any permission to others to possess the suit land. Their mother who is the real owner of the suit land was alive by then. Therefore, the permission

whatever the husband of the plaintiff or the plaintiff owes to possess the suit land, must be with the conformation of the true owner of the suit land who is none else but Rangabati Chhotray herself. The defendants in view of the forgoing discussion cannot claim their exclusive or joint possession over the suit land. This suit land exclusively belongs to Rangabati Chhotray. It was only cultivated by her husband and subsequently by the husband of the plaintiff and defendant No-2. The said Rangabati Chhotray subsequently alienated the suit land in favour of the plaintiff Bilasini Chhotray by virtue of a sale deed vide Ext-1. The sale deed is a genuine document and the rightful vendor to the suit land has duly transferred the same in favour of the plaintiff and for which the plaintiff became the rightful owner of the suit land and the defendants, who have no manner of right, title, interest over the suit land also failed to establish their possession too. The above issues are answered accordingly.

Issue Nos. 5 & 6

12. In view of the forgoing discussions, it is the considered opinion of this court that the plaintiff has purchased the suit land from its true owner and she has been in possession of the same. The defendants are the strangers to the suit property and as such it is the right of the plaintiff to preserve and protect her property by preventing the defendants, who have been attempting to interfere with the same. The reason assigned by the plaintiff against the defendants have also been duly established from the

very admission of the defendants, who have been claiming their right, title, interest and possession over the suit land as discussed earlier and as such they are required to be prevented from interfering with the peaceful possession of the plaintiff and as such the plaintiff is entitled for the relief of permanent injunction along with declaration as sought for in her case.

Issue Nos. 1 & 2.

13. The above issues being not pressed by both the parties, the same needs no further discussion. The plaintiff is entitled for the relief as noted in the forgoing paragraph. Hence it is order.

ORDER

The suit of the plaintiff be and the same is decreed on contest against the defendants, but in the circumstances without any cost.

The title and possession of the plaintiff over the suit land is hereby declared. The defendants are also permanently enjoined not to come over the suit land and to interfere with the peaceful possession of the plaintiff over the same in any manner.

Violation of the order of this court entails the plaintiff to adopt the proper recourse of law against the defendants.

Advocate's fees are at contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 14th day of May, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

- P.W. 1 Upendra Chhotaray.
P.W. 2 Bilasini Chhotaray.
P.W. 3 Sudarsan Behera.
P.W. 4 Bibhuti Bhusana Samantara.

List of witnesses examined on behalf of Defendant :-

- D.W. 1 Purna Chandra Chhotaray.
D.W. 2 Laxmidhar Chhotaray.
D.W. 3 Rajakishore Mohanty.
D.W. 4 Prasanta Kumar Swain.

List of documents admitted on behalf of the Plaintiff :-

- Ext. 1 Regd. Sale deed No. 3543 dt. 25.11.08.
Ext. 1/a Signature of P.W. 2 on Ext. 1.
Ext. 1/b Signature of P.W. 4 on Ext. 1.
Ext. 1/c Signature of Manu Nayak on Ext. 1.
Ext. 1/d Endorsement of P.W. 4 on Ext. 1.
Ext. 1/e Signature of Tapan Kumar Samantaray on Ext. 1.
Ext. 2 ROR in khata No. 274 of mouza Belapada.
Ext. 3 Rent Receipt.
Ext. 4 Regd. Sale deed No. 3103 dt. 11.09.1984.

List of documents admitted on behalf of Defendant :-

- Ext. A Certified copy of order in E.M. In Misc. Case No. 10/09.
Ext. B Un-Regd. Agreement dt. 30.10.2005.
Ext. B/1 Signature of D.W. 1 on Ext. B.
Ext. B/2 Signature of Upendra Chhotaray on Ext. B.
Ext. B/3 Signature of Bichitra Chhotray on Ext. B.

- Ext. B/4 Signature of witness Brundaban Senapati on Ext. B.
- Ext. B/5 Signature of Rajakishore Mohanty on Ext. B.
- Ext. B/6 Signature of Basudeb Parida on Ext. B.

Sr. Civil Judge, Khurda.