

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDHA

PRESENT :-

Sri Raj Kishore Lenka  
Senior Civil Judge, Khurda.

**Dated this the 26<sup>th</sup> day of March, 2014**

**C.S. 346/ 2009**

1. Smt. Sonam Dasarapurua, aged about 40 years, W/o- Bijay Kumar Dasarapurua.
2. Smt. Basanti Sahu, aged about 38 years, W/o- Dasarathi Sahu.  
Both are of Vill.- Jajarsingh, P.O./P.S./Dist- Khordha.

..... Plaintiffs.

-Versus-

1. Jagamohan Nanda, aged about 50 years, S/o- Late Narsingh Nanda.
2. Ramesh Chandra Nanda, aged about 46 years, S/o- Late Narsingh Nanda.
3. Santosh Kumar Nanda, aged about 23 years, S/o- Jagamohan Nanda.
4. Prasanta Kumar Nanda, aged about 20 years, S/o- Jagamohan Nanda.
5. Samarendra Nanda, aged about 22 years, S/o- Ramesh Chandra Nanda.  
All are of Vill.- Tangiapada, P.O.- Gada Niala, P.S./Dist- Khordha.

.....Defendants

Counsel for Plaintiff ... Sri T. Baral and associates,  
Advocates, Khordha

Counsel for defendants ... Sri P.K. Mishra and associates,  
Advocates, Khordha

.....  
Date of Argument – 21.03.2014

Date of Judgment – 26.03.2014  
.....

## JUDGMENT

The plaintiffs have instituted the present suit seeking reliefs of declaration of their right, title, interest and conformation of possession over the property recorded under khata No. 69, plot No. 468 measuring Ac. 1.140 decimals and plot No. 476 measuring Ac. 1.610 decimals of mouza Tangiapada (hereinafter called to be the suit land) as well as for permanent injunction against the defendants prohibiting them from causing any sort of disturbances or mischief in the possession of the plaintiffs over the suit land.

02. The plaintiffs' case is that the suit land has been purchased by the plaintiffs by virtue of a sale deed bearing No. 540 dated. 13.01.1990 from one Dillip Kumar Thakar for a consideration amount and got delivery of possession of the suit land from their vendor. It is further contended by the plaintiffs that the suit land has been purchased by the father of their vendor by virtue of a sale deed bearing No. 6579 dt. 01.08.1955 from one Jadu Nandan Ram. After death of the father of the vendor of the plaintiffs, their vendor became the rightful owner of the suit land and for his necessity he sold away the same in favour of the plaintiffs. The plaintiffs have been paying land revenue to the government and also obtained the rent receipts. They have also planted different kind of trees over the suit land. The further case of the plaintiffs is that the defendants being highly influential persons of the locality, on 02.10.2009, came to the suit land and threatened the plaintiffs not to come over the suit land by saying that the plaintiffs have no manner of right, title, interest or

possession over the suit land. The plaintiffs being frightened by the act of the defendants approached the court by instituting the suit seeking for the reliefs as already been reflected above.

03. The defendants appeared before the court and submitted their joint written statement. In the written statement, they controvert all the pleading of the plaintiffs by saying that the suit is not maintainable in the eye of law, there is no cause of action as well as bad for non-joinder of necessary parties. The specific case of the defendants is that the Hal ROR stands recorded in the name of one Jadu Nandan Ram, S/o- Bhuku Ram. But, the father of the vendor of the plaintiffs, had purchased the suit land by virtue of a registered sale deed No. 6597 dt. 01.08.1995, from one Jadu Nandan Ram, S/o- Ami Chanda Ram. Therefore, Jadu Nandan Ram, S/o- Bhuku Ram cannot be the same person, who executed the sale deed to the father of the vendor of the plaintiffs namely Jadu Nandan Ram, S/o- Ami Chanda Ram. Therefore the father of Dillip kumar Thakar, vendor of the plaintiffs, has not purchased the suit land from the real owner Therefore, the sale deeds that have been relied upon by the plaintiffs are all nominal and sham documents, which have been obtained by fraud. The defendants specific case is that the original tenant of the suit land namely Jadu Nandan Ram, S/o- Bhuku Ram of Jajarsingh has sold away the suit land to Narasingha Nanda of Tangia Pada on 31.01.1971 for a consideration amount of Rs. 1,500/- and duly delivered possession to the suit land to said Narasingha Nanda, who is the father of defendant No. 1 & 2 and grandfather of defendant Nos. 3, 4 & 5. Narasingha Nanda was in exclusive possession of the

suit land till his death and after his death the suit land devolved upon the defendants and they have been in peaceful and continuous possession till date. The plaintiffs have no manner of right, title, interest and possession over the suit land. Therefore, the suit is liable to be dismissed with cost.

04. Giving emphasis on the factual disputes between the parties, the following issues have been settled for a purposeful adjudication.

### **I S S U E S.**

1. Whether the suit is maintainable?
2. Whether the plaintiffs have cause of action to file the suit?
3. Whether the sale deed No. 540 dt/ 13.01.2009, executed by Dillip Kumar Thakar in favour of the plaintiffs is a sham, conclusive and fraudulent transaction?
4. Whether the plaintiffs have right, title, interest and possession over the suit land?
5. Whether the plaintiffs are entitled to a decree of permanent injunction restraining the defendants from entering upon the suit land and from creating any disturbance in the possession of the plaintiffs over it?
6. What relief, if any, the plaintiffs are entitled to?

05. In order to prove their case 9 witnesses have been examined on behalf of the plaintiffs including both the plaintiffs as P.W. 8 & 9 respectively. Six

Documents have been relied upon from the side of the plaintiffs in relation to their pleadings.

On the other hand defendants examined 4 witnesses including the defendant No. 1 as D.W. 4. Similarly, five documents have also been relied upon by the defendants in support of their claim.

### FINDINGS.

#### **Issue Nos. 3 & 4.**

06. The above two issues are interrelated and most vital issues and as such taken up together first for consideration.

While the plaintiffs have claimed their right, title, interest and possession over the suit land by virtue of a sale deed bearing document No. 540 dt. 13.01.2009, executed by one Dillip Kumar Thakar in their favour, which has been marked as Ext. 1, the defendants have challenged the same and raised a very vital and complicated question by saying that the father of the vendor of the plaintiffs have not purchased the suit land from the rightful owner. Therefore the subsequent sell of the suit land to the plaintiffs is void one. Defendants specific case to the said point is that Jadu Nandan Ram, S/o- Bhuku Ram is the real recorded tenant of the suit land. He executed a sale deed in favour of Narasingha Nanda in the year 1971 through Registered Sale deed No. 272 dt. 31.01.1971 by alienating the suit land in his favour. Therefore the sale deed executed by Jadu Nandan Ram, S/o- Ami Chanda Ram in favour of Thakar Wallaj, father of the vendor of the plaintiff is a forged document. Therefore, the sale deed, which has been marked as Ext. 2 is a

void and sham document. This being the very crucial and vital issue for the determination of title of the suit land, it is obligatory on the part of the court to have a thorough discussion over the pleading as well as the evidence of the parties along with the documents produced in support.

07. Plaintiffs specific case is that the suit land originally belongs to one Jadu Nandan Ram. Their pleadings do not reflect the name of the father of Jadu Nandan Ram. During evidence in chief the witnesses from the side of the plaintiffs started deposing that father of the vendor of the plaintiffs had purchased the suit land from Jadu Nandan Ram, S/o- Ami Chanda Ram @ Bhuku Ram. Whereas the sale deed vide RSD No-6597/55 (Ext-2) reveals that Jadu Nandan Ram is the son of Ami Chand Ram. May it be possible that the said fact was not within the knowledge of the plaintiff and after ascertaining the dispute regarding the name of the father Jadu Nandan Ram, they tried to establish that Jadu Nandan Ram is the son of Ami Chanda Ram, who is also known as Bhuku Ram. For that reason it cannot be stated that the same is out of a pleading matter. On the other hand let the court to look into the genuineness of the documents. It is absolutely clear that, in the sale deed vide document No-6597/55, the name of the father of Jadunandan Ram has been noted to be Ami Chanda Ram. There is absolutely nothing in the case of the plaintiffs to establish that that Ami Chanda Ram is also known as Bhuku Ram. Here it should be remembered that the sale deed vide Ext. 2 was executed in the year 1955. At that time Ami Chanda Ram must be dead and most importantly at the time of execution of Ext. 2, Jadu Nandan Ram was aged about 75 years as mentioned in

the sale deed. Therefore, Ami chanda Ram or Bhuku Ram, who might be the father of Jadu Nandan Ram was a man born in the 19<sup>th</sup> Century, must be around 130 to 140 years back from the year of institution of the suit. The plaintiffs nor the defendants have succeeded to prove the identity of Ami chanda Ram or Bhuku Ram. Except the ROR, which has been produced before the court by the defendants vide Ext-E, there is absolutely nothing to prove the real identity of Bhuku Ram. But as much as the father of Jadu Nandan Ram is concerned the defendants by producing Ext-E tried to establish that Jadu Nandan Ram is the son of Bhuku Ram. Keeping in mind the said typical position of the case, let's have visit to the evidence from the side of the defendants. The defendant as D.W. 4 himself in the evidence in chief has deposed that a Jadu Nandan Ram, S/o- Bhuku Ram is not the same person as Jadu Nandan Ram, S/o- Ami Chanda Ram. As noted above, defendants relied upon the Hal ROR of the year 1962, recorded under khata No. 69, which has been marked as Ext. E.

08. The above being the factual position of the case, now the question arises whether the wrong mentioning of the name of the father of the vendor to the sale deed No. 6597/ 1955 (Ext. 2) is sufficient to held that the said document is a forged one and the real vendor has not executed the said sale deed?

Searching for the answer, it is extremely important to go into the deep of the case. Firstly, the ROR is not an authentic document to ascertain the name of ones father. The Hal ROR (Ext. E), which reflects the name of the father of Jadu Nandan Ram (Vendor to Ext. 2) to be Bhuku Ram was published in the year 1962.

Whereas, the sale deed vide Ext. 2 was executed in the year 1955. The vendor to Ext. 2 is a non oriya person. He is originally belongs to the state of 'Rajsthan' as ascertained from his signature. He put his signature also in the 'Rajsthani' language. While the defendants are pressing heard that Jadu Nandan Ram, S/o- Bhuku Ram and Jadu Nandan Ram, S/o- Ami Chanda Ram are two different persons, it is their legal obligation to prove that they are in fact are different individuals, who belongs to the same village or different, if any. Because, except the name of the father, the other descriptions in both the sale deed such as Ext. 2 & Ext. A are completely similarly. The defendants have not even attempted to prove that Jadu Nandan Ram, S/o- Bhuku Ram is different person, who is not Jadu Nandan Ram, S/o- Ami chanda Ram, except relaying the ROR under khata No. 69 of mouza-Tangiapada published in the year 1962 (Ext-E).

Secondly, Ext. A was prepared in the year 1971, after final publication of the Hal ROR. Therefore, Ext. A must have been prepared basing on the entries of the Hal ROR vide Ext-E, wherein the name of the father of Jadu Nandan Ram has been mentioned as Bhuku Ram. The said fact has been admitted by D.W-4 who is the defendant No-1 in this case, in his cross-examination in Para-12. On the other hand Ext. 2 must have been prepared basing on the sale deed in which the suit land has been purchased by Jadunandan Ram or out of the statement of the vendee of the sale deed namely Jadu Nandan Ram. The said registered sale deed vide document No-7570/52 has been made available to the court by the plaintiffs and admitted as Ext-3. The said sale deed reveals that Jadunandan Ram (Wrongly

mentioned as Jadunandan Das (vendee)) is the son of Amichand Ram. Other descriptions regarding suit land, and the address of vendee to the said deed appears to be similar to the address of the vendor to Ext-2. But how the settlement authority mentioned the father's name of Jadunandan Ram to be Bhuku Ram in Ext-E, is a matter of great suspicion. As because, the same would not be possible if the sale deed vide Ext-3 could have been taken in to consideration by the settlement authority.

09. Lets now come to the next important aspect of the case. While this court verify the signature of Jadu Nandan Ram both in Ext. 2 & Ext. A, found a lot of discrepancies in the signatures of Jadunandan Ram on Ext-A. Firstly the vendor Jadu Nandan Ram in sale deed No. 2 put signature in 'Rajsthani' language and also mentioned the date of signature in the said language in each and every page. There is no discrepancy in the signature of the vendor over Ext. 2. Whereas the signature of Jadu Nandan Ram over Ext. A in each and every page is different and it is clearly visible in open eyes. The date of such signature has been made in English Language. To the utter surprise of the court, it is ascertained that the signature of the so called vendor to the Ext. A also put his signature on the back page of the stamp paper as the purchaser. On a comparison of the signatures of vendor on Ext. A, one can find that forgery to the maximum has been exercised at the time of preparation of Ext. A. Because, the signatures of the vendor to the said sale deed (Ext. A) and the signature of the same vendor as purchaser of the stamp

paper is completely different. This aspect of the case cannot be ignored at any stress of imagination.

10. When this court has already entered into the discussion relating to the viability of Ext. A, it would be preferable to have a discussion on another crucial aspect relating to the Ext. A, vide document No. 272 dt. 31.01.1971.

The said Ext. A was filed by the defendants after conclusion of the evidence from the side of the plaintiff and three witnesses from the side of the defendants, with permission of the court. The said Ext. A was then and there came to the knowledge of the court as well as the plaintiffs and has been challenged by the plaintiffs during course of cross-examining the witnesses. Therefore, expecting a specific pleading in the plaint over such document (Ext. A) is irrational and beyond logic.

As noted earlier, Ext. A is a sale deed vide document No. 272 dt. 31.01.1971, executed before the Sub-registrar, Khordha. Challenging the said document the plaintiff filed the certified copy of the sale deed vide document No. 272 dt. 13.01.1971 obtained from the District Sub-registrar, Puri and also marked as Ext. 6 with objection from the side of the defendants. The certified copy of the RSD No-272/71 reveals that the same has been executed between one Bairagi Subuddhi and Krushana Chandra Subuddhi. But, except raising a formal objection the defendants remained silent as to how two documents in same number are registered in one year. Even though options were available to the defendants to file the certified copy of Ext. A against Ext. 6, they preferred to remain silent. Therefore,

a valid question has been raised by the plaintiffs by saying that Ext. A is a foreign document, which has not been registered under document No. 272/71.

11. Reverting back to the sale deed vide Ext. 2; the defendants also disputed the same in two other aspects. Firstly, the defendants contended that Jadu Nandan Ram vendor to Ext. 2 has mentioned in Ext. 2 that he has purchased the suit land from one Mallika Dei on 22.11.1952 under registered sale deed No. 7510/1952. To that effect the defendants submitted the certified copy of the document No. 7510 dt. 18.11.1952 and admitted before the court as Ext. E. That document vide Ext. E clearly ruled out the claim of the vendor to Ext. 2 as because the vendor and vendee to Ext. E are different and the said sale deed has not been executed between Jadunandan Ram and his vender namely Mallicka. However, the plaintiff during the course of evidence submitted the certified copy of the registered sale deed No. 7570 dt. 12.11.1952 and proved before the court as Ext. 3, wherein the suit land has been purchased by Jadu Nandan Ram from one Mallika Dei. Therefore, it is clear that the sale deed No. 7570/1952 has been wrongly mentioned to be 7510/1952 in Ext. 2. This being nothing but a clerical mistake on the part of the deed writer to Ext. 2, the same should be ignored. The defendants cannot be permitted to take advantages of such clerical mistakes.

12. The defendants raised another question over Ext. 2. It is urged by the defendants that Ext. 2 was prepared in the year 1955 and the Hal ROR to the suit land was published in the year 1962. But, to their surprise the Hal ROR and plot numbers find place in Ext. 2 along with the Sabik Khata and plot numbers. They

raised question that how the vendor came to know about the Hal Khata and plot numbers six years prior to final publication of the ROR. As much as the said question is concerned, it may be noted that Survey and Settlement is a long process, which ends with final publication of the ROR. Before final publication it is always possible to know about their Hal khata and plot numbers from other available records maintained by the settlement authority under operation. One of such document is called as "PARCHA". Therefore, the said aspect of the case needs no further discussion. Now it is the conclusive opinion of this court that Ext. 2 is a genuine document. In consequence, the sale deed vide document No. 272/1971 (Ext. A), if accepted to be executed by the same vendor to Ext. 2, deemed to be voidable in nature as at the time of execution of Ext. A, the vendor had already transferred the suit land having his no subsisting interest over it and as such Ext. A is a document not enforceable in the eye of law. Ext-2 is a genuine document being executed by the real owner to the suit land. It is the further opinion of this court that Jadu Nandan Ram, S/o- Bhukuram and Jadu Nandan Ram, S/o- Ami Chanda Ram are one person.

13. Lets come to another crucial aspect of the case. The defendants have also disputed the sale deed vide document No. 1, wherein Dillip Kumar Thakar sold the suit land to the plaintiffs. It may be remembered that the father of Dillip Kumar Thakar has purchased the suit land from Jadu Nandan Ram under sale deed vide document NO. 6597/1955 (Ext. 2).

Here the said sale deed has been challenged only on one point. The defendants have pointed out during cross-examination to P.W. 5, Dillip Kumar Thakar vendor of Ext. 1 as well as to P.W. 6, P.W. 8 & P.W. 9, who have admitted that sale deed (Ext. 1), was prepared/ drafted at Jatani and registered at Bhubaneswar. P.W. 5 admitted in his cross-examination in para – 14, that the sale deed vide Ext. 1 was prepared by him at Jatani and executed at Bhubaneswar. P.W. 6 in his cross-examination also admitted that Ext. 1 was prepared at Jatani. P.W. 8, who is the plaintiff No. 1 herself categorically, admitted that the registration of Ext-1 was done at Bhubaneswar. P.W. 9 also admitted the said fact. However, it is not under dispute that the suit land situates at Khordha in mouza Tangiapada. The sale deed was drafted/ prepared at Jatani, wherein the vendor resides. But, the sale deed was registered before the District Sub-Registrar, Bhubaneswar.

This being the admitted position of the case, the defendants taking its advantage urged that the sale deed vide Ext. 1 is void, ab-initio as per the provision under Sec. 28 of "The Registration Act, which provides as follows -

"28. Save as in this Part otherwise provided, every document mentioned in Sec. 17, Sub-section (1), Clauses (a), (b), (c), [(d) and (e), Sec. 17, Sub-section (2) insofar as such documents affects immovable property] and Sec. 18, Cls. (a), (b), [(c) and (cc)] shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate"

To that effect the plaintiffs relied upon two judgments reported in AIR 1953 Hyderabad-280 (Vol. 40, C.N. 143) & AIR 40 Privy Council 222. The Hon'ble High Court of Hyderabad in the judgment reported in AIR 1953 HYDERABAD 280 (Vol. 40, C.N. 143) held that -

“7. The sale-deed is compulsorily registrable under Section 10 of the Hyderabad Registration Act corresponding to Section 17, Indian Registration Act. Section 22 corresponding to Section 28 of the Indian Registration Act requires that every registrable document shall be presented for registration in the office of the Sub-Registrar within: whose Sub-district the whole or some portion of the property to which such documents relate is situate.”

14. At this juncture the plaintiffs have to say that section 30 of “The Registration Act” empowers the District Registrar for registration of a document before him by exercising his discretion.

Sec. 30 of Indian Registration Act provides as follows:-

“30. (1) Any Registrar may in his discretion receive and register any document which might be registered by Sub-Registrar subordinate to him.

(2) The Registrar of a district in which a Presidency town is included and the Registrar of Delhi district [\* \* \*] may receive and register any document referred to in Sec. 28 without regard to the situation in any part of [India] of the property to which the document relates”.

The plaintiff also placed reliance to the section 6 and 7 of The Registration Act 1908.

15. After going through the submission as well as the citation in support of their claim, this court has gone through Ext. 1. The same has been registered before District sub-register khordha, at Bhubaneswar and not before the District Register, khordha. It is true that documents affects immovable property can be presented for registration before the Registrar of sub registrar beyond the local limit of the immovable property as per the provision of section 6 and 7 of "The Registration Act 1908", but to that effect a specific direction of the state is required. The Ext-1 in the above contest appears to be a voidable document what has not been executed in accordance with the provision of law.

16. Moving to the next chapter, the issue under consideration is whether the plaintiffs are in possession of the suit land or not? Therefore, without assessing the strength of their claim, it is not possible to arrive into a conclusion and as such it would be prudent to measure the claim of the plaintiffs first.

Plaintiff's specific pleading is that after purchase of the suit land they took possession of the suit land from the year 2009 and paying land revenue regularly. Two rent receipts of year 2009 & 2012 have been produced before the court and marked as Ext. 4 & 5 respectively. Here it is needful to mention that the suit land was duly purchased by the father of Dillip Kumar Thakar namely Thakar Wallege vide Ext. 2, as elaborately discussed in the forgoing paragraphs. After his death, his son Dillip Kumar Thakar sold it to the plaintiffs vide Ext. 1. The said Dillip Kumar Thakar is also examined as P.W. 5 and deposed that he delivered possession of the suit land to the plaintiffs. He is a most vital witness to the said

aspect of the case. But, surprising fact is that except putting a suggestion to him, the counsel for the defendants has not put anything to him regarding delivery of possession of the suit land by him to the plaintiffs. In that suggestion the defendants only disputed the possession of Dillip Kumar Thakar and his father over the suit land.

P.W. 1 has deposed that the plaintiffs are in possession of the suit land. They have deposited laterite stones there. His evidence on possession of the plaintiffs over the suit land has not been challenged by the defendants in the cross-examination. So far as P.W. 2 & P.W. 4 are concerned, they are only suggested that the plaintiffs are not in possession of the suit land. P.W. 6 is the husband of plaintiff No. 1. He has elaborately deposed about the possession of the plaintiffs over the suit land, but his evidence has not been tested by the defendants during the cross-examination except giving a suggestion to him. The approach of the defendants to P.W. 7 is similar.

17. P.W. 8 & P.W. 9 are the plaintiffs and the most vital witness for their case. They have claimed to be in exclusive possession of the suit land and planted trees over it and raising seasonal crops over the suit land and also stored laterite stone there over. Surprising fact is that not a single question has been put to them except a suggestion to the effect that they are not in possession of the suit land, to which both the witnesses denied.

As it appears, the defendants concentrating on the sale deeds vide Ext. 1 & 2, gave a free hand to the said aspect of the case. This being the factual

position, it is the opinion of this court that the defendants failed to establish that the possession of the suit land has not been passed to the plaintiffs properly, whereas the forgoing discussion of this court shows that Ext. 2 has been duly executed in favour of the father of the vendor of the plaintiffs and more over the possession of the father of the vendor of the plaintiffs and after his death the vendor of the plaintiffs has not been duly challenged by imputing proper force by the defendants.

18. Now, it is the time to deal with the defendants' case with regards to their possession. Firstly the defendants produced five rent receipts paid by Narasingha Nanda and the defendants relating to the suit land, out of which two of them are obtained before and the rest after institution of the suit. On that aspect, the defendants are much ahead of the plaintiffs, but the law is well settled that rent receipts cannot by itself create any title or possession of a person over an immovable property. Similarly, the plaintiffs who have filed two sheets of rent receipts are also put them in same footing as the defendants. Therefore, it would be wise to examine the evidence from the side of the defendants.

D.W. 1 has deposed in his evidence in chief that the defendants are in possession of their land. Two years back the said land was transferred to two women by an unknown person. D.W. 2 has also stated the same fact in evidence in chief as deposed by D.W. 1. In the cross-examination, D.W. 1 has admitted that he can say if Sonam Dasarpuria and Basanti Sahoo (plaintiffs) are in possession of the suit land. By this admission he expressed his ignorance as to who is in actual possession of the suit land. D.W. 2 in the cross-examination has stated that Jaga

Mohan Nanda (D-1) has filed the suit and the area of the suit land is Ac. 2.500 decimals. He again stated that he does not know the plaintiffs. It appears that he came to the court without having any knowledge about the case matter and as such his evidence in chief deemed to be prepared in his absence and not as per his version.

19. D.W. 4 is the defendant No. 1 and the most vital witness for defendants' case. He also repeated that the defendants are in peaceful possession of the suit land. It must be remembered that D.W. 4 is a man of Tangiapada, the suit mouza. Being in possession he must have acquired ample knowledge about the suit land. But, he in the cross-examination has stated that the suit land recorded under khata No. 79, plot No. 268 & 276. He also admitted that he cannot say the area of the suit land. Whereas the suit land stands recorded under khata No. 69 and plot No. 368 & 476. This is a clear example of a result of learning just before examination.

It is also quite important to note that the sale deed (Ext. 1) executed in favour of the father of defendants No-1 and 2 does not give the boundary description of the purchased land. The witness to the sale deed, who is examined as D.W. 2 has even admitted that he does not know the subject matter of the sale deed. Again coming to the Cross-examination of D.W. 4, he claims that the boundary of both the plots to their purchased land is similar. Such evidence again appears to be untrue. That being the sum of the evidence from the side of the defendants, it is not possible on the part of the court to keep reliance on it. There is

no pinch of evidence to justify the possession of the defendants over the suit land. On the other hand the evidence as adduced from the side of the plaintiffs with regards to their possession, succeeded to keep its presence being not challenged by the defendants to the minimum. The plaintiffs are entitled for the relief of confirmation of their possession.

**Issue Nos. 5 & 6.**

20. After a thorough discussion of the fact and circumstances of the case, this court came with a result that the plaintiffs, who have purchased the suit land by virtue of sale deed No.540/2009 (Ext-1) is not a void document. On the other hand the same is a voidable one as not prepared by adopting the right procedure. But, it is quite relevant to note that the possession has been passed to the plaintiffs by their vendor, who prior to them was in continuous possession. Therefore, the possession has been duly delivered to the plaintiffs by their vendor and the plaintiffs are in possession of the suit land till date and for the said reason, the defendants, who fail to establish their right, title, interest and possession over the suit land bear no right to interfere with the peaceful possession of the plaintiffs over the suit land. The plaintiffs being in possession of the suit land at the option of the true vendor owes a right to preserve and protect the suit land, which is under their possession. So far as the conduct of the defendants is concerned, the entire fact and circumstances leads to the conclusion that the defendants are vehemently opposing the right, title, interest and possession of the plaintiffs over the suit land and claiming their right over it. The matter stood thus, it is the clear perception of this

court that the defendants are in antagonistic term with the plaintiffs over the suit land. That being the admitted position of the case the apprehension of danger by the plaintiffs from the defendants over their peaceful possession is not unreasonable and particularly the cause of action, basing on which the plaintiffs case has been instituted remains untouched by the defendants during the course of hearing of the suit. The plaintiffs on the above reasons are also entitled for the relief of permanent injunction.

**Issue Nos. 1 & 2.**

21. The above two issues being not pressed by the defendants, needs any further discussion. Hence it is order.

**ORDER**

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

The prayer of the plaintiffs with regards to declaration of their right, title and interest over the suit land is hereby dismissed but their possession over the suit land is hereby confirmed. The defendants are also hereby permanently enjoined not to interfere with the peaceful possession of the plaintiffs over the suit land, in any manner. Failing of which, the plaintiffs are at liberty to adopt the proper recourse of law against the defendants, in any.

Advocates 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 26<sup>th</sup> day of March, 2014.

Sr. Civil Judge, Khurda.

List of witnesses examined on behalf of Plaintiff :-

P.W. 1	Nikunjakishore Pattnaik.
P.W. 2	Sukanta Kumar Jena.
P.W. 3	Muralidhar Pradhan.
P.W. 4	Santosh Kumar Jena.
P.W. 5	Dillip Kumar Thakar.
P.W. 6	Bijay Kumar Dasarapuria.
P.W. 7	Dasarathi Sahu.
P.W. 8	Sonam Dasarapuria.
P.W. 9	Basanti Sahu.

List of witnesses examined on behalf of Defendants :-

D.W. 1	Kabira Sitha.
D.W. 2	Gunanidhi Mohanty.
D.W. 3	Banambar Sahoo.
D.W. 4	Jagmohan Nanda.

List of documents admitted on behalf of the Plaintiff :-

Ext. 1	RSD No. 540 dt. 13.01.2009.
Ext. 1/a	Signature of P.W. 3 on Ext. 1.
Ext. 1/b	Signature of P.W. 4 on Ext. 1.
Ext. 1/c	Signature of P.W. 1 on Ext. 1.
Ext. 1/d	Signature of P.W. 2 on Ext. 1.
Ext. 2	RSD No. 6597 dt. 01.08.1955.
Ext. 3	Certified copy of RSD No. 7570 dt. 22.11.1952.
Ext. 4	Rent receipt.

- Ext. 5                      Rent receipts for the year 2012-13.  
Ext. 6                      Certified copy of sale deed No. 272/1994.

List of documents admitted on behalf of Defendants :-

- Ext. A                      Regd. Sale deed No. 272 dt. 31.01.1971.  
Ext. A/1                     Signature of D.W. 2 on Ext. A.  
Ext. A/2                     Signature of vendor Jadu Nandan Ram.  
Ext. B to B/4                Rent receipts.  
Ext. C                      Certified copy of Mutation Case No. 410/2008.  
Ext. D                      No due certificate issued by UCO Bank, Paikotigiria Branch.  
Ext. E                      Certified copy of Regd. Sale deed No. 7510/1952.

Sr. Civil Judge, Khurda.