

IN THE COURT OF THE SENIOR CIVIL JUDGE, KHORDA

PRESENT :-

Sri Raj Kishore Lenka  
Senior Civil Judge, Khurda.

**Dated this the 24<sup>th</sup> day of December, 2013**

**C.S. 85/ 2008**

1. Smt. Kain Dei,  
(Being expired, represented through her following legal representatives).
  - 1.(a) Maguni Bisoi, aged about 46 yrs., S/o- Late Bamadev Bisoi  
of Vill.- Lodhabhuin, P.o.- Pratap, P.S.- Banpur, Dist- Khurda.
  - 1.(b) Dandapani Bisoi, aged about 35 yrs., S/o- Late Bamadev Bisoi  
of Vill.- Lodhabhuin, P.O.- Pratap, P.S.- Banpur, Dist- Khurda.
- ..... Plaintiffs.

-Versus-

1. Smt. Sabitri Parida, aged about 40 yrs., W/o- Dandapani Parida,  
Vill.- Sarathipur, P.O./P.S.- Banpur, Dist- Khurda.
2. Smt. Laxmi Swain, aged about 35 yrs., W/o- Dhoba Swain  
of vill./P.o.- Pratap, P.S.- Banpur, Dist- Khurda.
3. Rabinarayan Pradhan, aged about 45 yrs., S/o- Late Judhistir Pradhan,  
of vill.- Dasarathipur, P.O./P.S.-Banpur, Dist- Khordha.
4. Santha Nirbhayananda Dash, aged about 35 yrs., Guru Late Nirakar Dash,  
of Balipada Atanga math, P.O.- Goudagop NischitaKoili,  
P.S.- Bhareswar, Dist- Cuttack.

.....Defendants

Counsel for Plaintiffs

... Sri T. Baral and associates,  
Advocates, Khordha

Counsel for defendants ... Sri A.K. Dash and associates,  
Advocates, Khordha

.....  
Date of Argument – 21.12.2013

Date of Judgment – 24.12.2013  
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### JUDGMENT

The plaintiffs have preferred this suit for declaration and permanent injunction.

02. Sans unnecessary details the plaintiffs' case is that the properties situate in mouza Lodhabhuin under khata No. 132/ 30, plot No. 159 corresponding to mutation khata No. 132 of 1999 total measuring Ac. 4.55 decimals having a residential house over it (hereinafter referred to be the suit property) belongs to the deceased plaintiff Kain Dei. During her lifetime, she was staying with her family members over the suit property. Kain Dei has two sons and two daughters. Maguni Bisoi and Dandapani Bisoi who are the plaintiffs in this case are the sons of Kain Dei and Smt. Sabitri Parida and Smt. Laxmi Swain who are the defendants No-1 and 2 in this case, are the daughters of Kain Dei. It is contended by the plaintiffs that in the year 2000 the wife of Dandapani Bisoi died and the father in law of Dandapani Bisoi submitted a written report before the local police against Kain Dei, her husband and Dandapani Bisoi, basing on which a criminal case U/s- 498-A, 304-B, 302,201/34 of IPC read with Sec. 4 of D.P. Act was registered against Kain Dei, her husband Bamadev Bisoi and their son Dandapani Bisoi. They were remanded to the judicial custody. Her another son Maguni, who was in Antagonistic term with his

parents and brother Dandapani filed a title suit against them vide T.S No. 06/ 2000 for partition over their joint family property and also obtained an order as per the provision under order 39 rule 1 & 2 CPC in respect of their family properties, in that civil suit. It is further contended by the plaintiffs that Kain Dei first released on bail while her husband and her son Dandapani were in custody. She being a Pardahnashin, simple and an illiterate lady stayed in the house of defendant No. 1. During her stay, defendant No. 1, 2 & their husbands taking advantage of her loneliness hatched conspiracy and convinced her to execute a power of attorney in favour of defendants No-1 and 2 for the purpose of looking after the civil and criminal cases pending against her and other family members. They took Kain Dei to the sub-register office at Banapur on 17.01.2001 and got a deed registered. It is further contended by the plaintiffs that the defendants No. 1 & 2 under the pretext of executing a power of attorney in their favour obtained the signatures of their mother over a sale deed bearing registration No. 84 dated – 17.01.2001. Wherein, Kain Dei alienated the suit property in favour of the defendant No. 1 & 2. On that score the plaintiffs have to say that, Kain Dei keeping on faith of her daughters only put signatures on the documents without knowing it to be a sale deed. Thereafter, defendant No. 1 executed one sale deed No. 2300 in respect of the part of the suit property measuring Ac. 1.14 decimals in favour of defendant No. 3 on 18.04.2007. Subsequently, the defendants No. 1 & 2 together executed a sale deed vide document No. 773 dated – 18.04.2007 in respect of Ac. 3.41 decimals of the suit property in favour of defendant No. 4. On the same day, defendant No. 3 executed

another sale deed vide document No. 774 in respect of Ac. 1.40 decimals in favour of defendant No. 4. Therefore, by virtue of the above sale deeds the entire suit property was transferred to defendant No. 4. It is again contended by the plaintiffs that Kain Dei has neither executed any sale deed in favour of defendant NO. 1 & 2 with her knowledge nor delivered possession to them. In the mean time her husband expired. All the above transactions were neither within the knowledge of Kain Dei nor his two sons but, all of a sudden the plaintiffs received one notice from the Tehsildar, Banpur in demarcation case No. 166/ 2008 instituted by defendant No 4, fixing on 26.04.2008 for demarcation of the suit property. From the said notice they came to know that the defendant No. 4 has filed the said case claiming himself as the owner of the suit land. The plaintiffs inquired about the matter and came to know about the whole incidents. The plaintiffs have again stated that the consideration amount alleged to have been paid to their mother by defendant No. 1 & 2 is absurd. Her mother has not delivered the possession of the suit property to the defendants at any point of time. She was all along in possession of the suit land till her death and after her death the plaintiffs are in possession of the suit land till date. The claim of the defendants is misleading and completely false. Defendant No. 4 is not at all in possession of the suit land at any point of time. The sale deed vide document No. 84 dated – 17.01.2001 is a manufactured document having its no legal effect and by virtue of the sale deed no title has been conveyed to the defendants. It is again contended by the plaintiffs that the cause of action arose on

29.04.2008 when Kain Dei obtained the incumbency certificate over the suit property through her son.

Initially, Kain Dei has preferred the suit against the defendants. But she died during the pendency of the suit and as such her two sons as above have been substituted in her place as plaintiffs.

03. After institution of the present case summons were issued to the defendants. Subsequently, all the defendants appeared except the defendant NO. 2 and as such the suit against her was set ex-parte on 29.10.2008.

The defendants Nos. 1, 3 & 4 submitted their joint written statement by saying that the suit is not maintainable as there is no cause of action. The suit is also barred by limitation and non-joinder of necessary parties and the proper description of the suit property has not been supplied by the plaintiffs to the court. The defendants has to say that the plaintiffs have contended misleading facts as they are no more the owners nor they have any right, title, interest or possession over the suit property. It is further surfaced that after releasing from the Jail custody, Kain Dei made sincere efforts for the release of her husband and other family members and for that a huge amount was required by her. In order to meet such exigency, after due consolation with her husband and other family members tried to sale away the suit property for meeting the expenditure of the criminal cases. The defendant No. 1 & 2 being her two daughters expressed their desire to purchase the suit property and accordingly the sale deed was executed in their favour by Kain Dei. It was very much within her knowledge and consent of other family members.

After purchased, they became the rightful owners of the suit property and subsequently the entire suit property was transferred to the defendant NO. 4 and now the defendant No. 4 is the exclusive owner of the suit property having his right, title, interest and possession over the same. The suit land has been mutated in favour of defendant NO. 4. The aforesaid mutation proceeding was very much within the knowledge of the plaintiffs and Kain Dei, but they have never preferred to file any objection and as such the same attended the finality. The plaintiffs' only to harass the defendants and to grab the suit property have filed the present suit, which is not tenable in the eye of law and liable to be dismissed.

04. In view of the rival pleadings of both the parties as above, the following issues have been settled for an useful adjudication.

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

- i. Is the case maintainable?
- ii. Is there any cause of action to file this case?
- iii. Whether the suit is defective for non-joinder of necessary parties?
- iv. Whether the suit is barred by law of limitation?
- v. Whether the sale deed No. 84/ 2001 executed by the plaintiffs in favour of defendant Nos. 1 & 2 is void and consequentially all other subsequent sale deeds bearing NO. 2300 dated – 27.12.2005 and Nos. 773 and 774 dated – 18.04.2007 are void, inoperative and do not carry any interest?

- vi. Whether the plaintiffs are entitled to the relief of permanent injunction restraining the defendants coming over the suit property and from disturbing the lawful possession of the plaintiffs?
- vii. What relief, if any, the plaintiffs are entitled to?
- viii. Whether the mutated record of right pertaining the suit property is wrong?
- ix. Whether the defendant No. 4 is the absolute owner in possession over the suit property having his right, title and interest?

05. In order to prove their case plaintiffs have examined altogether six witnesses. Out of whom P.W. - 1 Radhakanta Ratha, P.W. - 2 Sadasiva Baral, P.W-3 Satha Routray, P.W. 4 Prabhat Kumar Behera and P.W. - 5 Jalandhar Routray are the independent witness claiming their knowledge about the suit affairs. P.W. - 6 Maguni Bisoi is the plaintiffs' No. 1 (a) himself.

Four documents have been relied upon by the plaintiffs. The certified copy of the ROR in khata NO. 132/ 30 of mouza Lodhabhuin is marked as Ext. 1. The incumbency certificate bearing No. 203/ 2008 as Ext. 2, Electric Bill dated – 15.02.2007 in respect of the suit house as Ext. 3 and the demarcation notice in demarcation case No. 166/ 2008 as Ext. 4.

06. Similarly three witnesses have been examined on behalf of the defendants. D.W. - 1 Rabi Narayan Pradhan is the defendant No 3 himself, D.W. 2 Sabitri Parida is the defendant NO. 1 and D.W. - 3 Santha Nirbhayananda Dash is the defendant No. 4 of this case.

The defendants have relied upon 7 documents. The sale deed bearing NO. 84 dated – 17.01.2001 is marked as Ext. A, sale deed bearing NO. 2300 dated – 27.12.2005 as Ext. B, sale deed bearing No. 774 dated – 18.04.2012 as Ext. C, ROR in khata No. 132/ 93 as Ext. D, rent receipts dated – 22.05.2006 and 19.03.2007 as Ext. E & E/1 respectively, the registered sale deed vide document No. 773 dated – 18.04.2007 as Ext. F and the certified copy of the order sheet in mutation case NO. 477/ 2012 as Ext. G.

### FINDINGS.

#### Issue Nos. v & viii.

07. The above issues are the most pivotal issues and well interrelated to each other and as such both are taken up first for consideration.

On the above issues, the plaintiffs case is that the original plaintiff Kain Dei has two sons namely Maguni and Dandapani and two daughters such as Sabitri and Laxmi. Her two daughters are married and staying in their respective in-laws house. Kain Dei has been staying in the house over the suit property with her husband and her two sons. After the death of the wife of Dandapani, his father in law instituted one dowry death case against Kain Dei, her husband Bamadev and son Dandapani. They all are detained inside the custody, but subsequently; Kain Dei was released on bail. At that time her mental condition was not good. Her two daughters who are the defendants No. 1 & 2 respectively hatched a conspiracy to take away the suit land which has been exclusively recorded in the name of Kain Dei to be the owner. They persuaded their mother Kain Dei to execute one power of

attorney in their favour to look after the case matters against their family members and accordingly they obtained some signatures of Kain Dei on certain papers. The plaintiffs in this regard have to say that their mother being an illiterate, Pardahnashin, rural and simple lady acted upon the direction of her two daughters without knowing their intention and without going through the nature of the deed, put her signatures. She had no knowledge about the sale deed which has been executed in favour of the defendants Nos. 1 & 2 and as such the sale deed by nature is nominal, void and ineffective in the eye of law. Whereas the defendants have to say that the deed is executed properly with the full knowledge and consent of Kain Dei.

08. The plaintiff by saying Kain Dei to be an illiterate and paradanasin lady tried to shift the burden on the defendants to prove the sale deed to be genuine one and obtained without exercising any fraud. The plaintiffs make it more forceful by again saying that the defendants No-1 and 2 by taking advantage of her helplessness convinced her to execute a power of attorney and thereby obtained the disputed sale deed behind her back. To that effect two reported judgments of the Hon'ble High Court of Orissa and the one judgment of the Hon'ble Apex Court has been relied upon by the plaintiffs. The Hon'ble Court in the judgment reported in 1985(II)OLR-417, in a case between Narayan Mishra and two others Vrs. Champa Dibya (Dead) and after her Bhabani Dei and two others, held that -

“2. EVIDENCE ACT, 1872 – Secs. 101 to 103- Burden of proof- Deeds executed by Pardahnashin and illiterate lady- person setting up validity, is to prove that lady understood the nature and effect of her act.”

It is observed in another judgment reported in 1997 (I) OLR-591, that-  
“EVIDENCE – Execution of document (sale deed) by illiterate lady- she only gave thumb impression- A few days thereafter a deed of cancellation was executed by her stating that there was arrangement for deed of exchange, but by fraud such deed of sale has been taken from her – burden of proof lies on the vendee to prove due execution.”

Similarly, in the judgment reported in AIR 1971 SUPREME COURT 1949, the Hon'ble Apex Court observed that-

“(A) Evidence Act (1872), S. 101- Where a witness of one party deposes that a letter written by one S to him has been received by him, the burden lies on the other side to prove its allegation that the letter was not written by S or that it was written in collusion between S and the witness.”

It is the general principle of law that a person relying upon a transaction with an illiterate woman has to prove due execution of document evidencing the transaction. Coming to the present case, true that Kain Dei released on bail first while her son Dandapani and husband were behind the bar. If the evidence of her son Maguni (P.W-6) is taken in to count, he has specifically stated in the evidence in chief as well as in cross-examination that he was looking after the case matter pending against her mother and other family members. He again stated

that while her mother was with the defendant No-1, he was looking after the difficulties of her mother and very often visiting her. The plaintiffs also gathered supporting evidence to that effect from other witnesses of their own. Therefore, it is not possible to conceive that Kain Dei at the time execution of sale deed was leading a destitute life depending on defendants N0-1 and 2.

Coming to the next, Kain Dei has purchased the suit land in her own name in the year 1979. P.W-5 has also stated that Kain Dei during her life time was managing the suit land. Besides, the overall evidence goes to show that Kain Dei may be an illiterate lady but she was never a Pardahnashin lady. Similarly, if her son Maguni Bisoi was all along with her mother during the difficulties, the question of getting benefit from her daughters also does not arise. If at all, it must be within the knowledge of Maguni Bisoi, and he has to explain the manner of such benefit availed by her mother from defendants No-1 and 2. Now it is wise to proceed with the next aspect of the case to find out whether the execution of the sale deed vide Ext. 1 has been duly executed without practicing any manner of fraud, misrepresentation or by exercising undue influence.

09. It may be noted that Kain Dei was the original plaintiffs, who died during the pendency of the suit. The sale deed was executed in the year 2001. Undisputedly, at the time of execution of the sale deed the husband and her son Dandapani were inside the custody, whereas, her son Maguni and her two daughters were outside. The sale deed vide document No. 84 dated – 17.12.2001 (Ext-A) cannot itself be asserted to be null and void unless it has been proved

before the court to be a valid document obtained by not exercising fraud or undue influences. Therefore, it would be wise enough to visit the evidence of both the parties to that effect.

10. The certified copy of the ROR in khata No. 132/ 30 of mouza Lodhabhuin (suit property) is marked as Ext. 1 on behalf of the plaintiffs. The same reveals that the suit property measuring Ac. 4.55 decimals exclusively stands recorded in the name of Kain Dei. Neither party disputes the said fact. The plaintiffs did not rely upon the sale deed which is under challenged nor exhibited the same before this court. On the other hand the said sale deed has been relied upon from the side of the defendant as Ext. A, where Kain Dei has executed the sale deed to her daughters such as defendant No. 1 & 2 in presence of the witnesses, scribe and the Registering Officer on 17.01. 2001, seven years prior to institution of this case.

Coming to the evidence from the side of the plaintiffs, it came to the light that P.W. 1 to P.W. 5 are not whispering a single word regarding execution of the sale deed as they are no way concern about the said fact. P.W. 6 Maguni Bisoi has also no personal knowledge about such execution, as he came to know about the execution of such sale deed (Ext-A) in the year 2008 after receiving notice from the Tehsildar, in demarcation case No. 166/ 2008 filed by the defendant No. 4. Therefore, it is clear that the execution of the sale deed for the first time came to the knowledge of plaintiffs after seven years of its execution. In the evidence P.W-6 has stated that her mother was an illiterate and Pardahnashin woman who was in mental agony and lost her mental stability due to her entanglement in criminal case.

In such a condition her mother came under the control of defendant NO. 1 & 2 who give consolation to her and persuaded her to execution a power of attorney in their favour and accordingly her mother under the influence of her two daughters executed the sale deed with a wrong notion that she has been executing a power of attorney in their favour to look after the case matter. Now the question is how P.W. - 6 and other family members were kept in dark for seven years about such fact? It is quite important to mention that P.W. 1 in his cross-examination in para – 9 specifically stated that Maguni Bisoi (P.W. – 6) had been staying in a separate house and the other witnesses also corroborate the said fact and even it has been admitted by the plaintiffs that P.W. - 6 had a bitter relationship with her mother, brother and also with the Kain Dei and he has filed a suit against them before the Civil Judge, Jr. Divn, Banapur for partition of the joint family property vide title suit NO. 06. of 2006. P.W. - 6 in his cross-examination has stated that he has been looking after the present suit as the property involving therein is a joint family property. Whether the suit property is the joint family property or the exclusive property of Kain Dei may be decided at the later stage, but so far as question involving with the legality of execution of sale deed is concern there is absolutely no direct involvement of the P.W-6 to say on which circumstances, the sale deed was executed. However it may further be noted that the plaintiffs in their pleading have also categorically mentioned that Maguni was at antagonistic term with the Kain Dei and other family members and filed one civil suit against them in the year 2000.

On the other hand P.W-6 in the Cross-examination has stated that since, his wife was suffering from ailment, his mother after releasing from jail stayed with her daughter Sabitri Parida (D-1) in her house. D.W. - 6 further stated that at that time he was looking after the difficulties of her mother and often used to visit her mother. But, her mother never intimated regarding the execution of the sale deed on 17.01.2001, which was prepared by exercising fraud and misrepresentation by the defendant No. 1 & 2. For the first time in the year 2008 his mother intimated the said fact to him. In case the evidence of P.W. - 6 is believed for a moment, if he could able to keep a good relationship with his mother in spite of filing a civil case against her, he must have a scope to ascertain the matter of execution of any power of attorney in favour of defendant NO. 1 & 2. Such execution being not a casual practice on the part of the Kain Dei who is an illiterate. simple and rustic lady could have intimated the fact to Maguni Bisoi, who claimed to have a good relationship with Kain Dei and if not, to other family members such as her husband and son after their releasing from the jail custody. But, in fact the same has not occurred at all. The above circumstances represent, either Maguni was never in contact with her mother or the family members were all along aware about such execution.

11. Coming to the next aspect, the sale deed may be disputed on the question of preparation, execution, consideration or registration. At this stage it is wise for the court to surface the judgment of the Hon'ble High Court of Orissa

reported in AIR 2003 Orissa 155, as relied upon by the defendants. The Hon'ble Court in the said judgment observed that-

“Transfer of property Act (4 of 1882). S.54- Sale deed- validity- conveyance duly registered-Executant an illiterate lady-Scribe to document as well as attesting witnesses admitted in their evidence that contents of document were read over and explained by scribe to the executant -She admitted contents to be true and correct and then put her thumb impression on deed- Evidence of attesting witnesses not shattered in cross-examination- Only denial statement by executant - Order declaring sale deed as valid on evaluation of evidence holding that defendants duly discharged burden of proof-Proper”

So far as preparation of the sale deed vide Ext-A is concerned no rebuttal evidence has been adduced from the side of the plaintiffs. The plaintiffs have to say that no consideration amount has been paid and the consideration amount mentioned in the sale deed is marginal worse than the actual value of the suit property, which includes house and valuable grown up trees. In this subject, it would be profitable to visit the evidence from the side of the defendants. D.W. - 1 is a witness to the sale deed vides document No. 84/ 17.01.2001. He stated that the sale deed was drafted by one Satrugana Jena. He prepared the sale deed as per the dictation of the vendor Smt. Kain Dei. He put signature on it as Ext. A/1. As per his evidence, Kain Dei was staying in the house of one Ladu singh at village- Pratap and she was staying alone and used to visit the house of her two daughters. She was eking her livelihood by incurring loan and also depending on her daughters.

D.W. - 2 Sabitri Parida is the daughter of Kain Dei. As per her evidence, her mother Kain Dei incurred some loan to meet her own legal necessity and to meet the expenses of the criminal cases pending against her family members. And as such she sold away the suit property to them (D- 1 & 2) for a consideration amount of Rs. 21,000/-. She also admitted the ROR under khata NO. 132 of 1993 recorded in her name and her sister Laxmi Swain to be Ext. D and the rent receipts of year 2006-07. The genuineness of the registration cannot be disputed as the same is duly registered in presence of the registering officer, Banpur. The contentions appears to be read over and explain to the vendor Kain Dei and it is the outlook of the registering officer to see whether the document has been prepared with the consent of both the parties and the consideration has been paid accordingly. Being a public officer, his act cannot be put under suspicion without any rebuttal evidence to that effect. It is learnt that except the bald oral evidence, there is no case with the plaintiffs to prove that their mother was within the control and influence of defendants No. 1 & 2 and if so, the same does not leads the conclusion that they have influenced their mother Kain Dei for execution of the sale deed in their favour. Rather the rebuttal evidence goes to show that defendant No. 6, who is the only witness in favour of the plaintiffs' case, having no contact with his mother during the said period as he was staying outside. He was inimically deposed of with her mother and other family members and even he has also filed a case against them for partition of the suit property as admitted by the plaintiff in their pleading. This above fact leads to the further conclusion that Kain Dei after releasing from the jail

custody was alone. She has to look after the case matter and to eke her livelihood. There is no evidence from the side of the plaintiffs to show the source of income of Kain Dei for eking her livelihood and being a lonely lady she took the help of her daughters. The question of incurring loan by her in the above situation cannot be ruled out as not specifically challenged by the plaintiffs. Therefore, she alienated the suit property to her daughters. This court find no improbability in the above events as the plaintiffs had have no personal knowledge about such incidents and not being informed by their mother even seven years after the execution of the sale deed. The said sale deed is genuine one and executed with the consent of Kain Dei.

At this stage, it is quite needful to mention that the suit land was muted in favour of the defendant No-1 Sabitri Parida vide mutation case No-477/2002. The certified copy of the mutation case is marked as Ext- G. The same reveals that the notice to the mutation case was served to the plaintiff No-1(a). Therefore the mutation of the suit land in favour of the defendant No-1 was very much within the Knowledge of the plaintiff.

12. The plaintiffs' again came with a case by saying that the suit property is the joint family property. D.W. 6 in his cross-examination specifically stated that the suit property is the joint family property. In this way he has to say that the alienation of joint family property by Kain Dei who is one of the co-sharer is also null and void. This court has already discussed that the record of right of the suit property stands in favour of Kain Dei. Whereas P.W. 3 in his evidence in chief has

stated that the mother of plaintiffs (Kain Dei) was the owner in possession of the suit land. P.W. - 5 in the cross-examination for the first time has stated that the suit property has been purchased by the father of the plaintiffs around 25 to 26 years back from one Godabarisa Mishra in the name of his wife Kain Dei. P.W. - 6 also in his cross-examination has stated that the suit property is their joint family property. The party who is claiming a specific property to be joint family property has to give a detail description of the same with all sufficiency, which can be accepted by a court of law. So far as the plaintiffs case is concern the pleading is completely silent about the same, rather they have stated that the suit property is owned by Kain Dei. In case it is accepted that the suit land has been purchased by the husband of Kain Dei in her favour, the plaintiffs have to prove the date of purchase and source of income and detailed description as to the joint family surplus income which has been contributed for purchase of the suit land. A bare statement by saying that the property has been purchased by the husband in the name of his wife is not also acceptable as per the Sec. 3 of The Benami Transaction (Prohibition) Act 1988. Now it is the considered opinion of this court that the sale deed vides document No. 84 dated – 17.01.2001 legally effective one and not obtained by exercising any fraud, mis-representation of fact. And accordingly, the mutation record of right pertaining to the suit property is also genuinely exercised.

13. At this stage it may further be noted for the sake of other matters under issue that while the sale deed vides document No. 84 of 2011 is a valid document the right, title and interest of the defendant No. 1 & 2 cannot be disputed.

Both sold the suit property to defendants No. 3 & 4 in different occasions and subsequently defendant No. 3 also sold his property to defendant No. 4. The above sale deeds executed by defendants' No. 1, 2 & 3 to defendant No. 4 cannot be disputed. They being the recorded tenants of the suit property alienated the entire suit property to defendant No. 4 which is neither under challenge nor is the legality of such execution put under the question mark. The above issues are answered accordingly.

**Issue Nos. vi & ix.**

14. The plaintiffs came with an alternative plea for permanent injunction claiming their possession over the suit property. While the defendant has to say that the plaintiffs have been dispossessed off from the suit property immediately after sale of the suit land by Kain Dei and now the defendant NO. 4 is in exclusive possession over the same as the suit property has been transferred by defendant NO. 1, 2 & 3 in favour of defendant No. 4.

The sale deed was executed in the year 2001 by then Kain Dei. Before such execution, herself, her husband and other family members were staying in the house. In the examination chief P.W. - 1, 2 & 6 have stated that the plaintiffs are in possession of the suit land. Before coming to the possession of Kain Dei after sale of the said land to the defendant No 1 & 2, lets came to the cross-examination of the witness to find out whether the present defendants are in possession of the suit land or not. P.W. 1 in the cross-examination has stated that the plaintiff Maguni has been residing in a house which is 300 meter far from the

suit land. He again stated that for last four to five years he has been staying away from the suit property. P.W-2 in the cross-examination has stated that the plaintiffs have another residential house near the suit land. Both the plaintiffs have been using both the house. The evidence became more clear while P.W. - 2 again stated that Dandapani (Plf-2) is now staying in the house of Ladu Singh on rent. This being the version of the witness from the side of the plaintiffs, this court has no scope to interfere with the same in any manner as P.W. – 1 and 2 must not be without any basis have clearly stated that Dandapani is staying in the house of Ladu singh and plaintiff maguni in his own house in a different place since long. Similarly, P.W. - 3 in the cross-examination has again stated that Maguni has another house besides the house over the suit land which situates at the eastern side of the suit land. The said house is there for last 20 years and the family members of Maguni are staying in both the house. P.W. - 3 in the cross-examination again stated that the land of goddess 'Sulia' situates at the northern side of the suit land which is in possession of Dandapani Bisoi and another land of Goddess Sulia situates at the eastern side of the suit land is in possession of Maguni. Defendant NO. 5 in his cross-examination again stated that there is one house for their joint family and another house in a separate place belong to Maguni. The house of Maguni is 20 years old. Initially Maguni was running a Broiler firm in his house and for last 5 to 6 years he has been staying there. P.W. 6 being the plaintiff himself is the most vital witness for his own case. He in his cross-examination has stated that since his wife was under treatment being suffering from ailment his mother after releasing from jail stayed

with her sister Sabitri Parida in her house. The above statement clearly reveals that Maguni was not staying in his house at any point of time and he was staying elsewhere in his own house. The pleadings of the plaintiffs also reveals that while Kain Dei and her family members were in custody Maguni was in antagonistic term with his family members and he had already filed a case against Kain Dei and his other family members for partition. There is absolutely no pleading from the side of the plaintiffs that Maguni Bisoi was at any point of time was looking after criminal case pending against Kain Dei and other family members and was staying in the suit house. It further reveals from the pleading itself that after releasing from jail Kain Dei herself started managing the case matter of his family members by depending upon her daughters. Maguni was not in the scene to satisfy his possession over the suit property rather it clearly reveals that Maguni was staying elsewhere with his family members. Coming to the possession of Dandapani, P.W. 2 himself has stated that Dandapani was now staying in the house of Ladu Singh. At this stage another aspect of the case is required to be looked into. In case Maguni was in possession of the suit land, her mother after releasing from bail could have taken shelter in the suit land which belongs to herself. She ought to have no occasion to take shelter in the house of her daughters. It may further be noted that P.W. 5 in his cross-examination has stated that after releasing from jail Kain Dei started residing in the house of her daughter Sabitri Parida and then shifted to the house of her daughter namely Laxmi Swain. At that time Maguni was all along present in his house. The said witness again stated that Kain Dei stayed for three

months in the house of Sabitri and one month in the house of Laxmi and ultimately came to her house. The said conduct of Kain Dei implies that nobody except her daughters were beside her at the said crucial moment of her life for immediate help. She had no source of income to eke her livelihood. Maguni was neither residing in the said house nor he was in good terms with his mother. Neither the pleading nor the witnesses examined from the side of the plaintiffs reveals that Kain Dei at any point of time stayed with her son Maguni Bisoi. The same well corroborates to the fact that Maguni was not residing in the suit house being inimically disposed of with his family members and the suit land was lying vacant. Kain Dei did not prefer to reside there alone and went to her daughters' house. Being a destitute lady she kept faith on her daughters, rather than her son Maguni. Therefore, the story narrated by Maguni appears to be not only out of pleading, but also quite imaginary one being not supported by any witness. Maguni was not in possession of the suit land at any point of time. It has already been discussed that P.W. 1 has already admitted that Dandapani, plaintiff No-2, is now staying in the house of Ladu Singh on rent whereas the other witnesses have refused to the suggestion made by the counsel for the defendant on the said status of Dandapani. On that aspect if the evidence from the side of the defendant be taken into account they have not only claimed their right, title, interest over the suit property by virtue of the sale deed and filed the rent receipts of year 2006-07. Therefore, the defendants have succeeded to prove a better case in respect of their possession over their suit property. On the other hand the witness examined from the side of the plaintiffs admitted the real

background regarding possession, which reveals that neither the plaintiff No-1 nor plaintiff No-2 are in possession of the suit land and as such a question of prohibiting the rightful owner from their purchased property does not arise. Defendant No. 1, 2 & 3 who are the purchasers' have already alienated the suit land to defendant No. 4. After purchased the defendant No. 1, 2 & 3 were in possession of the suit land and as per their own case they sold the entire suit property to defendant No. 4 and delivered possession of the same. In view of the forgoing discussions on the evidence as well as the pleading of both the parties and the documents relied upon, it is the opinion of this court that the suit property is in possession of defendant No. 4 and as such this court find no reason to interfere with the peaceful possession of defendant No. 4 over the suit property. Therefore, the plaintiffs having no manner of right, title, interest and possession of the suit land are not entitled for the relief of permanent injunction

**Issue Nos. i, ii, iii & iv.**

15. The Issues Nos. i, ii, iii & iv involve with the question of maintainability regarding cause of action, non-joinder of necessary parties and limitation. Those questions have not been put forward from the side of the defendants and deemed to be not pressed. But, so far as the question of relief is concerned, it is well asserted by this court in the forgoing discussions that the suit land has been rightly transferred by the real owner of it namely Kain Dei and the plaintiffs having no manner of right, title, interest and possession over the suit land are not entitled for any relief as sought for. Hence it is order.

**O R D E R.**

The suit of the plaintiffs be and the same is hereby dismissed on contest against defendants No-1,3 and 4 while Ex-Parte against defendant No-2, but in the circumstances without any cost.

Advocate's fee is at the contested scale.

Sr. Civil Judge, Khurda.

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 24<sup>th</sup> day of December, 2013.

Sr. Civil Judge, Khurda.

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

- |        |                      |
|--------|----------------------|
| P.W.1  | Radhakanta Rath.     |
| P.W. 2 | Sesadev Baral.       |
| P.W. 3 | Satha Routray.       |
| P.W. 4 | Pravat Kumar Behera. |
| P.W. 5 | Jalandhar Routray.   |
| P.W. 6 | Maguni Bisoi.        |

**List of witnesses examined on behalf of Defendants. :-**

- |        |                      |
|--------|----------------------|
| D.W.1  | Rabinarayan Pradhan. |
| D.W. 2 | Sabitri Parida.      |

D.W. 3 Santha Nirvayananda Dash.

List of documents admitted on behalf of the Plaintiffsss :-

- Ext.1 Certified copy of ROR in khata No. 132/30 of mouza Lodhabhuin.  
 Ext. 2 Incumbency certificate bearing NO. 203/ 2008.  
 Ext. 3 Electric Bill dated – 15.02.2007 in favour of father of P.W. 5.  
 Ext. 5 Demarcation notice in Demarcation Case No. 166/ 2008 issued by  
 Tehsildar, Banpur.

List of witnesses examined on behalf of Defendants :-

- Ext. A Sale deed bearing No. 84 dated – 17.01.2001.  
 Ext. A/1 Signature of D.W. - 1 on Ext. A.  
 Ext. A/2 Signature of D.W. - 2 on Ext. A.  
 Ext. A/3 Signature of Laxmi on Ext. A.  
 Ext. B Sale deed bearing No. 2300 dated – 27.12.2005.  
 Ext. B/1 Signature of D.W. - 2 on Ext. B.  
 Ext. C Sale deed bearing No. 774 dated – 18.04.2012.  
 Ext. C/1 Signature of D.W. - 1 on Ext. C.  
 Ext. D ROR in khata No. 132/93 of mouza Lodhabhuin.  
 Ext. E Rent receipt.  
 Ext. E/1 Rent Receipt.  
 Ext. F Registered sale deed.  
 Ext. F/1 Signature of D.W. 2 on Ext. F.  
 Ext. F/2 Signature of Laxmi on Ext. F.

Ext. G Certified copy of order sheet in mutation case No. 477/ 2012.

Sr. Civil Judge, Khurda.