

**IN THE COURT OF 2ND ADDL. SENIOR CIVIL JUDGE,
BHUBANESWAR, DISTRICT-KHURDA.**

PRESENT:- **Shri S. K. Pattanaik, M.A., LL.,M,**
2nd Addl. Senior Civil Judge,
Bhubaneswar.

C.S. No.291/77 of 2013/2011

Smt. Anjana Panda, aged about 47 (Forty seven) years,
Wife of Sri Suryanarayan Panda,
resident of Adarsha Nagar, Mangala lane,
Sidhamahavir, P.S: Kumbharapada,
PO-Puri-2, Dist : Puri.

Plaintiff

-Versus-

1. N.N. Builders (P) Limited, a company registered under the provisions of Companies Act, 1956, having its registered office at Plot No. N-1/271, I.R.C. Village, PO/PS: Nayapalli, Bhubaneswar, Dist : Khurda represented through its Managing Director, Sri Nrusingha Charan Samantaray, S/o. Late Raj Kishore Samantaray, resident of village: Lingipur, P.S: Lingaraj, P.O. Sisupalgarh, Dist: Khurda.
2. Nrusingha Charan Samantaray, aged about 41 (Forty one) years, S/o. Late Raj Kishore Samantaray, Resident of village : Lingipur, P.S. Lingaraj, P.O. Sisupalgarh, Dist : Khurda.

..... Defendants

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff : M/s. P.K. Mishra & Associates

For Defendants : N o n e

DATE OF ARGUMENT : 13.10.2014
DATE OF EXPARTE JUDGMENT:15.10.2014

EXPARTE JUDGMENT

This is a suit for specific performance of contract and permanent injunction.

2. The gist of the plaintiff's case is as follows :-

The defendant No.1 company being floated by the defendant No.2 as its Managing Director took up a project to sell lands divided into several plots for house sites in the name and style of Ananda Village situate in Mouza Utter Munda Muhan under Jatni Police Station. As per advertisement of the said project, the plaintiff being interested approached and negotiated the defendants to purchase a plot. Accordingly, an agreement to sell the suit property was entered into between the defendants and plaintiff on 18.04.2003 for a total consideration of Rs.1,05,800/- (Rupees One lakh five thousand eight hundred). Out of which a sum of Rs.6,000/- (Rupees Six thousand) was paid by the plaintiff in cash to the defendants towards part payment of consideration vide Money receipt No. 7669 and 7685 on the same day for the Plot No.130, area 2000 sq.ft (50' x 40').

It is the further case of the plaintiff that it was stipulated that the rest part of the consideration money will be paid by the plaintiff in 60 equal monthly installments. It was also agreed that after completion of the installments, the defendants will execute and register the sale deed in respect of the suit property in favour of the plaintiff and the plaintiff will bear all the expenses required for purchasing stamp papers and registration charges or fees etc. The plaintiff continued to pay the installment dues to the defendants as stipulated in the agreement and completed the same.

It is also the case of the plaintiff is that after payment of the entire consideration money, the plaintiff approached and requested the defendants to execute and register the sale deed in respect of the suit schedule property and also informed them that she is ready with the required money for purchasing stamp papers and registration expenses. So the defendants avoided to execute and register the sale deed in respect of the suit property on some pretext or other the defendants deferred to execute and register the sale deed. So the plaintiff sent a legal notice to the defendants through her advocate on dated 04.10.2010. It is further stated that when the defendants are negotiating and searching with intending purchaser to alienate the suit

property, the plaintiff without getting any alternative filed the suit with a prayer that a decree for specific performance of contract for sale of the suit property against the defendants directing them to execute and register the sale deed in respect of the suit property and deliver possession the same to the plaintiff within a stipulated time with permanent injunction.

3. The defendants are set exparte vide order dated 20.04.2013.

4. In order to substantiate her case, the plaintiff Anjana Panda examined herself as P.W.1 and relied upon Ext.1 to Ext.3 in support of her claim.

5. The plaintiff Anjana Panda examined as P.W.1. According to her, as per advertisement of the project by the defendants the plaintiff was interested to purchase a plot of land from the said project and approached the defendants to purchase of the same in Ananda village. Then an agreement to sell was made between the plaintiff and defendants on dated 18.04.2003 for a total consideration of Rs.1,05,800/-, out of which a sum of Rs.6000/- was paid by the plaintiff in cash to the defendants acknowledged by the defendants vide money receipt No.7669 and 7685 on the same day. As per the terms and conditions of the agreement to sell, the plaintiff has performed her part of contract as stipulated in the said agreement. It is further evident that after payment of total consideration money the plaintiff has approached the defendants several times to execute the sale deed in her favour but they avoided and failed to perform their part of the contract. P.W.1 relied the documents of original unregistered agreement dated 18.04.2003 executed between herself and the defendant No.1 vide Ext.1, Ext.2 to 2/ac are the money receipts and Ext.3 is the office copy of the pleader notice dated 04.10.2010.

6. From the aforesaid pleadings and evidence of P.W.1, it is clear that the plaintiff has paid the entire consideration money as per the agreement vide Ext.1 and submitted the money receipts vide Ext.2 to 2/ac for purchase of land vide allotment plot No.130, area 2000 sq.ft. in mouza Utter Munda Muhan. The Defendants did not perform their part of contract, as a result of

which the plaintiff has brought the suit against them. The evidence of P.W.1 has not been challenged by the defendants as they are set exparte. The unchallenged testimony of P.W.1 clearly led me to say that as per the unregistered agreement vide Ext.1 and the manner in which the plaintiff has paid the initial amount along with the subsequent installment which would show that she is always ready and willing to perform her part of contract. Fact remains that the defendants have made advertisement, negotiation, execution of agreement, receipt of consideration amount and they have also made several correspondences as well as negotiations with the plaintiff for sale of the suit plot. When the defendants after taking all the consideration amount did not perform their part of contract which would show that they have intentionally harassed the plaintiff with an oblique motive. Therefore, considering all the aforesaid facts and circumstances, in my humble views the irresistible conclusion is that the plaintiff is entitled to get the relief as sought for.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on exparte against the Defendants but in the circumstance without cost. The Defendants are directed to execute and register the sale deed and deliver the possession of the suit property to the plaintiff within three months hence. The defendants are also restrained from alienating the suit plot in any manner.

2nd Addl. Senior Civil Judge,
Bhubaneswar

Judgment is typed out to my dictation, corrected and pronounced in open court, on this 15th day of October, 2014 under the signature and seal of this court.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

LIST OF WITNESS EXAMINED FOR THE PLAINTIFF:

P.W.1 : Smt. Anjana Panda

LIST OF WITNESS EXAMINED FOR THE DEFENDANTS:

N O N E

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

Ext.1 : Original unregistered agreement dated 18.04.2003

Ext.2 to 2/ac:Money receipts.

Ext.3 : Office copy of the pleader notice dated 04.10.2010.

Ext.3/a : Postal receipt.

LIST OF DOCUMENTS FILED BY DEFENDANTS:

N I L

2nd Addl. Senior Civil Judge,
Bhubaneswar.