

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 01st Nov. '14.

F.A.O. No. 117 of 2013.

[Arising out of the order dated 03.08.2013 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.607 of 2012, corresponding to C.S. No.1565 of 2010.]

1. Annanda Charan Mohanty, aged about 75 years,
S/o. Late Fakira Charan Mohanty.
2. Bed Prakash Mohanty, aged about 42 years,
S/o. Late Barada Charan Mohanty.
3. Jyoti Prakash Mohanty, aged about 38 years,
S/o. Late Barada Charan Mohanty.
Sl. Nos.1 to 3 are residents of Banka Bazar,
Cuttack, Dist. – Cuttack.
4. Puspa Mohanty, aged about 42 years,
W/o. Biswajit Mohanty,
C/o. Satyajit Mohanty,
Resident of B.C. Lane, Tulsipur,
Cuttack - 8.
5. Sudhansu Mohanty, aged about 71 years,
D/o. Late Fakir Charan Mohanty,
Resident of Plot No.1753, Mahatab Road,
P.O. – Kapilaprasad, P.S. – Lingaraj,
Bhubaneswar, Dist. – Khurda.

... **Appellants.**

-Versus-

1. Maa Tarini Estcon Pvt. Ltd.,
A Company registered under the Companies Act, 1956,
having its Registered Office at Plot No.69,
Sahid Nagar, P.O./P.S. – Sahid Nagar,
Bhubaneswar, Dist. – Khurda,
Represented through its Managing Director
Sri Niranjan Rana.
2. Smt. Sabitri Sahoo, aged about 39 years,
W/o. Muralidhar Sahoo, resident of
Village/P.O. – Mayura Jhalia, P.S. – Ranpur,
Dist. – Nayagarh.
3. Nalini Kumar Mohanty, aged about 48 years,
S/o. Not Known.
4. Deba Mohanty, aged about 25 years,
S/o. Not Known.
Sl. Nos.3 & 4 are residents of Village - Mula Suanga,
At present : Village - Santapara, P.O./P.S./Dist. –
Kendrapara.

... **Respondents.**

Counsel:

For Appellants : Shri J. Das & Associates.
For Res. No.1 : Shri B.B. Jena & Associates.
For Res. Nos.2 to 4 : None.

Date of argument : 24.10.2014.

Date of judgment : 01.11.2014.

J U D G M E N T

This appeal is directed against the order dated

03.08.2013 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.607 of 2012, arising out of C.S. No.1565 of 2010, dismissing the application under Order 39, Rules 1 & 2 of the C.P.C. read with section 151 of the C.P.C. filed by the appellants. Appellants are plaintiff-petitioners and respondents are defendant-opposite parties in the Court below.

2. The parties hereinafter have been referred to as they have been arrayed in the Court below for the sake of convenience and proper appreciation.

FACTS :

3. The factual matrix leading to the case of the plaintiffs (appellants herein) is that originally the suit land belonged to one Tilotama Dei, who is their common ancestor, and after her death, plaintiffs and defendant No.5 being her successors-in-interest stepped into the shoes of deceased Tilotama Dei and enjoyed the property. One Barada Charan Mohanty, second son of Tilotama Dei, had pre-deceased her leaving behind plaintiff Nos.2 to 4 as successors-in-interest in respect of his share. Since the elder son of Tilotama Dei was not available to file the suit, he has been arrayed as proforma defendant No.5 in the present suit. It is further averred in the plaint that defendant Nos.1 to 4 by engaging their goondas

tried to encroach upon the suit land. Defendant Nos.3 & 4 having impersonated themselves to be the legal heirs of Tilotama Dei executed a Power of Attorney in favour of defendant No.1 and defendant No.1 sold the suit property to defendant No.2. Thus, the transaction is totally derived out of fraud. Hence, the plaintiffs have filed the suit to declare the General Power of Attorney in favour of defendant No.1 and the Sale Deed in favour of defendant No.2 as illegal. Prayer has also been made for permanent injunction against the defendants. Pending the suit, they filed another petition for temporary injunction to restrain the defendant-opposite parties from entering into the suit land. Hence the suit and petition.

4. Defendant No.1 (respondent No.1 herein) filed written statement refuting the allegations made in the plaint. It is the case of defendant No.1 that Tilotama Dei is late mother of defendant No.3 and she is not the common ancestor of the plaintiffs. According to this defendant, defendant Nos.3 & 4 have rightly executed Power of Attorney in his favour and he has also rightly sold the suit land to defendant No.2. Accordingly, defendant No.2 is the rightful owner in possession of the said property. Thus, it is prayed for dismissal of the suit.

5. Defendant Nos.2 to 5 are set ex parte.

6. The learned trial Court heard the matter and

disposed of the Interim Application under Order 39, Rules 1 & 2 read with section 151 of the C.P.C. by the impugned order rejecting the prayer of the plaintiff-petitioners with observation that they have no prima facie case, no balance of convenience leans in their favour and there will be no irreparable loss or injury if injunction is refused. Such order of the learned Civil Judge (Sr. Division), Bhubaneswar, is under challenge in this appeal.

CONTENTIONS :

7. Learned counsel appearing for the appellants submitted that the learned trial Court has committed error by not allowing temporary injunction when there is a prima facie case in their favour. He further submitted that the learned trial Court has grossly erred in law by observing that the fraud, if any, committed can be decided in the suit and since the Sale Deed being a public document is in favour of defendant No.2, no injunction would lie against the opposite parties. He further submitted that there are ample documents in favour of the plaintiff-petitioners, but they have been neither discussed nor taken into consideration to find out the prima facie case of the plaintiff-petitioners. According to him, the plaintiff-petitioners have got balance of convenience in their favour and in the event of refusal of injunction, they would suffer irreparable

loss. So, he submitted to set aside the order of the learned trial Court by allowing the appeal.

8. Learned counsel appearing for respondent No.1 submitted that there is no prima facie case against the present petitioners and balance of convenience does not lie in their favour. When there is a Registered Sale Deed, the same should be honoured. On the other hand, he supported the order of the learned trial Court and prayed to dismiss the appeal.

DISCUSSIONS :

9. Perused the plaint, written statement, petition, objection, impugned order, copies of documents filed and the lower Court record. On going through the pleadings of both parties, it appears that the plaintiffs have alleged, inter alia, that defendant Nos.3 & 4 are not the legal heirs of Tilotama Dei. In support of their contention, they have produced copies of Death Certificates of Fakira Charan Mohanty and Tilotama Dei, which show that Tilotama Dei died on 15.11.1966. Copy of Legal Heir Certificate issued by the Addl. Tahasildar, Sadar, Cuttack shows that Tilotama Dei has got three sons, namely, Sarada Charan Mohanty, Barada Charan Mohanty & Ananda Charan Mohanty and one daughter, namely, Sudhansubala Mohanty. In order to prove the legal heirs of Barada Charan Mohanty, they have filed copies of Voter Identity Cards which

show that Bed Prakash Mohanty (plaintiff No.2) & Jyoti Prakash Mohanty (plaintiff No.3) are sons of Barada Charan Mohanty and Puspa Mohanty (plaintiff No.4) is the wife of Biswajit Mohanty, who is said to be the daughter of Barada Charan Mohanty as per the contention of learned counsel for the appellants. The names of Nalini Kumar Mohanty (defendant No.3) and Deba Mohanty (defendant No.4) do not figure in the Legal Heir Certificate issued by the Addl. Tahasildar, Cuttack. So, prima facie it appears that defendant Nos.3 & 4 are not the legal heirs of Tilotama Dei. Thus, the observation of the learned trial Court that the petitioners have not filed any documentary evidence showing the fraud to have been committed by the opposite parties is not correct. When defendant Nos.3 & 4 being in no way related to the family of Tilotama Dei, who is admittedly the owner of the suit property, have executed General Power of Attorney in favour of defendant No.1, prima facie the same itself is said to be fraud committed by them because they have impersonated themselves as the legal heirs of Tilotama Dei and executed Power of Attorney in favour of defendant No.1 who sold the suit property to defendant No.2.

10. It is true that fraud can be substantiated during trial, but from the documents produced by the petitioners, it is

found that the persons who have no title if conveyed the same by way of Power of Attorney or by sale is definitely a point to be considered in favour of the plaintiff-petitioners. Moreover, the learned trial Court has observed that the alleged Sale Deed is a public document, which is absolutely incorrect in law because no Sale Deed is a public document; but the certified copy of a Registered Sale Deed is a public document. So, the reason assigned in the order of the learned trial Court is not correct and cannot be sustained in law. On the other hand, I am of the view that there is a prima facie case in favour of the plaintiff-petitioners. Mere filing of Registered Sale Deed without conveying any title will not stand in favour of the opposite parties. When there is a prima facie case in favour of the plaintiff-petitioners and they are in possession of the suit property as per the affidavit filed by them, the balance of convenience lies in their favour. If defendant No.2 or defendant No.1 by obtaining the document from the persons, who are strangers to the original owner, tried to dispossess the plaintiff-petitioners, then definitely there will be irreparable loss and injury to the plaintiff-petitioners. Hence, the learned trial Court has committed error by not appreciating the documents properly and arriving in a wrong conclusion, for which this Court is not able to concur with the findings of the

learned trial Court. Hence ordered :

O R D E R

The appeal is allowed on contest without cost. The order dated 03.08.2013 passed by the learned Civil Judge (Sr. Division), Bhubaneswar in I.A. No.607 of 2012, arising out of C.S. No.1565 of 2010, is hereby set aside.

The respondents (opposite party Nos.1 to 4 in the Court below) are hereby temporarily injuncted from interfering with the peaceful possession of the appellants (plaintiff-petitioners in the Court below) over the suit land till disposal of the suit.

It is clarified that whatever has been stated herein-above in this order are not in any manner intended to be a reflection much less a finding on the merit of the case of either party which shall be available to be determined on the evidence and materials brought on record in the suit.

**District Judge, Khurda
at Bhubaneswar.**

01.11.2014.

Dictated, corrected by me and pronounced in the open Court this day the 01st November, 2014.

**District Judge, Khurda
at Bhubaneswar.**

01.11.2014.

