

**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.

M.S. NO. 13/599 of 2013/2012

Ranjan Kumar Kar, aged 34 yrs,
S/o. Nityananda Kar
At : Belarpur, P.S. Derabis,
Dist : Kendrapara.

..... Plaintiff

-Versus-

Prakash Ch. Sahoo, aged 50 yrs,
S/o. Kedar nath Sahoo,
At : Bada danda Sahi,
Old Town, Bhubaneswar.

.....Defendant

COUNSELS APPEARED FOR THE PARTIES:

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

For Defendant : M/s. B.K. Dash, Advocate

DATE OF ARGUMENT:19.09.2014

DATE OF JUDGMENT: 14.10.2014

J U D G M E N T

This is a suit for realisation of money of Rs.2,50,000/-
(Rupees Two lakhs fifty thousand).

2. Plaintiff's case in nutshell is as follows :-

The defendant approached the plaintiff to sell the suit
schedule property situated in Mouza Andharua vide Khata

No.621/756, Plot No.1277/3979 for an area of Ac.0.080 decimals at a price of Rs.7,00,000/- (Rupees Seven lakhs). The plaintiff being in need of a plot agreed to the offer and as advance paid a sum of Rs.2,50,000/- (Rupees Two lakhs fifty thousand). The defendant on receipt of the advance promised to execute the sale deed within seven days after demarcating the land with at least one feet boundary wall. Then the plaintiff waited for registration and everyday from 16th January 2012 ran after the defendant for demarcation and registration. The defendant avoided and as the plaintiff had to go to his working place after waiting for long 15 days he went back to his place of service. The father-in-law of the plaintiff contacted the defendant informing him that he has the balance money and the registration expenses but the defendant did not take any steps either for demarcation or for registration.

It is the further case of the plaintiff that in January, 2012 the plaintiff also had received another offer and could have purchased it but of the defendant's deal did not proceed on it. The defendant has also not returned the advance taken along with the interest and damage. The plaintiff has no land at Bhubaneswar. The plaintiff has not only performed his duty by paying the advance as well as arranging the balance money but well arranged the registration expenses and always was/is willing and ready to perform his part of duty. The defendant is not coming forward to his part of duty by taking steps to get the sale deed registered. When all

attempts of the plaintiff became fruitless and the defendant is not responding for which without getting any alternative he filed the present suit with a prayer for recovery of Rs.2,50,000/- (Rupees Two lakhs fifty thousand) from the defendant along with cost and damage. Hence, the suit.

3. The contesting defendant has challenged the suit on various grounds about its maintainability, cause of action, principles of res judicata, not approach the Court in clean hand as well as law of limitation, under valuation and suppression of material facts. According to him the defendant has never received any money from the plaintiff at any time. Hence, there is no question of refund of money along with interest and damage to the plaintiff. Further submitted that Dipti Ranjan Das, who is a mediator and witness to the money receipt suddenly came with the plaintiff on dated 16.01.2012 and contacted to defendant and approached to sale a plot of land to which the defendant is agreed. The plaintiff insisted to defendant to execute a money receipt for an amount of Rs.2,50,000/- (Rupees Two lakhs fifty thousand) only immediately without giving any money to the defendant and by saying that he will pay the entire money to Dipti Ranjan Das and accordingly paid to Dipti Ranjan Das.

It is the further case of the defendant that after execution of the said money receipt the defendant went to Delhi on the same day in his urgent work. After returning from Delhi the defendant could not get the money for which the defendant asked to the plaintiff regarding the same and the

plaintiff replied to defendant that he had already paid the amount to Dipti Ranjan Das. Subsequently, after lapse of some days the plaintiff asked to Dipti Ranjan Das to return the entire amount along with expenses, since the plaintiff is not interested to purchase the land and accordingly the said Dipti Rajan Das paid the entire amount to the defendant in shape of cheque along with excess amount of Rs.15,000/- (Rupees Fifteen thousand) towards expenses. The present suit is nothing but an outcome of jealous and angriness of the plaintiff for extracting extra money. In this process prayed for dismissal of the suit.

4. Basing on the plaint averments and written statement, following issues are settled:

ISSUES

1. Whether the suit is maintainable ?
2. Whether there is any cause of action to file the suit?
3. Whether the Plaintiff is entitled to get a sum of Rs.2,50,000/- (Rupees Two lakhs fifty thousand)?
4. To what other relief, the plaintiff is entitled ?

5. In order to establish his claim, the plaintiff examined himself as P.W.1 and relied upon only one document vide Ext.1 in support of his stand. Similarly to substantiate the allegation, the Defendant examined himself as D.W.1.

FINDINGS

ISSUE NO.3 :

6. This issue is the principal and vital issue needs to be taken up first for discussion. This is a suit for recovery/realisation of money of Rs.2,50,000/- (Rupees Two lakhs fifty thousand). The plaintiff Ranjan Kumar Kar examined himself as P.W.1. According to him as he was in need of a plot at Bhubaneswar, the present defendant approached him to sale the property situate in Mouza Andharua, Khata No.621/756, Plot No.1277/3979, area Ac.0.080 decimals at a price of Rs.7,00,000/- (Rupees Seven lakhs). Then he paid a sum of Rs.2,50,000/- (Rupees Two lakhs fifty thousand) as advance money by executing a money receipt vide Ext.1. It is further evident that on receipt of the advance money the defendant promised to execute the sale deed within 7 days. The plaintiff (PW.1) waited for registration but the defendant did not execute the same and on being asked he flatly refused to give money and threatened him (plaintiff).Then he filed the suit.

7. The contesting defendant (D.W.1) admitted in his evidence that on 16.01.2012 one Dipti Ranjan Das being the mediator came with the plaintiff approached to sale a piece of land in Bhubaneswar and the defendant agreed to the said proposal. He further admitted that on the same day the plaintiff insisted him to execute a money receipt for an amount of Rs.2,50,000/- (Rupees Two lakhs fifty thousand). But the defendant disputed that though money receipt has been executed by him but the plaintiff without giving any money to him the same has been prepared by saying that he will pay

the entire money to Dipti Ranjan Das to which Dipti Ranjan Das is a witness to the said money receipt. Then he (D.W.1) went to Delhi. After coming when he could not get money, for which he asked to the plaintiff regarding the said money and the plaintiff replied him that he had already paid the amount to Dipti Ranjan Das. So the D.W.1 unable to register the sale deed in favour of the plaintiff. Since the plaintiff is not interested to purchase the land and accordingly the said Dipti Ranjan Das paid the entire amount to the plaintiff along with excess amount of Rs.15,000/- (Rupees Fifteen thousand).

8. From the aforesaid evidence of both the parties, it is to be seen that the initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act which reads as under :-

“Section 101-Burden of proof—Whoever desires any Court to give judgment as to any legal right or liability depends on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”

In terms of the said provision the burden of proving the fact rests on the party who substantially asserts the affirmative issue and not the party who denies it. The elementary rule in Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges the onus and makes out a case which entitles him to a relief, then onus

shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

9. Let me examine the oral evidence of the witnesses and their evidentiary value to the present fact in issue. Let me examine the real exercise on the oral as well as documentary evidence relating to the fact in issue. Further, law is well settled that oral evidence cannot override the documentary evidence. The document vide Ext.1 stands in favour of the plaintiff. The said document vide Ext.1 discloses that the defendant Prakash Chandra Sahoo has received a sum of Rs.2,50,000/- (Rupees Two lakhs fifty thousand) out of Rs.7,00,000/- (Rupees Seven lakhs) from the plaintiff Ranjan Kumar Kar towards sale of his property in mouza Andharua, Khata No. 621/756, Plot No.1277/3979, area Ac.0.080 decimals and defendant signed the agreement on 16th day of January, 2012 at Bhubaneswar. The signature of the defendant is also marked as Ext.1/a. The money receipt vide Ext.1 as well as the signature of D.W.1 vide Ext.1/a has been marked without objection.

10. P.W.1 in his cross examination has categorically stated that he handed over the partial amount of Rs.2,50,000/- as the defendant was in need of money. Notary and Prakash Chandra Sahoo handed over the money receipt to him. Therefore, from the aforesaid evidence of P.W.1 it clearly shows that he discharged his onus on the defendant successfully that an amount of Rs.2,50,000/- has been paid

as a partial amount by the plaintiff to the defendant for purchase of a piece of land at Bhubaneswar.

11. D.W.1 in his cross examination has stated that there was an agreement executed between the plaintiff and himself. So the defendant (D.W.1) does not dispute about any agreement regarding purchase of land between the plaintiff and defendant. At the same time, the plaintiff also admitted in his evidence regarding execution of agreement but the said agreement is not available in this case nor the same has been exhibited from any of the side. It is further admitted by D.W.1 in para-9 of his cross examination that "It is a fact that the facts stated in Ext.1 are all correct and I have signed having gone through its contents".

12. Therefore, from these statement of D.W.1 in his cross examination would go to show that the document vide Ext.1 has been validly executed by him and after knowing the contents true i.e. he has received a sum of Rs.2,50,000/- towards part payment he signed on it. So, there is no dispute regarding execution of money receipt vide Ext.1 as well as his signature vide Ext.1/a. D.W.1 only disputes that the plaintiff insisted him to execute a money receipt in a hurried manner for an amount of Rs.2,50,000/- only immediately without giving any money to him by saying that tomorrow he will pay the entire money to Dipti Ranjan Das to which Dipti Ranjan Das is a witness and accordingly the plaintiff paid the above amount to Dipti Ranjan Das. It is also admitted that Dipti Ranjan Das is a witness to Ext.1. In this case Dipti Ranjan

Das has not been examined. Had he been examined the real story between the plaintiff and defendant would have come out. When the transaction was made between the parties in presence of Dipti Ranjan Das and the defendant (D.W.1) has categorically stated that he had already paid the amount to Dipti Ranjan Das and when plaintiff asked Dipti Ranjan Das to return the entire amount, the said Dipti Ranjan Das paid the entire amount to the plaintiff with excess amount of Rs.15,000/-. In this contingency the evidence of Dipti Ranjan Das is more vital and the defendant has to examine the said witness Dipti Ranjan Das. So the best evidence available to the defendant has been withheld for the best reason known to him. Thus, the evidence of D.W.1 is not providing any support to his stand and it is also not believable. To support the contention of D.W.1 none has been examined. This certainly, in the facts and circumstances of this case calls for a drawal of adverse inference against the defendant.

13. Learned counsel for the defendant during course of his argument submitted that the plaintiff has to establish his case and he cannot take advantage of the weakness of the evidence of defendant. He relied on a decision reported in **1995 (I) OLR 526 (Nirakar Das-vs-Gourhari Das and others)**.

14. From the discussion made supra it is no doubt true that there was an agreement for sale of land by the defendant to the plaintiff. Accordingly, a money receipt vide Ext.1 was executed by D.W.1 on 16.01.2012 on receipt of Rs.2,50,000/-

and the defendant (D.W.1) after going through the contents signed therein. If this evidence is admitted by the defendant it cannot be said that the plaintiff will take advantage of the weakness of the evidence of defendant. So the decision relied on by the defendant is not applicable to the present facts and circumstances of this case. The plaintiff has been exhaustively cross examined by the defence. Nothing substantial has been elicited from the mouth of the plaintiff to disbelieve his version. When the document vide Ext.1 is admitted by the D.W.1 as well as his signature vide Ext.1/a all these led me to say that this document has been genuinely/validly executed and the defendant has failed to discharge the burden on him. In this circumstance, in my humble views the stand taken by the defendant is not believable at all. Therefore, the plaintiff is entitled to get back his money of Rs.2,50,000/- (Rupees Two lakhs fifty thousand) as prayed for. So this issue is answered accordingly.

ISSUE NO. 1, 2 & 4

15. These issues are formal in nature, need no elaboration. As per discussion, supra, the suit is maintainable in the eye of law and there exists cause of action to bring the suit. There is no other evidence with regard to any other relief. So these issues are answered accordingly.

Hence, it is ordered

ORDER

The suit be and the same is decreed on contest against the Defendant with cost. The plaintiff is entitled to get Rs.2,50,000/- (Rupees Two lakhs fifty thousand) from the defendant. The Defendant is directed to pay the above decretal amount within three months hence, failing which the plaintiff is at liberty to realize the same in due process of law.

Lawyer's fee at contested scale.

2nd Addl. Senior Civil Judge,
Bhubaneswar

Judgment is typed out to my dictation, corrected and pronounced in open court, on this the 14th 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 : Sri Ranjan Kumar Kar

LIST OF WITNESS EXAMINED FOR THE DEFENDANT:

D.W.1 : Sri Prakash Chandra Sahoo

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

Ext.1 Money receipt dated 16.01.2012

Ext.1/a : Signature of Prakash Ch. Sahoo

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON
BEHALF OF DEFENDANT:

Nil

2nd Addl. Senior. Civil Judge
Bhubaneswar.