

**IN THE COURT OF THE ADDL.DISTRICT JUDGE,
BHUBANESWAR**

Present:

Shri A.C.Behera, LL.B.,
Addl. District Judge,
Bhubaneswar.

R.F.A NO.69/9/73 of 2013/06/05

(Arising out of Judgment and decree dated
30.04.2005 & 13.05.2005 respectively passed in
T.S.No.180 of 1999 by the learned Civil Judge, (Jr.Divn),
Bhubaneswar,).

Dated, this 30th day of January, 2015

1. Smt.Labanyabati Pradhan, aged about 89 years,
W/o.Late Hata Pradhan of Vill.Saleswar,
P.O.Jaypore, P.S.Balianta,
Dist.Khurda
(Expired leaving behind without any
heirs as per memo dtd.12.12.2014)

2. Padmanava Choudhury, aged about 66 years,
S/o.Balaram Choudhury
At present- M-50, Madhusudan Nagar,
Unit-IV, Bhubaneswar,
Dist.Khurda.

..... Appellants.

-Versus-

1. Debendranath Mohanty, aged about 39 years,
S/o.Rasananda Mohanty.

2. Rasananda Mohanty, aged 78 years,
S/o.Late Nilamani Mohanty
Both are of Vill.Saleswar,
P.O.Jaypore, P.S.Balianta,
Dist.Khurda
(Defendants in the court below).

..... Respondents.

Counsel for the Appellant : Sri J.N.Das & his
associate Advocates.

Counsel for the Respondents : Sri J.Mohanty & his
associate Advocates.

Date of Hearing : 21.01.2015

Date of Judgment : 30.01.2015

J U D G M E N T

This is an appeal U/s.96 r/w. O.41, R.1 of the Civil Procedure Code, 1908, which has been preferred by the appellants against the judgment and decree dtd.30.04.2005 and 13.05.2005 respectively passed in T.S.No.180 of 1999 by the learned Civil Judge (Jr.Divn), Bhubaneswar, wherein the suit vide T.S.No.180 of 1999 was dismissed on contest against the defendants but without any cost.

The appellants and the respondents were the plaintiffs and defendants respectively before the learned court below in T.S.No.180 of 1999.

2. The case of the plaintiffs against the defendants in nutshell before the learned court below as per the averments made in their plaint was that, the suit land described in schedule of the plaint was belonged to Hata Pradhan i.e. the husband of the plaintiff No.1 (Labanyabati Pradhan). Hata Pradhan was an illiterate person. He had not known read and write. He was giving his thumb impressions on the documents at the time of requirements. He was receiving family pension till his death by putting his thumb impressions in the pension register of Govt of Orissa on being duly identified by Sarapanch of Lahal Grama Panchayat. At the time of execution of a sale deed by Hata Pradhan in favour of plaintiff No.2 in the year 1972, Hata Pradhan had given his thumb impression in that sale deed.

The further case of the plaintiffs was that, in the year 1987, the Defendant No.1 (Debendra Mohanty) was aged about 20 years. At that time, he had no independent source

of income. So, the question of purchase of any land by the said Debendra Mohanty in the year 1987 on payment of consideration money by him does not arise at all. The defendant No.2 (who is the father of defendant No.1) is a veteran litigant of the locality. By the time of the year 1987. Hata Pradhan was extreme old and he had lost his mental balance and during that time, there was disturbance in his family due to differences of opinion and misunderstanding between him and his wife (plaintiff No.1). Taking the advantage of such disturbance in the family of Hata Pradhan, the defendants instigated Hata Pradhan to execute a sale deed in respect of the suit land in their favour, but to which Hata Pradhan did not agree. So both the defendants had managed to execute and register a fake sale deed in respect of the suit land in favour of the defendant No.1 on dtd.24.07.1987 vide R.S.D. No.7099 with some malafide intention behind the back of Hata Pradhan and his wife (plaintiff No.1) through impersonation i.e. by projecting some other fellow before the Sub-Register as Hata Pradhan and also by putting forged signatures therein in the name of fake executant i.e. Hata Pradhan, although Hata Pradhan was far away from

the signature, as he had not known his signature.

In the above manner, at no point of time, Hata Pradhan had executed the sale deed No.7099 dtd.24.07.1987 in favour of the defendant No.1 in respect of the suit land. Hata Pradhan had not received any consideration amount of the suit land from the defendants and the delivery of possession of the suit land was also not given by Hata Pradhan to the defendant No.1 in any manner and accordingly the above alleged so called fake and forged sale deed No.7099 dtd.24.07.1987 has not acted upon till yet.

Hata Pradhan died in the early part of 1994 leaving behind the plaintiff No.1 as his wife and successor in interest. After the death of Hata Pradhan, plaintiff No.1 raised a grave-yard (Samadhi Pitha) of Hata Pradhan by cement structure on the suit land and she (plaintiff No.1) has been worshipping on that Samadhi Pitha during Sradha ceremony of Hata Pradhan.

Suddenly in the middle part of 1999, the defendants tried to cultivate the suit land forcibly by disposing the plaintiffs therefrom, but when the plaintiffs objected the above activities of the defendants, then the defendants

disclosed that, Hata Pradhan has sold the suit land to them and due to the intervention of some gentlemen, the defendants left the suit land and threatened the plaintiffs to take the possession of the same by hook or crook.

Then the plaintiffs made enquiry and came to know about the existence of above so-called forged and fabricated sale deed No.7099 dtd.24.07.1987 from Sub-Registrar office, Bhubaneswar. Again on dtd.15.07.1999, the defendants also created disturbance on the possession of the plaintiffs over the suit land and tried to take away the growing crops of the plaintiffs from the same, for which, without getting any, the plaintiff No.1 approached the learned court below by filing the suit against the defendants on dtd.19.07.1999 vide T.S.No.180 of 1999 and prayed for declaring sale deed No.7099 dtd.24.07.1987 as void, illegal, fake and not binding on the plaintiff, to confirm the possession of the plaintiff on the same and to injunct the defendants from interfering into the possession of the plaintiff over the same along with cost and other reliefs to which, she (plaintiff) is entitled for.

It appears from the record that, subsequent to the filing of the above suit by the plaintiff No.1 alone against

the defendants, the plaintiff No.2 was impleaded into the suit vide order No.27 dtd.26.08.2012 as a purchaser of the suit land during the pendency of the suit through registered sale deed No.6113 dtd.01.11.2000 and accordingly after impletion of plaintiff No.2, they (plaintiffs) had filed consolidated plaint on dtd. 09.10.2002 incorporating the name of the plaintiff No.2 in the cause title of the plaint including the name of the previous sole plaintiff i.e. plaintiff No.1.

3. Having been noticed from the learned court below, the defendants had filed their first written statement on dtd.13.03.2000 prior to the impletion of plaintiff No.2, while the plaintiff No.1 was the sole plaintiff and then they (defendants) had filed their additional written statement on dtd.22.11.2002 after impletion of plaintiff No.2 on dtd.26.08.2002 by challenging the suit of the plaintiffs.

According to the pleadings (written statements) of the defendants in nutshell that, plaintiff No.1 (Labanyabti Pradhan) is the wife of Hata Pradhan. But she (plaintiff) is a way ward lady. She (Labanyabati) acts as per the directions of other without paying any heed to the versions

of Hata Pradhan. Because she (plaintiff No.1) does not look at all to comforts of her husband Hata Pradhan. So, Hata Pradhan was selling his properties to different persons from time to time including them (defendants). Before selling the suit land on dtd.24.07.1987 to the defendant No.1, he (Hata Pradhan) had sold his other properties to defendant No.1 on dtd.19.07.1985 by putting his signature in that sale deed. As, there was no issue of Hata through his wife Labanyabati, (plaintiff No.1) for which, the father of the plaintiff No.2 i.e. Balaram Choudhury had given a proposal to Hata Pradhan by taking Labanyabati into his confidence to adopt one of his sons, to which Hata Pradhan did not agree. Because, by that time, plaintiff No.1 was living with that Balaram Choudhury after leaving Hata Pradhan. So due to the above conduct and attitude of Labanyabati (plaintiff No.1), Hata was selling his properties including the suit land one after another on being dissatisfied with his wife i.e. plaintiff No.1 and without getting any support from his wife. Hata was not able to write his signature upto 1982 and he was putting his L.T.I in all the documents including in the sale deed dtd.23.10.1979 executed by him. But, he

(Hata Pradhan) was able to write his signature since 1982 through adult education programme of his village. For which, in the earlier sale deed dtd.18.07.1985, which was executed by him (Hata Pradhan) in favour of defendant No.1 and thereafter in his subsequent sale deed dtd.24.07.1987 i.e. on the alleged disputed sale deed of the suit land, the executant i.e. Hata Pradhan has given his signatures. Apart from the signatures of Hata Pradhan, his specimen thumb marks have also been taken on the said sale deeds and so also in the relevant books of the registration office. The plaintiff No.1 had also challenged the previous sale deed dtd.19.07.1985 executed by Hata Pradhan in favour of defendant No.1 on the ground of non passing of consideration amount and unsoundness of mind without disputing the signature of Hata Pradhan in that deed dtd.19.07.1985 by filing a suit vide T.S.No.206 of 1986, which suit is still subjudice for adjudication before its appellate forum. In that suit vide T.S.No.206 of 1986, Hata Pradhan had filed written statement being a party thereof admitting that sale dtd.19.07.1985 in favour of defendant No.1 after putting his signatures in his written statement and verification thereof. He (Hata Pradhan) had

also filed a petition before the appellate authority of that T.S.No.206 of 1986 U/o.41, R.27 of the C.P.C for additional evidence by putting signatures in the affidavit of that petition.

The further case of the defendants as per their pleadings that, Hata Pradhan had sold the suit land to the defendant No.1 on dtd.24.07.1987 by duly executing and registering that deed with proper delivery of possession of the suit land in favour of the defendant No.1 after receiving the consideration amount thereof by knowing fully well about such execution and registration. After purchase, the defendant No.1 is in possession over the suit land and has mutated the same to his name and separate R.O.R has already been prepared in his name in respect of the suit and he (defendant No.1) has been paying rent in respect of the suit land in his name since the date of purchase till yet with proper rent receipts.

The defendants also denied to all the averments of the plaintiffs made in the plaint except the relationship between plaintiff No.1 and Hata Pradhan as husband and wife and the original ownership of Hata Pradhan over the suit land. They (defendants) have also taken the plea that,

the suit of the plaintiffs is barred by limitation, as he (defendant No.1) is in possession over the same after purchase since 24.07.1987. The plaintiff No.2 is liable to pay the court fee, but no court fee has been paid by him, for which, the suit of the plaintiffs is defective due to non payment of adequate court fee. That apart, the plaintiffs have no manner of right, title, interest and possession over the suit land, as since 24.07.1987 the right, title, interest and possession of the suit land has been transferred from Hata Pradhan to defendant No.1. There is also no whisper or averments in the plaint even after impletion of plaintiff No.2 through amendment about any purchase of the suit land by the plaintiff No.2. The plaintiff No.2 has managed to create a fake deed in his favour if any in respect of the suit land deliberately after knowing very well about the purchase of the suit land from Hata Pradhan by the defendant No.1, for which, the plaintiffs are not entitled for any relief. So, the suit filed by the plaintiffs is liable to be dismissed with costs.

4. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether eight

numbers of issues were framed by the learned Court below and the said issues are:

ISSUES

1. Is the suit maintainable?
 2. Have the plaintiffs any cause of action to bring the suit against the defendants ?
 3. Whether the suit is barred by limitation ?
 4. Whether the suit has been grossly under valued and whether the plaintiff No.2 has paid the court fees after his impletion as a party ?
 5. Whether the sale deed No.7099 dtd.24.07.1987 in respect of the suit land is to be declared void, illegal, fake and not binding on the plaintiff?
 6. Whether the plaintiffs are in possession over the suit land and if the plaintiffs are in possession over the same, whether their possession over the suit land is to be confirmed?
 7. Whether the defendants are to be permanently injuncted to interfere into the possession of the plaintiffs over the suit land ?
 8. To what other relief, the plaintiffs are entitled?
5. In order to substantiate the case of the plaintiffs, they

have examined only two witnesses on their behalf including plaintiff No.2 as P.W.2 and they have proved five documents from their side starting from Ext.1 to 5. But, whereas the counterparts of plaintiffs i.e. the defendants have examined four witnesses from their side i.e. D.Ws. 1 to 4 including defendant No.1 as D.W.1 and they have proved series of documents on their behalf vide Exts.A to N.

6. After conclusion of trial and on perusal of the materials and evidence available in the record, the learned court below answered all the issues against the plaintiffs and in favour of the defendants and finally dismissed the suit of the plaintiffs on contest against the plaintiffs without costs vide his judgment and decree dtd. 30.04.2005 and 13.05.2005 respectively.

7. On being aggrieved with the aforesaid judgment and decree dtd.30.04.2005 and 13.05.2005 respectively passed in T.S.No.180 of 1999 by the learned court below against the plaintiffs in dismissing their suit, they (plaintiffs) have challenged the same being the appellants by preferring this appeal against the defendants arraying them (defendants)

as respondents after taking several grounds in their appeal memo.

When during the pendency of appeal, the appellant No.1 expired without leaving behind any legal heirs as per memo dtd.10.12.2014 of the learned counsel for the said appellant No.1, for which the appeal was prosecuted/proceeded for hearing at the instance of the appellant No.2 only.

8. I have already heard from the learned Counsels from both the sides i.e the learned counsel for the appellant No.2 and respondents and so also have perused the materials and evidence available in the record.

9. Basing upon the pleadings of the parties, matters in controversies between them, findings made by the learned court below in the impugned judgment, arguments advanced from the learned counsels of both the side and the grounds taken by the appellants in their appeal memo, the crux of this appeal are :

- (i) Whether the sale deed dtd.24.07.1987 vide Ext.B in respect of the suit land was executed by Hata Pradhan (husband of the plaintiff No.1) in favour of the defendant No.1 or whether the

same was managed to have been executed through impersonation by producing some other fellow before the Sub-registrar Bhubaneswar as Hata Pradhan ?

- (ii) Whether the defendant No.1 is in possession over the suit land since 24.07.1987 or whether the same is under the possession of plaintiff No.2 (appellant No.2) ?
- (iii) Whether the impugned judgment and decree dtd.30.04.2005 and 13.05.2005 respectively passed in T.S.No.180 of 1999 by the learned Civil Judge (Jr.Divn), Bhubaneswar against the plaintiffs in dismissing their suit is sustainable under law ?

10. In order to have a better appreciation and so also for just decision of the appeal, the above three points fixed for determination are required to be discussed and analyzed serially and chronologically one after another by taking into account the materials and evidence available in the record to ascertain the sustainability and justifiability of the impugned judgment and decree passed by the learned court below.

11. So far, the first point i.e. whether, the sale deed dtd.24.07.1987 vide Ext.B in respect of the suit land was

executed by Hata Pradhan (husband of the plaintiff No.1) in favour of the defendant No.1 or whether the same was managed to have been executed through impersonation by producing some other fellow before the Sub-Registrar Bhubaneswar as Hata Pradhan is concerned;

The findings of the learned court below in the impugned judgment in favour of the defendants that, the sale deed dtd.24.07.1987 vide Ext.B in respect of the suit land was executed by no other person, but only by Hata Pradhan is under challenge in this appeal by the appellants/plaintiffs.

12. But, in support of the above findings of the learned court below, the learned counsel for the respondents/defendants has relied upon the decisions as follows :-

- (i) A.I.R 1997 (S.C.) 3720 – Dhanna Singh and others (v) Baljinder Kaur and others.
- (ii) A.I.R. 1999 (S.C.) 1441- Vidhyadhar (v) Manikrao and another.
- (iii) 1999 (ii) O.L.R 319 Natabar Behera (v) Batakrushna Das.

(iv) A.I.R 1995 (Orissa) 270 Nirakar Das (v)
Gourhari Das and others.

13. The appellants/plaintiffs have disputed/challenged to the genuineness of the sale deed dtd.24.07.1987 vide Ext.B on the sole ground that, the same has not been executed by the person named as executant thereof i.e. Hata Pradhan, but the same has been executed by some other else than Hata Pradhan through impersonation by projecting a fictitious/fake person as Hata Pradhan, because Hata Pradhan had not at all known to put his signature and he (Hata Pradhan) was giving his L.T.I in every where, but the said deed vide Ext.B contains the signature of Hata Pradhan. For which, that deed vide Ext.B is not beyond suspicion.

14. In order to explain the circumstances under which Hata Pradhan could able to put his signatures on the Ext.B dtd.24.07.1987, the defendants have taken their stands that, upto the year 1981, Hata Pradhan had not known to write his signature, but since 1982 through adult education programme of his village, he (Hata Pradhan) was able to put his signatures. So, after learning to write his signature,

when Hata Pradhan sold a piece of land to defendant No.1/respondent No.1 first on dtd.19.07.1985, Hata Pradhan had executed the said sale deed by putting his signatures thereon. Subsequent thereto, the wife of Hata Pradhan i.e. plaintiff No.1 challenged the said deed dtd.19.07.1985 of Hata Pradhan by filing the suit vide T.S.No.206 of 1986 without disputing to the signatures of Hata Pradhan therein, but on other grounds. In that suit vide T.S.No.206 of 1986, Hata Pradhan had contested by filing his vokalatanama and written statement by admitting the execution of that deed on dtd.19.07.1985 after putting his signatures in his voklatnama and written statement. That Hata Pradhan had also filed an affidavit for additional evidence in the appellate stage of that suit vide T.S.No.206 of 1986 after putting his signatures therein.

15. During evidence, the defendant No.1 has marked documents i.e. as Ext.C to the certified copy of the judgment of Title appeal No.64/19 of 1990/88 arising out of T.S.No.206/86. As Ext.D, to the xerox certified copy of the written statement of Hata Pradhan in T.S.No.206/86 and as Ext.E to the xerox certified copy of vokalatanama of

Hata Pradhan without any objection from the side of the plaintiffs in Para-30 of the examination in chief of the defendant No.1 (D.W.1) in the court on oath in order to show and establish that, Hata Pradhan had known to write his signatures prior to the disputed sale deed of this suit at hand dtd.24.07.1987 vide Ext.B.

16. At the end of Para-3 of the written statement of the defendants, they have specifically pleaded that, apart from the signatures, the specimen thumb marks of the executant Hata Pradhan have also been taken on the sale deed in question and also in the relevant books of the registration office. It appears from the impugned judgment and the records of the learned court below that, the thumb impression register of the office of Sub-Registrar, Bhubaneswar corresponding to the disputed deed in question has been marked as Ext.L on behalf of the defendants through senior clerk of that office vide D.W.4 with signature of the Hata Pradhan therein as Ext.L/1.

17. The above allegations alleged by the plaintiffs against the defendants that, the disputed deed in question vide Ext.B was managed to have been executed through

impersonation through some other else are coming within the purview of the allegations of fraud.

It is the well settled propositions of law that, the person who alleges fraud, he is to prove the same. Because, onus lies on him to establish that allegation either through oral or through documentary evidence or by both.

18. Here in this case at hand, when some undisputed documents, (those were in existence prior to the initiation of this suit) vide Exts.D and E along with the sale deed dtd.19.07.1985 are carrying the signatures of Hata Pradhan, from which, a rebuttable presumption can easily be drawn on the basis pre-ponderance with probabilities that, before coming into existence the disputed deed in question vide Ext.B dtd.24.07.1987, Hata Pradhan had known to write his signatures.

19. In order to draw the above presumption in favour of defendant No.1 and against the plaintiffs basing upon the undisputed documents vide Ext.D and E those were coming into light prior to the suit finds support from the ration of the following decision :-

114(2012) C.L.T.- page-799 and 2012 (11) C.L.R.- Page-358(at para-8)- Sanjukta Mallick Vrs. Bharati Sethi.

“Evidence-appreciation-while appreciating the evidence, the court must give importance to those materials, which had come into existence prior to the rising of cause of action- A document, which has come into existence after the cause of action arose, then such document should be viewed with suspicion- such documents have fare-less probative value than the materials which had come into existence much prior to the time, when the cause of action arose in the case”.

20. The above presumption, which has been drawn against the plaintiffs basing upon the documents about the knowing of Hata Pradhan to put his signature on the disputed deed in question vide Ext.B dtd.24.07.1987 could have been rebutted by the plaintiffs by sending the Ext.B and the thumb impression Registrar vide Ext.L (corresponding the Ext.B) containing the signature of the said Hata Pradhan vide Ext.L/1 with his L.T.I for

comparison before the experts i.e. before the forensic authority in order to ascertain conclusively, whether the L.T.Is available in the Ext.B belong to the executant Hata Pradhan or not. But, the plaintiffs have not done so, though it was obligatory on their part as per law to take such step under the facts and circumstances of the case as stated above.

Accordingly, the plaintiffs have failed and neglected in their duties to discharge their onus deliberately which was laid on them. That apart, though the plaintiff No.1 (the wife of Hata Pradhan) was alive during the trial of the case before the learned court below and who was reasonably a best person to state, whether Hata Pradhan was able to write his signature on dtd.24.07.1987, but it is curious enough that, neither she (plaintiff No.1) herself come forward to depose about the same nor the plaintiff No.2 took any step either through issuance of commission or otherwise as per law to examine her i.e. plaintiff No.1 as a witness.

21. In addition to the above defects of the plaintiffs in their case, there is no averment at all in the plaint about

any purchase of the suit land by the plaintiff No.2 from plaintiff No.1 at any point of time. So any evidence by the plaintiff No.2 (P.W.1) regarding the purchase of the suit land from plaintiff No.1 is not admissible or acceptable being beyond its pleadings.

That apart, the duties and liabilities, which were casted upon a purchaser like the so called purchaser i.e. plaintiff No.2 have not at all been discharged by him. Because, it is the duty of a purchaser as per law to verify the documents including the R.O.R of the purchased land to see about the title thereof and to reflect the same in the purchase deed.

But, here in this case, the P.W.1 (plaintiff No.2) has deposed in his cross-examination that, "he had not verified the R.O.R of the suit land at the time of purchase. He can not say in whose name the suit land has been recorded. Labanyabati (plaintiff No.1) has not given him the R.O.R of the suit land. He does not remember the khata/plot number of the suit land. He does not know if the present khata number was there at the time of his purchase. He does not know if the suit land was already recorded in the

name of the defendant No.1 at the time of his purchase from the plaintiff No.1. To his knowledge the plaintiff No.1 has not paid the rent in respect of the suit land. In the year 1999, he came to know that, plaintiff No.1 had purchased the suit land”.

Though the plaintiff No.2 (P.W.1) has relied upon a sale deed vide Ext.1 showing his purchase from the plaintiff No.1 on dtd.01.11.2000 but, the above conduct of the plaintiff No.2 (P.W.1) about his non verification to the documents regarding the ownership of his so-called purchased land and non stating about the earlier sell of the same to the defendant No.1 in the deed vide Ext.1 even after knowing about the same since 1999 is not terming him (plaintiff No.2) as a bonafide purchaser. His (plaintiff No.2's) above conduct and negligence is further strengthening the suspicion against him (plaintiff No.2, P.W.1). Because, he (P.W.2, P.W.1) has not discharged his duties as a bonafide purchaser.

The above conclusion finds support from the following decisions :-

111(2014) Civil Law Times-Page-352 (Chhatisgarh)
(Para-13) Manjari Devi (v) Usha Devi and others-

Transfer of property-whenver a person purchases property, he has to first ensure as to how seller has got title and ownership over the property- Non performance of such duty is called negligent and he will meet all consequences against him.

2010(1)O.L.R (S.C.)118-A.K.Lakshmi Pathy (dead) and others (v) Rai Saheb Pannalal H.Lahoti Charitable Trust and others (para-11) – T.P.Act, 1882- Sec-55-prerogative of the buyer to find out the defects in a property before buying it and also to make the seller rectify such defects.

22. The above existence of the signatures of Hata Pradhan in the documents prior to the execution of the Ext.B and non discharging of onus of the plaintiffs by taking step for sending the Ext.B and L to any expert for comparison coupled with the withholding of the plaintiff No.1 from her examination as a witness on behalf of the plaintiffs without any reasonable explanation for the same are making the finding of the learned court below that, the disputed deed in question vide Ext.B dtd.24.07.1987 was

executed by no other else but by Hata Pradhan and the same was not executed through impersonation by some other else than Hata Pradhan.

23. So far the second point i.e. whether the defendant No.1 is in possession over the suit land since 24.07.1987 or whether the same is under the possession of the plaintiff No.1 (appellant No.2) is concerned ;

by taking the oral and documentary evidence of the parties available in the record into account, the learned court below has come to the conclusion in the impugned judgment that, since the date of purchase i.e. since 24.07.1987, the purchaser of the suit land i.e. defendant No.1 is in possession over the suit land and the same is not under the possession of the plaintiffs.

The documents vide Exts. G and H series i.e. R.O.R after mutation and rent receipts are going to show prima facie possession of the defendant No.1 over the suit land.

The defendant No.1 (D.W.1) has proved the original R.O.R. of the suit land vide Ext.F standing in the name of Hata Pradhan by stating in Para-31 of his examination in chief that, Hata Pradhan had handed over the same to him

at the time of execution of Ext.B and he (D.W.1) has also deposed that, from the date of purchase through Ext.B, he has been possessing the suit land and has been paying rent for the same in his name regularly.

But, whereas, the plaintiff No.2 (P.W.1) has neither pleaded nor whispered in his evidence about his possession over the suit land.

Because, he (P.W.1, plaintiff No.2) has deposed in his evidence by giving answers to the questions of the defendants that, "he can not say in whose name the suit land has been recorded at present. He is not paying rent in respect of the suit land. He can not say who is paying rent for the suit land. He does not know if defendant No.1 is paying rent for the suit land at present. Labanyabati (plaintiff No.1) has not given him the R.O.R for the suit land. He does not know, if the suit land was already recorded in the name of defendant No.1 at the time of his purchase from the plaintiff No.1. The suit land is now lying vacant. Nobody is in possession over the suit land now".

24. As stated above, when the oral and documentary

evidence on behalf of the defendants are going to show about the possession of the defendant No.1 over the suit land since 24.07.1987 and when the plaintiff No.2(P.W.1) himself is stating that, he is not in possession over the suit land, then at this juncture, there is no other alternative for this appellate court but to endorse and confirm the findings of the learned court below that, the defendant No.1 is in possession over the suit land since 24.07.1987 and the same is not under the possession of the plaintiff No.2(appellant No.2).

25. So far the third and last point i.e. whether the impugned judgment and decree dtd. 30.04.2005 and 13.05.2005 respectively passed in T.S. No.180 of 1999 by the Learned Civil Judge (Jr.Divn) Bhubaneswar against the plaintiffs in dismissing the suit of the plaintiff is sustainable under law is concerned ;

the plaintiffs have prayed for declaration of the sale deed dtd.24.07.1987 vide Ext.B in favour of the defendant No.1 as void on the ground of fraud and impersonation, to confirm the possession of the plaintiffs over the suit land and to injunct the defendants from entering into the

possession over the suit land along with other reliefs to which they are entitled for as per law and equity.

26. As per the findings made above in forgoing point Nos. 1 and 2, it has already been held that, the sale deed dtd.24.07.1987 vide Ext.B in favour of the defendant No.1 is not void but valid one and the plaintiffs are not in possession over the suit land, but the same is under the possession of the defendant No.1, for which it can not at all be held that, the impugned judgment and decree passed by the learned court below i.e. in dismissing the suit of the plaintiffs by refusing their aforesaid relief(s) sought for by them as illegal and erroneous. So, it is ultimately held that, the impugned judgment and decree passed by the learned court below is sustainable under law.

27. On analysis of the facts and circumstances of the case as per the discussion and observations made above point-wise, when it has been held that, the impugned judgment and decree passed by the learned court below is not illegal and erroneous, for which there is no justification at all under law to interfere with the impugned judgment and decree of the learned court below in this

appeal filed by the appellants. So, there is no merit in the appeal of the appellant. The same must fail. Hence ordered :-

ORDER

The appeal filed by the appellant is dismissed on contest being devoid of any merit, but under the circumstances without costs.

The impugned judgment and decree dated 30.04.2005 and 13.05.2005 respectively passed in T.S.No.180 of 1999 by the learned Civil Judge (Jr.Divn), Bhubaneswar is hereby confirmed.

Pronounced the judgment in the open court today, this the 30th day of January, 2015 under my seal and signature.

Dictated & corrected by me.

Addl.Dist.Judge.,BBSR.

Addl.Dist.Judge.,BBSR.

