

**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.

T.S. No. 313/170 of 2010/2002

Prabhat Kumar Swain, aged 45 years,
S/o. Navnidhi Swain,
At present : Kudiari Bazar,
Po-Locho Colony, Ps-Jatani,
District-Khurda (Orissa).

..... Plaintiff

-Versus-

Sri Biswesara Patnaik, aged 43 years,
S/o.-Rama Chandra Patnaik,
At/Po-Kudiari Bazar, Ps-Jatani,
District –Khurda (Orissa).

..... Defendant

COUNTER CLAIM

Sri Biswesara Patnaik, aged 43 years,
S/o.-Rama Chandra Patnaik,
At/Po-Kudiari Bazar, Ps-Jatani,
District –Khurda (Orissa).

.....Counter Claimant

-Versus-

Prabhat Kumar Swain, aged 45 years,
S/o. Navnidhi Swain,
At present : Kudiari Bazar,
Po-Locho Colony, Ps-Jatani,
District-Khurda (Orissa).

.....Counter defendant

COUNSELS APPEARED FOR THE PARTIES:

For the Plaintiff: M/s J. Raheman & Associates
For Defendant : M/s. M.M. Basu & Associates

DATE OF ARGUMENT: 27.03.2014

DATE OF JUDGMENT: 10.04.2014

J U D G M E N T

This is a suit for declaration of title, confirmation of possession and permanent injunction.

2. The plaintiff's case in nut-shell is as follows :-

The area of suit Plot No. 216 is Ac.0.400 decimals. The defendant before selling the suit land to the plaintiff had already sold Ac.0.186½ decimals to different five persons and rest Ac.0.213½ decimals was with him. The defendant was agreed to sell the plaintiff Ac.0.060 decimals at the rate of Rs.400/- per decimal, a total of Rs.24,000/- (Rupees Twenty four thousand) on 31.05.1993. The defendant being a Mamalatkar of that locality received the entire consideration amount of Rs.24,000/- (Rupees Twenty four thousand) and accordingly executed and registered the sale deed in favour of the plaintiff who is semi blind (disabled person). The defendant has also given delivery of possession to the plaintiff.

It is the further case of the plaintiff is that after one month of registration, the defendant expressed his desire to sell another Ac. 0.060 decimals of land to the immediate south of the plaintiff's previous purchased land. The plaintiff agreed to purchase the same Ac. 0.060 decimals at the same price of Rs. 24,000/- (Rupees Twenty four thousand). Accordingly, the plaintiff gave Rs.24,000/- (Rupees Twenty four thousand) to the defendant. The defendant registered the deed and gave possession to the plaintiff Ac.0.060 decimals immediate north of the previous land. He became the owner and remained in possession of Ac.0.120 decimals of land. On 15.02.2002 while the plaintiff was going to

construct a cowshed on the south-western corner, the defendant objected him with a plea that he has not sold that portion. The plaintiff being blind of his left eye went with the sale deed to his neighbour who explained that both the sale deeds are in respect of the same property, thereafter the plaintiff came to know the mischief of the defendant. The first sale deed dated 31.05.1993, though the plaintiff has paid Rs. 24,000/- (Rupees Twenty four thousand) the defendant has mentioned Rs.2,000/- (Rupees Two thousand) as consideration money. On confrontation the defendant told that to avoid registration charges he did it. On the second occasion on 25.07.1993 when registration for another Ac. 0.060 decimals of land the plaintiff insisted that full consideration money of Rs. 24,000/- (Rupees Twenty four thousand) was mentioned in the sale deed. The defendant taking advantage of the blindness cheated the plaintiff by executing and registering the second sale deed in respect of the same property though has taken money for another Ac. 0.060 decimals. The plaintiff as the owner of Ac.0.120 decimals of land as per the schedule given in the plaint but in spite of that he (defendant) has executed and registered the second sale deed in respect of the self same property of first sale deed, which cast a cloud in the title of the plaintiff for which the suit has been filed with a prayer that the title of the plaintiff in respect of Ac.0.120 decimals along with confirmation of possession and permanent injunction. Hence, the suit.

3. The contesting defendant filed written statement-cum-counter claim in the suit. In his written statement he has challenged the suit in various grounds about its maintainability, cause of action and non-joinder of necessary party. The defendant has specifically pleaded that he is a permanent resident of village Kudiari under Jatni Police Station of district

Khurda and the plot No. 2165 measuring Ac.0.400 decimals in Khata No. 823 of Mouza Kudiari is one of his ancestral property which is situated by the side of the Delang-Jatni road. In the year 1993, the plaintiff approached the defendant to purchase Ac.0.060 decimals only from his house side, it was agreed that he shall purchase a piece of land measuring Ac.0.060 decimals at the rate of Rs.400/- per decimal i.e. a total of Rs. 24,000/- (Rupees Twenty four thousand) only through Regd. Sale Deed dated 31.05.1993, such property was transferred to the plaintiff. It is customary that the vendor pays for the scribe, stamp duty and registration charges. It is also customary that the vendee engages the scribe. On 31.05.1993 the plaintiff selected his scribe and the document was prepared for a face value of Rs. 2,000/- only, thus paying much lesser amount towards stamp duty and registration charges. The document was duly scribed and executed. The possession of the property measuring Ac. 0.060 decimals was delivered to the defendant much there before. The registration ticket was endorsed by the defendant to the plaintiff as he has already received his agreed consideration amount of Rs. 24,000/- (Rupees Twenty four thousand).

It is the further case of the defendant is that after about a month the plaintiff re-approached the defendant saying that the face value of the sale deed on dated 31.05.1993 i.e. Rs. 2,000/- is too nominal, he was unable to raise finance on such property for construction. Thus the defendant would do well to cancel the instrument at his cost executing a fresh Regd. Sale deed for actual value received also at his cost and as is the customary in the area. The plaintiff returned the sale deed to the defendant and both went together to the office of Sub-Registrar, Jatni on 05.07.1993 by producing the original sale deed requested the Sub-Registrar to cancel such document and executing a

cancellation instrument bearing No. 1136 of 1993 and simultaneously a fresh sale deed bearing No. 1137 of 1993 was executed on 05.07.1993 for consideration of Rs. 24,000/- (Rupees Twenty four thousand) for the same land, such consideration received before execution of Regd. Sale Deed No. 922 of 1993. The defendant received back the cancellation instrument so also the original sale deed cancelled on its face and endorsed the ticket of Regd. Sale Deed No. 1137 of 1993 to the plaintiff. The plaintiff has signed in Regd. Sale Deed No. 922 of 1993 and No.1137 of 1993. His eye sight was perfect by 05.07.1993, there being no difficulty in subscribing his signature on the sale deeds. Possession of property was delivered to the plaintiff only once as recited in Regd. Sale Deed No. 922 of 1993.

It is the further case of the defendant is that the recitals of cancellation instrument No. 1136 of 1993 were mutually decided by the parties thus deviations from actual. The plaintiff has filed the present suit only to defraud and deprive the defendant for further Ac.0.060 decimals out of Plot No. 2165 for which he has suppressed the material facts. The plaintiff, in fact, has purchased only Ac. 0.060 decimals of land out of Plot No. 2165 and he is not entitled to any declaration as prayed for. On the contrary the defendant is entitled to confirmation of cancellation of the instrument dated 31.05.1993 as executed through cancellation instrument No. 1136 of 1993 and the defendant through this written statement prays for such counter claim, otherwise the false claim of the plaintiff shall cast a cloud on the title of the defendant on an adjacent area of Ac. 0.060 decimals from Plot No. 2165 that purchased by him through Regd. Sale Deed No. 922 dated 31.05.1993. The defendant also stated that the plaintiff suit is liable to be dismissed with cost and on contrary the defendant's sale of property as described in Regd. Sale Deed

No. 922 of 1993 or 1137 of 1993 is to be confirmed as the same and one. The defendant is entitled to a declaration that the plaintiff has no claim/right on any other portion of Plot No. 2165 except the purchased area through Regd. Sale Deed No. 922 of 1993 or 1137 of 1993. In this process the defendant prayed for to confirm and declare that the property sold to the plaintiff by the defendant through Regd. Sale Deed No. 922 of 1993 and Regd. Sale Deed No. 1137 of 1993 are same and one and that the rescission of Regd. Sale Deed No. 922 of 1993 be confirmed.

4. The plaintiff has filed written statement to the counter claim by challenging its averments. He has stated inter alia that it is customary that the vendor pays for the scribe, stamp duty and registration charges and the vendee engages this scribe. In this case the vendor engaged his own scribe as a vendee is a blind person and not knowing anyone having faith over the vendor, the present defendant. The defendant who received the entire consideration amount only to execute and register the sale deed on dated 31.05.1993 through his own scribe showing the value of Rs. 2,000/- in order to avoid paying higher stamp charges. After registration, the possession was given to the plaintiff. The plaintiff has never approached the defendant that he is unable to raise finance on such property so that the sale deed be cancelled at his cost to execute fresh sale deed. In reality the defendant was to execute another sale deed in respect of Ac. 0.060 decimals adjacent to his first purchased land for which the receipt of Rs. 24,000/- (Rupees Twenty four thousand) from plaintiff. In stead of executing the sale deed, taking advantage of the plaintiff's blindness the defendant through his own scribe has cancelled the original sale deed No. 922 dated 31.05.1993 and for the same land he executed the sale deed bearing No. 1137 of 1993 which fact plaintiff came to know on 15.02.2002 when the defendant

objected to make any construction over the suit land. The plaintiff all alone is in possession of Ac. 0.120 decimals appertaining to Plot No. 2165, Khata No. 923. In this process prayed for dismissal of the counter claim.

5. On the basis of the pleadings of the parties, following issues are settled for adjudication.

ISSUES

1. Whether the suit is maintainable ?
 2. Whether the counter claim is maintainable ?
 3. Whether the plaintiff has got any cause of action to file the suit ?
 4. Whether the defendant has got any cause of action to file the counter claim ?
 5. Whether the plaintiff has got title over Ac.0.120 decimals of land ?
 6. Whether the plaintiff is entitled to get confirmation of possession over Ac.0.120 decimals of land ?
 7. Whether the sale deed dated 05.07.1993 be declared wrong ?
 8. Whether the plaintiff is entitled to get permanent injunction against the defendant ?
 9. Whether the property sold to the plaintiff by defendant through Regd. Sale Deed No. 922 of 1993 and Regd. Sale Deed No. 1137 of 1993 are the same and one ?
 10. Whether the rescission of Regd. Sale Deed No. 922 of 1993 be confirmed ?
 11. Whether plaintiff is entitled for any other relief ?
 12. Whether defendant is entitled for any other relief ?
6. In order to substantiate the allegation, plaintiff has examined three witnesses. P.W.1 is Prabhat Kumar Swain

plaintiff himself, P.W.2 is Jagadeb Pradhan, a co-villager of the plaintiff and P.W.3 is Sunia Pradhan, a witness to the sale deed and relied upon Ext.1 to Ext.8 in support of his claim. Similarly, to substantiate the allegation, the defendant examined himself as D.W.1 and Purna Chandra Panda, a deed writer examined as D.W.2 and relied upon Ext.A to Ext.F/3 in support of his stand.

FINDINGS

ISSUE NOs. 5 to 10 :

7. These issues are interlinked and interdependent to each other and need common evidence for discussion for which these issues have been taken up together. The plaintiff has filed the suit and sought for declaration of relief of his title, confirmation of possession and permanent injunction. The claim of the plaintiff is that he has purchased Ac.0.060 decimals of land from the defendant by paying consideration amount of Rs. 24,000/- (Rupees Twenty four thousand) on 31.05.1993 through Regd. Sale Deed No. 922 dated 31.05.1993 vide Ext.2. Again after one month, the defendant was going to sell the adjacent land of the purchased land of plaintiff and asked the plaintiff to purchase. Accordingly on 25.07.1993 another sale deed was executed for Ac.0.060 decimals of land with same consideration of money i.e. Rs. 24,000/- (Rupees twenty four thousand). The plaintiff intended to say that by this process he is in remained possession over Ac.0.120 decimals of land by constructing residential house over first purchased land and by using bari over the second purchased land. The plaintiff (P.W.1) in his evidence he has fully corroborated to the plaint story. In cross examination he has stated that there was no agreement between himself and defendant regarding sale of Ac. 0.060 decimals of land out of Ac. 0.213½ decimals . He has paid a sum of Rs. 24,000/- (Rupees

twenty four thousand) as consideration money for purchase of Ac.0.060 decimals of land but he has not obtained any receipt to that effect from the defendant. He has also not filed any money receipt for consideration amount of Rs. 24,000/- towards the registration on dated 25.07.1993. He has stated that the sale deed executed on dated 31.05.1993 after understanding the contents and being read over and explained to him.

8. P.W.2 is a co-villager. In his evidence has stated that the plaintiff is in possession over Ac. 0.120 decimals of land since 1993. The residential house situate on the southern side and north side was laying vacant with a cowshed. In cross examination has stated that though he was present at the time of demarcation but he has not signed in the demarcation paper nor has seen the sale deed for an area of Ac. 0.120 decimals.

9. P.W.3 is an attesting witness to the sale deed executed by defendant in favour of the plaintiff. Since the plaintiff was unable to see properly with much difficulties he puts his signatures, thereafter he along with another witness signed on the sale deed. In cross examination he has stated that he cannot say who the plaintiff and defendant in this case. He cannot say the Khata No., plot No. of sale and purchase of land so also the number of sale deeds. He has also signed in the cancellation deed bearing No. 1136 dated 05.07.1993. Further stated that Srinibas Srichandan was also a witness to the sale deed as well as cancellation deed.

10. The plaintiff in support of his case has relied upon several documents i.e. Ext.1, the disable certificate showing his blindness. Ext.2, the certified copy of sale deed bearing No. 922 dated 31.05.1993, Ext.3, the certified copy of Regd. Sale Deed No. 1137 dated 05.07.1993, Ext.4, the ROR vide Khata No. 1013/388, Plot No. 2165/4988 for an area of Ac. 0.060 decimals,

Ext.5, 5/a and 5/b are the rent receipts, Ext.6 is the building plan and Ext.7 are the holding tax receipts. All these above documents give a signal to the court that the plaintiff is in possession over Ac. 0.060 decimals of land. But it is also goes un-controverted that the plaintiff has only purchased Ac. 0.060 decimals of land from the defendant. The oral evidence of the witness i.e. P.Ws.1, 2 and 3 reveals that the plaintiff is residing over Ac. 0.060 decimals of land and another Ac. 0.060 decimals of land being used as bari or cowshed. The evidence also shows that after purchase the plaintiff applied for mutation only for Ac. 0.060 decimals of land. Accordingly, the ROR was published in the year 1990 vide Ext.4 for an area of Ac. 0.060 decimals in his name. The present suit was filed by the plaintiff in the year 2002 when the plaintiff came to know that the second sale deed was executed for the self same land in the year 2002. The recital of the sale deed vide Ext.2 reveals that the defendant sold the property for an area of Ac. 0.060 decimals to plaintiff out of Ac.0.400 decimals with consideration amount of Rs. 2,000/-. The second sale deed was executed for self same land for consideration of Rs. 24,000/- (Rupees Twenty four thousand) vide Ext.3. The plaintiff only disputes that the defendant after taking the entire consideration amount of Rs. 48,000/- (Rupees forty eight thousand) he executed two sale deeds on dated 31.05.1993 and 05.07.1993 for the same land. In other words, the second sale deed was executed for the same land of first sale deed and the defendant cheated the plaintiff and fraudulently cancelled the first sale deed.

11. The contesting defendant totally differs the testimony of the plaintiff. According to the contesting defendant (D.W.1) that the plaintiff was agreed to purchase a piece of land of Ac. 0.060 decimals at the rate of Rs.400/- per decimal for a total of

Rs.24,000/- (Rupees Twenty four thousand). Accordingly on 31.05.1993 a sale deed executed by him vide Regd. Sale Deed No. 922 dated 31.05.1993 in favour of the plaintiff and delivered possession. After a month the plaintiff approached him the value of Regd. Sale deed No. 922 dated 31.05.1993 was too low i.e. Rs. 2,000/- and he unable to raise finance for construction of the house. The plaintiff had approached him to cancel the above Regd. Sale Deed and to execute a fresh sale deed as per actual valuation and basing upon the version of the plaintiff, the plaintiff and D.W.1 went to the office of Sub-Registrar on 05.07.1993 to cancel the Regd. Sale Deed No. 922 dated 31.05.1993. The Deed of cancellation bearing No. 1136 of 1993 was executed and simultaneously a fresh sale deed No. 1137 of 1993 was executed with consideration of Rs. 24,000/- (Rupees twenty four thousand). The D.W.1 has also corroborated his written statement as averred by him. In cross examination he has stated that he had received a total consideration amount of Rs. 24,000/- from the plaintiff when he first sold the land in respect of Ext.2 and delivered the possession. He has not obtained the signature of plaintiff in the cancellation deed though he was present. He cannot say whether in Ext.C the fact of cancellation of Ext.B was mentioned or not. He has also admitted that the fact of cancellation to be made on higher rate has not been mentioned in Ext.C. Further admitted that in Ext.A discloses that he has not received the consideration money for which the cancellation was made. In the cancellation deed it is mentioned that he is in possession over the suit land as the deed writer mentioned the same.

12. D.W.2 is the deed writer of Regd. Cancellation deed No. 1136 dated 05.07.1993 and Regd. Sale deed No. 1137 dated 05.07.1993. According to him the cancellation deed as well as

the sale deed were executed in presence of both the parties i.e. the plaintiff as well as the defendant. At the time of execution of deeds the eyes of the plaintiff was perfect with full vision and he has signed on the deed. The cancellation deed was executed as per the request of plaintiff as the valuation deed was too low and to execute a fresh deed bearing No. 1137 dated 05.07.1993. In cross examination he has stated that he knew the parties on the date of execution of sale deed. He has no signature on Ext.3. He has not obtained any signature of the plaintiff in the cancellation deed though he was present.

13. The contesting defendant has relied on the documents such as Ext.A, the Regd. Cancellation deed bearing No. 1136 dated 05.07.1993, Ext.B Regd. Sale deed bearing No. 922 dated 31.05.1993. According to him Ext.B was handed over to him by the plaintiff for the purpose of cancellation. Ext.C, the certified copy of Regd. Sale Deed No. 1137 dated 05.07.1993, Ext.D the current rent receipts of Khata No. 823, Ext.E demarcation notice in Demarcation Case No. 3/02 and other documents.

14. Learned counsel for the plaintiff during course of his argument submitted that the defendant perpetrated active fraud on the plaintiff and by doing so, he cancelled the first sale deed executed on dated 31.05.1993 and again registered the same for Ac.0.060 decimals of land in favour of the plaintiff on 05.07.1993. The fact of cancellation deed was not within the knowledge of the plaintiff. The plaintiff has not signed on the cancellation deed. Therefore, the said cancellation deed was executed behind the back of the plaintiff. The recital made in cancellation deed has not been reflected in the pleading so also the second registered document vide Ext.3 executed on dated 05.07.1993. He also further stated that complete and absolute sale can be cancelled

at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground of fraud. In this regard he relied one decision reported in AIR 2011 Madras 66 (M/s. Latif Estate Line India Ltd.-vrs.-Mrs. Hadeeja Ammal and others).

15. Learned counsel for the defendant on the other hand has submitted that the plea of fraud as mentioned by the advocate for the plaintiff has not been pleaded and proved. In this case, the plaintiff has neither pleaded nor proved specifically the fraud practiced on him. Besides that the plaintiff himself in order to obtain loan approached the defendant for cancellation and accordingly the cancellation deed was executed on 05.07.1993 vide Ext.A and on the same day another sale deed for consideration amount of Rs. 24,000/- (Rupees twenty four thousand) was executed in favour of the plaintiff. The plaintiff has signed on the sale deed on the very day. So the question of fraud does not arise at all. Further mere use of word 'fraud' is not sufficient, the averments are to be made specifically that the nature and its manner. In this regard, he relied on 2007 (Supp.I) OLR 927 (The Oriental Insurance Co. Ltd.-vrs.-Rabindra Mandal and others), 1996 (II) OLR 283 (Jagannath-vrs-Kailash), 1996 (II) OLR 112 (M/s. Seetal-vrs.-M/s. Tinna).

16. Keeping in view of the above submission and counter submission in mind so also the oral and documentary evidence led by the parties let me now go to examine the details relating to the fact in issue. Whether the plaintiff has got the title over the suit land or not. Admittedly, the plaintiff has purchased Ac.0.060 decimals of land at the rate of Rs.400/- per decimal for a total of Rs. 24,000/- (Rupees twenty four thousand) through Regd. Sale Deed No. 922 dated 31.05.1993 vide Ext.2. The said property

was transferred to the plaintiff and the defendant has given delivery of possession of the said property. According to plaintiff (P.W.1) one month just after his purchase the defendant asked him to purchase the adjacent land of Ac.0.060 decimals and P.W.1 purchased the same through Regd. Sale Deed on dated 25.07.1993 with consideration amount of Rs. 24,000/- (Rupees Twenty four thousand). From the date of purchase, P.W.1 is in possession over the suit land. In support of the same P.W.1 in his evidence has proved the certified copy of Regd. Sale Deed No. 922 dated 31.05.1993 vide Ext.2 which indicates he has purchased Ac. 0.060 decimals of land at the consideration of Rs. 2,000/- (Rupees Two thousand). The plaintiff has also proved Ext.3 which shows the purchase of same land. He relied on mutation ROR of the year 1996 vide Ext.4 for the same land. The plaintiff has also submitted building plan vide Ext.6 and the rent receipts. All these above documentary evidence as well as oral evidence goes to show that he is in possession over only Ac.0.060 decimals of land. The next witness P.W.2 and 3 have stated in a generalised manner that the plaintiff has purchased Ac.0.120 decimals of land but they do not have any idea about khata No. and Plot No. of the suit land where the plaintiff is in possession.

17. The above facts are completely denied by the defendant. The defendant (D.W.1) has stated that after about one month P.W.1 approached him saying the face value of sale deed dated 31.05.1993 is Rs. 2,000/- which is too nominal then the plaintiff and defendant went to the Sub-Registrar office, Jatni, cancelled the document vide cancellation document No. 1136 dated 05.07.1993 vide Ext.A and simultaneously a fresh sale deed was executed bearing No. 1137 dated 05.07.1993. The defendant to support of his cancellation proved Ext.A and the original sale

deed bearing No. 922 dated 31.05.1993 vide Ext.B. Under the above circumstance it can say that the plaintiff has not given any proper explanation after execution and registration of Regd. Sale Deed No. 922 dated 31.05.1993, how it can come to the hand of the defendant. The said plaintiff has also applied for mutation and accordingly obtained the mutation ROR vide Ext.4. The mutation ROR only reflects the area of Ac.0.060 decimals. The plaintiff has given no explanation whatsoever on the score that why he had not applied for mutation of another Ac. 0.060 decimals of land. So best evidence available to the plaintiff has been withheld for the best reason known to him. The plaintiff in his cross examination has admitted that he has signed on the sale deed executed on 31.05.1993 after understanding the contents and being read over and explained to him. The consideration money of the sale deed dated 31.05.1993 was valued for Rs.2,000/-. So the above statement of P.W.1 clearly indicates that the sale deed executed on 31.05.1993 for consideration amount of Rs. 2,000/- was within the knowledge of the plaintiff. Furthermore, on 05.07.1993 both the cancellation deed and sale deed vide Ext.A and Ext.C respectively were executed. P.W.1 admits that he was present when the second sale deed was executed. But he is denying the execution of cancellation deed No.1136 dated 05.07.1993. When both the deeds were executed on the same day in presence of P.W.1 and his signature was obtained on Ext.C his ignorance about execution of cancellation of instrument cannot be believable. The evidence of D.W.1 is found ample support from the evidence of D.W.2. He being the deed writer has corroborated his evidence stating that the deed No. 1136 dated 05.07.1993 executed for cancellation of deed No. 922 dated 31.05.1993 as per the request of plaintiff Prabhat Kumar Swain as the valuation of the deed was

too low and to execute a fresh deed No. 1137 dated 05.07.1993 in a higher valuation. These D.Ws. though have cross examined by the plaintiff exhaustively but nothing substantial has been elicited to disbelieve their version. Rather the documents submitted on the side of defence that Ext.A, B and C clearly shows that the sale deed dated 31.05.1993 vide Ext.B was for consideration of Rs. 2,000/- which has been cancelled by D.W.1 on 05.07.1993 vide Instrument No. 1136 dated 05.07.1993 vide Ext.A and on the very day the another sale deed was executed vide Ext.C in favour of the plaintiff. All these above clearly led me to say that the plaintiff has purchased only Ac. 0.060 decimals of land where he is in possession over the same by constructing building therein. When the plaintiff has all through has knowledge from the registration of the sale deed vide Ext.2 to the further execution of sale deed vide Ext.3, so the question of taking advantage of plaintiff's blindness by the defendant through his own scribe, did the same does not arise at all. More so the plaintiff has applied for mutation and the ROR was issued to him in the year 1996. It is specifically pleaded that the fact of cancellation was come to his knowledge on 15.02.2002 when the defendant objected him to make any construction over the land. But from the aforesaid evidence of the plaintiff as well as the defendant it is very much clear that all these purchase, cancellation and again registration of second sale deed were in the year 1993 and accordingly the plaintiff (P.W.1) applied mutation and obtained ROR in the year 1996. When all these things happened, why the plaintiff did not file any mutation of his further purchased land, even though he has paid the amount for that. Besides that except Ext.2 and 3 he has not filed a single document that he has paid an amount of Rs. 24,000/- to the defendant for purchase of another Ac.0.060 decimals of land.

Absolutely, there is no scarp of document filed on behalf of the plaintiff nor had obtained any receipt from the defendant to the effect that he has paid a sum of Rs. 24,000/- (Rupees Twenty four thousand) to purchase the another Ac.0.060 decimals of land. In absence of any positive documents it cannot be said that the plaintiff has paid subsequently a sum of Rs. 24,000/- for purchase of another Ac.0.060 decimals of land. Further the plaintiff having failed to prove any fraudulent act done by the defendant. Rather it can be said that the sale deed which was executed on 31.05.1993 got cancelled and subsequently the same was executed with the same description as reflected in earlier one for an area of Ac. 0.060 decimals. The documents filed by the plaintiff, in my humble views, do not come to the aid of the plaintiff on the score of establishment of title of another Ac.0.060 decimals of land and its possession. The fundamental facts required to be established have not at all been satisfactorily proved in this case by the plaintiff. Therefore, the plaintiff is not entitled to get any more except Ac.0.060 decimals which he has purchased through Ext.C. At the same time, the defendant is entitled for declaration and confirmation that the property described in Regd. Sale Deed No. 922 of 1993 or 1137 of 1993 are the same and one. Thus, the plaintiff has no claim on any other portion of Plot No. 2165 except the above purchased land through Regd. Sale Deed No. 1137 of 1993. So these issues are answered accordingly.

ISSUE NO. 1, 2, 3, 4, 11 & 12

18. These issues are formal in nature, need no elaboration. As per the discussion, supra, the suit is maintainable in the eye of law and there exists cause of action to bring the suit. The counter claim of Defendant is also maintainable. 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 in part on contest against the Defendant without cost. The plaintiff is only entitled to get Ac.0.060 decimals of land as per the Regd. Sale Deed No. 1137 dated 05.07.1993 and he has right, title, interest and possession over the same. The counter claim of Defendant is allowed on contest against the Plaintiff without cost, it is declared that the sale deed No. 922 of 1993 and Regd. Sale Deed No. 1137 of 1993 are to be treated as one sale deed in every purpose from the date of pronouncement of judgment.

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 10th day of April, 2014 under the signature and seal of this court.

2nd Addl. Senior Civil Judge,
Bhubaneswar.

LIST OF WITNESSES EXAMINED FOR THE PLAINTIFF:

P.W.1 : Prabhat Ku. Swain.
P.W.2 : Sri Jagadeb Pradhan
P.W.3 : Sunia Pradhan

LIST OF WITNESSES EXAMINED FOR THE DEFENDANT:

- D.W.1 : Sri Bisweswar Patnaik
 D.W.2 : Sri Purna Chandra Panda.

LIST OF DOCUMENTS ADMITTED INTO EVIDENCE ON BEHALF OF PLAINTIFF:

- Ext.1 : Handicapped certificate.
 Ext.2 : Certified copy of Regd. Sale Deed No. 922 dated 31.05.1993.
 Ext.3 : Certified copy of Regd. Sale Deed No. 1137 dated 05.07.1993.
 Ext.4 : ROR vide Khata No. 1013/388
 Ext.5, 5/a & 5/b: Rent receipts
 Ext.6 : Building plan
 Ext.7 & 7/a: Holding Tax receipts.
 Ext.8 : Signature of P.W.3 on Regd. Sale Deed No. 1136 dated 05.07.1993

LIST OF DOCUMENTS FILED ON BEHALF OF DEFENDANT:

- Ext.A : Regd. Cancellation deed bearing No. 1136 dated 05.07.1993.
 Ext.B : Regd. Sale deed bearing No. 922 dated 31.05.1993.
 Ext.C : Certified copy of Regd. Sale Deed No. 1137 dated 05.07.1993.
 Ext.D : Current rent receipt of Khata No. 823.
 Ext.E : Demarcation Notice in Demarcation Case No. 3/02.
 Ext.F : Office copy of Pleader's notice dated 08.05.2003
 Ext.F/1 : Postal receipt
 Ext.F/2 : A.D.
 Ext.F/3 : Signature of plaintiff
 Ext.A/1 : Signature of D.W.2 on Ext.A.
 Ext.B/1 : Endorsement made by Registering Authority of Jatani at back page of Ext.B.

2nd Addl. Senior Civil Judge,
 Bhubaneswar.

