

**HIGH COURT OF ORISSA: CUTTACK**

**SA No.238 of 1994**

From the judgment and decree dated 16.07.1994 and 28.8.1994 respectively passed by Sri M.N. Patnaik, learned 2<sup>nd</sup> Addl. District Judge, Cuttack in Title Appeal No.29 of 1992 confirming the judgment and decree dated 5.3.1991 and 11.3.1991 respectively passed by Sri A.P. Das, learned 2<sup>nd</sup> Addl. Sub-Judge, Cuttack in Title Suit No.137 of 1986.

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Chmpa Bewa & others	....	Appellants
<i>Versus</i>		
Smt. Snehalata Devi	....	Respondent
For Appellants	... Mr.D.P. Mohanty, Advocate	
For Respondents	... None	

**JUDGMENT**

**PRESENT:**

**THE HONOURABLE DR. JUSTICE A.K.RATH**

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Date of hearing: 19.01.2017 : Date of judgment: 30.01.2017

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**Dr. A.K.Rath, J** Defendants 1 to 4 are appellants against a reversing judgment.

**2.** Respondent no.1 as plaintiff instituted the suit for recovery of possession of Schedule-A properties and permanent injunction impleading the appellants and respondent no.2 as defendants.

**3.** The dispute is between the sisters with regard to the property of the father. The plaintiff and defendants 2,3 and 4 are sisters. They are daughters of late Nokei alias Lokei Behera. Defendant no.1 is the widow of late Lokei. Defendant no.5 is the husband of defendant no.2. According to the plaintiff, Kapila Behera,

one of the ancestors of Nokei, was the owner in possession of Ac.1.340 decimals of land appertaining to Plot No.581, Khata No.754 of Mouza-Bidanasi. Half of the said land fell to the share of Lokei in an amicable partition. On 7.11.1966, to press for his legal necessities, Lokei sold Ac.0.80 decimals of land to her for a consideration of Rs.2,400/-. As the boundary of the suit land described in Ext.1 was incorrect, Lokei executed a rectification deed in favour of the plaintiff on 27.11.1970. Her name was mutated in respect of the suit land in Mutation Case No.604 of 1970. She is paying rent since 1971. She constructed a house on the suit land after obtaining permission from the Greater Cuttack Improvement Trust and Cuttack Municipality. In the Hal settlement, the suit land had been carved out as a separate plot bearing no.843 appertaining to khata no.293. She along with her husband and children were residing in the house till 1984. Later they shifted to her husband's house at Mangalabag keeping Schedule-B movable properties. In September, 1985, when she went to the suit house to bring some of her Schedule-B movable properties, she found defendant no.2 and her husband were residing in the house along with defendant no.1 and they resisted her entry into the house.

**4.** Defendants have filed a joint written statement denying the assertions made in the plaint. It is stated that Lokei was never in need of money so as to sell a portion of his ancestral property. Lokei was illiterate. As the husband of the plaintiff is a stamp vendor, Lokei entrusted him with the task of looking after the settlement operations on his behalf. Taking advantage of the same, the husband of the plaintiff defrauded Lokei and thereafter clandestinely got the suit land mutated in the name of the plaintiff. Lokei constructed the house of the suit land from the income he got from his milk business. Being illiterate he had requested the husband of the

plaintiff to obtain necessary permission from the Greater Cuttack Improvement Trust and Cuttack Municipality for construction of the house on the suit land. But the husband of the plaintiff again duped Lokei obtaining permission in the name of his wife. No consideration had passed. Exts.1 and 2 were obtained by fraud and misrepresentation and as such void documents. The plaintiff has neither title nor possession over the suit land at any point of time.

**5.** On the basis of the inter se pleadings, learned trial court struck five issues, out of which issue nos.3 and 4 are pivotal. The same are quoted below;

“3. Is the sale deed dt.7.11.62 together with corrected deed of sale dt.27.10.70 is legal, valid and have they conferred any title on the plaintiff and have the defendants any locus standi to challenge the alienation made by Lokei Behera ?

4. Is the plaintiff entitled to recover the movables as mentioned in Schedule-B of the plaint ?”

**6.** To substantiate the case, the plaintiff had examined four witnesses and on her behalf, fourteen documents had been exhibited. On behalf of the defendants, four witnesses had been examined but no documents had been exhibited. Learned trial judge came to hold that Lokei alienated the suit land in favour of the plaintiff for a valid consideration vide Exts.1 and 2. The plaintiff had constructed the suit house from her own funds. The defendants failed to establish the alleged fraud and misrepresentation. However, on issue no.4, he came to the finding that the plaintiff had signally failed to prove that she had kept Schedule-B movable properties in the suit house at the time of her departure in the year 1984. On these findings, learned trial court decreed the suit in part directing the defendants to deliver possession of Schedule-A property to the plaintiff. Defendants 1 and 2 had unsuccessfully challenged the judgment and decree before the learned lower appellate court, which was eventually dismissed.

**7.** The second appeal was admitted on 9.1.1995 on the following substantial question of law;

“2(A) If the learned courts below are correct in interpreting the Exts.1 and 2 on the basis of the question of “fraud with regard to the contents of the documents” overlooking the question of “fraud with regard to the nature of the document” especially when the execution of the documents have been admitted.”

**8.** Heard Mr. D.P. Mohanty, learned counsel for the appellants. None appears for the respondent.

**9.** Mr. D.P. Mohanty, learned counsel for the appellant, submitted that Lokei had no legal necessity to alienate the suit land in favour of the plaintiff. Lokei was illiterate. He reposed confidence on the husband of the plaintiff, who was a stamp vendor, to look after the settlement operations on his behalf. Clandestinely the husband of the plaintiff mutated the land in the name of the plaintiff. The husband of the plaintiff had also obtained permission from the Greater Cuttack Improvement Trust for construction of the house on the suit land in the name of the plaintiff taking advantage of the illiteracy of Lokei. No consideration was paid to Lokei. The alleged sale deeds vide Exts.1 and 2 had been obtained by playing fraud.

**10.** On an anatomy of pleadings and evidence on record, both the courts held that for executing the sale deed, Lokei went to the Registration Office twice, first on 7.11.1966 and secondly after one year on 27.11.1970. Further, Lokei lived so many years after 1970, while defendant no.5 was in active management of the settlement affairs on his behalf. Defendant no.5 was a mute spectator to the settlement operations and raised no objection when the suit land was carved out as a separate plot in the Hal settlement in favour of the plaintiff. A series of documents filed by the plaintiff, i.e., rent receipts (Ext.1 series), letter of permission from the Greater Cuttack

Improvement Trust and Municipal Authorities in the year 1971 (Exts.5, 5/a and 6), sanction plan (Ext.6/a), permission from PHD and Municipal authorities for electrification and water pipe connection (Exts.7 and 11) go to establish a continuous act of possession of the suit land by the plaintiff for several years without any resistance by the defendants. It is futile for the defendants to pretend that they were blissfully ignorant of all these documents which were obtained phase-wise in a continuous process by the plaintiff. Further, in para-4 of the written statement defendants have admitted that they have got only Ac.0.064 decimals of land in plot no.581, that means the rest of the land inherited by Lokei has been sold in favour of the plaintiff. That apart defendant no.1 had sold a portion of the suit plot in favour of defendant no.2 on 7.10.1980 by means of registered sale deed vide Ext.14. A map has been appended to Ext.14 showing a strip of land kept joint for use of defendants 1 and 2 which leads to the inference that the north-eastern portion of the plot having been earlier alienated in favour of the plaintiff by Lokei, defendants 1 and 2 were compelled to carve away the joint strip of land for their use as a common passage.

**11.** These are essentially the findings of facts. There is no perversity or illegality in the same. Accordingly, substantial question of law enumerated in Ground No.2(A) is answered.

**12.** In the result, the appeal being devoid of merit, is dismissed. No costs.

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**DR. A.K.RATH, J**

