

IN THE HIGH COURT OF ORISSA : CUTTACK
RSA No.154 of 2010

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by Additional District Judge, Malkangiri in RFA No.7 of 2004.

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Amal Bhakta

::: *Appellant.*

-:: VERSUS ::-

Manada Bala

::: *Respondent.*

**Advocate(s) who appeared in this case by hybrid arrangement
(virtual/physical) mode.**

For Appellant

... M/s. K.M. Mishra,
Mr. R.K Mohanty, K. Parida, B. Das,
K.M. Mishra, L.Mohapatra & R.
Mohanty, Advocates

For Respondent

... M/s. Soumendra Pattanaik & K.C.
Swain, Advocates.

**CORAM :
MR. JUSTICE D. DASH**

Date of Hearing: 13.12.2021 :: Date of Judgment: 03.01.2022

The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure (for short, 'the Code') has assailed the judgment and decree passed by learned Additional District Judge, Malkangiri in RFA No. 7 of 2009.

By the above judgment and decree, the First Appeal filed by the Appellant (Defendant) under section 96 of the Code has been dismissed and thereby the judgment and decree passed by the learned Civil Judge (Senior Division), Malkangiri in C.S. No. 49 of 2008 have been confirmed. The suit filed by the Respondent as the Plaintiff has been decreed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. **Plaintiff's case:-**

The suit land better described in the schedule of the plaint belonged to Santosh Kumar Bala, the father of the Plaintiff. He being refugee and having the family as such finally settled at village-MV 47 by the Central Govt. through its LNK project meant for the purpose. At that point of time, they had been allotted with a house as well as some land for doing agricultural operation in earning their livelihood. In the year 1991, the Record of Right in the settlement operation was prepared in the name of Santosh Kumar Bala, the father of the Plaintiff. Santosh died in the year 2000 and his wife and son had predecesit in. So after the death of Santosh, Plaintiff being the sole surviving heir, inherited all his properties and became the owner as such and remained in possession of the same.

The Plaintiff's husband had however deserted her after few days of their marriage when the Plaintiff was carrying a child in his womb. That was prior to the death of her father. So she being the deserted daughter was staying with her father till his death. In the year 1984, the Plaintiff gave birth to girl child who was given in marriage with one Binod and to the said wedlock the son and a daughter were born. That son-in-law of the Plaintiff also left for Kolkata in the year 2002 and thereafter did not return to take care of his wife and children. The Plaintiff, her daughter and grand children thus had to remain in a helpless condition with nobody to assist them in any matter whatsoever. During that crucial period, the Defendant came forward in saying that he would assist them in order to tide over the difficult situation. The

Plaintiff being an illiterate lady having no outside exposure then readily agreed to the proposal in good faith in believing his words. The Defendant thus coming in contact with the Plaintiff enjoyed her full confidence and the family was depending on his aid, advice and assistance so provided. Sometime thereafter, the Defendant persuaded the Plaintiff to execute a Will in his favour bequeathing half of his total land in his name so that he would be looking after the entire family and manage everything including their landed property. Being under such a relationship and finding the Defendant to have been rendering the service with all sincerity and showing all the promptitude whenever she needed for the benefit of the family, the Plaintiff had yielded to the request.

It is stated that on 2.4.2003, the Defendant took the Plaintiff to Malkangiri Tahasil Office and there she was asked to put her thumb impressions over some stamp papers and the Defendant thereafter cultivated the land of the Plaintiff and continued to provide the maintenance to all the family members. Subsequently, as his mind was mischievous from the very beginning which was not known to the Plaintiff, the neglect was shown to the Plaintiff and family by the Defendant. He then sold away one house of her for Rs.8,000/- and took away the entire money. The Plaintiff finding no other alternative being an illiterate simple ton lady having no male member by her side to advice in carrying the liability of her deserted daughter and grandchildren approached 'Palli Mangal Samiti' of her village. The members of the Samiti then instructed the Defendant to handover the record of right and other connected papers of the landed properties of the Plaintiff to her. The Defendant however then gave only a copy of the record of right to the Plaintiff in stating that the original was missing. Subsequent to the same, it came to the knowledge of the Plaintiff that

the Defendant in the guise of a Will as suggested had obtained a sale deed in his favour in respect of the suit land and mutated the same in his name behind her back and knowledge. The Defendant then avoided to respond to the Plaintiff any more. He in turn initiated a proceeding under section 144 of the Code of Criminal Procedure (Cr.P.C.) in the Court of Sub-Divisional Magistrate, Malkangiri vide Misc. Case No. 12 of 2008. In that proceeding prohibitory order being initially passed was later on vacated and the proceeding was dropped directing the parties to take shelter before the Civil Court. So the Plaintiff filed the suit praying the relief of declaration of her right, title, interest and possession over the suit land and declare the register sale deed dated 2.4.2003 as null and void. She has also advanced the prayer for recovery of possession of the said from the Defendant in case of dispossession.

4. The Defendant's Case:-

The Plaintiff was never in possession of the entire suit land after the death of her father Santosh Kumar Bala. It is said that the Defendant had never persuaded the Plaintiff to execute any Will in his favour by bequeathing half of her property. The allegations that the Plaintiff was taken to Malkangiri Tahasil Office where her thumb impressions over some stamp papers and different registers were taken with an assurance to provide maintenance have been denied. It is stated that on 2.4.2003, the Plaintiff appeared before the Registering Authority with the witnesses and executed the sale deed in respect of the suit land measuring Hc.1.265 of Mouza-Chidutalli in his favour on receipt of consideration of Rs.85,000/-. The Defendant having got the sale deed and thus purchased the suit land mutated the said land in his favour. The record of right was issued in his name on 14.7.2003 and since then he is in possession of the same paying land revenue to the State. It is the

counter allegation that in the month of June, 2008, the Plaintiff had come to his house and then had sought for advancement of hand loan of Rs.5000/-. The Defendant when expressed his inability, she got annoyed. On the next day, under the direction of the Plaintiff one Ranjit Mandal was found to be cultivating the suit land. For that the Defendant had to initiate a proceeding under section 144 of the Cr.P.C.

5. On the above rival case, the Trial Court framed as many as six issues. Issue Nos. 3 and 5 are interlinked. Those concern with the Plaintiff's right, title, interest and possession over the suit land as well as the claim of the Plaintiff that the said registered sale deed dated 2.4.2003 standing in the name of the Defendant is null and void. The answer to the above issues has placed the final say over the litigation.

The Trial Court coming to decide issue No. 5 as to the fate of the registered sale deed dated 2.4.2003 as it appears has made elaborate discussion of evidence let in by the parties. The conclusion has been that the sale deed is not legal and binding upon the Plaintiff and as such is null and void. This answer has paved the way for recording the answers on other issues in favour of the Plaintiff in finally, decreeing the suit of the Plaintiff for the reliefs as prayed for.

6. The Defendant being aggrieved by the above judgment and decree passed by the Trial Court having carried the first has failed in that move. Hence, he is with the present Second Appeal before this Court.

7. The Appeal has been admitted on the following substantial questions of Law:-

“1. Whether, the plaintiff's suit is barred by Article 56 & 59 of the Indian Limitation Act on the basis of her admission that the cause of action for the suit filed on 10.9.2008 arose on

18.4.2003, when the plaintiff came to know that the defendant fraudulently managed to obtain the impugned Sale Deed dated 02.04.2003 (Ext.2 and A).

2. Whether, the plaintiff having duly appeared before the Registering Authority and the Registering Authority having given the statutory certificate as prescribed under Section 58,59 and 60 of the Indian Registration Act, it was incumbent on the plaintiff to bring her suit within three years of such Execution/Registration.

3. Whether, due Execution/Registration statutory Mutation and continuous payment of Rent are sufficient to hold that the plaintiff had clear knowledge about the impugned Sale Deed for which she was obliged to see it aside as a voidable document within the prescribed period of limitation, she being E.O. nominee party to the impugned transaction”.

8. Mr. R.K. Mohanty, learned Senior Counsel for the Appellant submitted that as the Plaintiff having come to know on 18.4.2003 that the Defendant has fraudulently managed to obtain the sale deed dated 2.4.2003 (Ext.A = Ext.3), has filed the suit on 10.9.2008. He thus submitted that in view of the provisions of Article 56 and 59 of the Indian Limitation Act, the Courts below ought to have held the suit to be barred by limitation. According to him, the provisions of sections 56 and 59 of the Limitation Act clearly stand on the way of the entertainment of the suit filed by the Plaintiff for the reliefs claimed. clearly stand on the way amendment of the suit the Plaintiff any relief to the suitor, the Plaintiff. He further submitted that the deed under challenge being a registered one followed by the recording of the said transacted land in favour of the Defendant in a mutation proceeding and continuous

payment of rent by the Defendant-purchaser, the challenge to the same ought to have been found to be untenable. It was submitted that the knowledge of the Plaintiff as to the said sale deed ought to have been taken to be from that very year, 2003 and therefore as within the time period prescribed the Plaintiff has not filed the suit in seeking appropriate relief of setting aside of the said registered sale deed on those grounds as projected in the plaint, the Courts below have committed grave error in decreeing the suit when the right over the suit land in favour of the Defendant had already been crystallized being no more amenable to challenge. He further submitted that the deed in question i.e. Ext.A = Ext. 3 is registered one, and presumption is attached to the same as per the provisions contained in the Registration Act, not only as to the genuineness and due execution but also as to the factum of knowledge about the existence of the same by the parties to the document. He therefore submitted that the Courts below having ignored all these important aspects since have decreed the suit, the same is liable to be set at naught.

9. None appeared for the Respondent (Plaintiff) despite the opportunity and accommodation.

10. Keeping in view the submission made, I have carefully read the judgments passed by the Courts below.

11. In so far as the controversial facts are concerned; the Trial Court as well as the Lower Appellate Court upon detail discussion of evidence and their critical examination from all angles at their respective level and independent of one another as at para-6 of the judgment of the trial court as also at para-8 of the judgment of the Lower Appellate Court have recorded the finding that the Plaintiff has not been paid with the consideration of Rs.85,000/- for the purported transaction of sale and (ii)

that the Defendant has failed to discharge the heavy burden of proof lying upon him in proving the factum of due execution of the said sale deed by the Plaintiff, an illiterate lady having no other male member other than the Defendant by her side on whom she had reposed full faith and confidence. The findings as above have been returned by the Courts below are seen to be the outcome net result of the strenuous exercise so undertaken. Let us now proceed to judge the sustainability of the same.

12. The Plaintiff is an illiterate lady who does not know to read and write Odia and she has put her thumb impressions everywhere. She was then living with her deserted daughter and grandchildren having no other male member in the family. It is stated that she was being helped by the Defendant and on him, she was reposing confidence and in good faith was thus following his advice. The evidence on record do not show that the Plaintiff had any such experience in those outside affairs. She admittedly was a refusee and staying in a rural area in the scheduled District of the State having no such extra source of income other than the return from the landed property.

So, here in view of the aforesaid, the matter has to be approached by putting the burden of proof upon the Defendant as regards due execution by applying the principles of execution of document by paradarashin ladies.

13. At this juncture, before proceeding for further examination the settled position of law is required to be discussed and stated for reference and proper appreciation in arriving at a correct decision.

The law as to the burden of proof has been summarized in a decision of Privy Council in case of Farid-un-Nisa Vrs. Munishi Mukhtar Ahmad; AIR 1925 P.C. 204:-

“The law throws around her a special cloak of protection. It demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the granter. In such cases, it must also, of course, be established, that the deed was not signed under duress, but arose from the free and independent will of the grantor. The law as just stated too well settled to be doubted or upset.”

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“The law of India contains well known principles for own disadvantage when they have not the usual means of fully understanding the nature and effect of what they are doing. In this it has only been given the special development, which Indian social usages make necessary, to the general rules of English Law, which protect persons, whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred. This is part of law relating to personal capacity to make binding transfers or settlements of property of any kind.”

The position thus emerges that executant being a paradarnashin woman, the deed was read out to her; it must further be shown that it was explained to her, or that she understood its conditions and effect; and that explanation included all material points as well as the general

nature of transaction. The principle upon which the law accords protection as above is founded on equity and good conscience.

In that case, it has been held that:-

“In the instant case the learned Munsif, and on appeal, the learned Subordinate Judge found concurrently that the two widows put their thumb marks without understanding the true import of the document. Imam, J., in second appeal reversed the said finding on the ground that they were vitiated by an erroneous view of the law in the matter of burden of proof. The judgment, if we may say so with respect, consists of propositions which appear to be contradictory. The learned Judge after reviewing the case law on the subject, concludes his discussion by holding that it was the duty of the plaintiff to prove that there was fraud committed and that, as that had not been established, the question whether the document was read over and explained to the plaintiff in his opinion, in the circumstances, did not arise. This proposition, in our view is clearly wrong and is contrary to the principles laid down by the Privy Council in a series of decisions. In India, Pradahnashin ladies have been given a special protection in view of the social conditions of the time: they are presumed to have an imperfect knowledge of the world, as by the paradah system they are practically excluded from social intercourse and communion with the outside world....

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“.... The legal position has been very well-settled. Shortly it may be stated thus: The burden of proof shall always rest upon the

person who seeks to sustain a transaction entered into with a paradahnashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it, but also by other evidence, direct and circumstantial.”

As held by this Court in Chandal Bewa v. Madhav Panda and others; XXVI (1960) CLT, 304, that when a question arises as to whether the document has duly been executed by an old and illiterate lady belonging to a village, in order that the documents may be enforced against her, or , as a matter of that, in order that it may be found by the Court that the documents were properly executed, the vendee must prove that the documents were read over and explained to the illiterate executant, who is a lady, and she knew the nature and character of the transactions while she became a willing party to the documents and particularly that she was aware of the acreage involved in the transactions.

On the aforesaid, this Court then has taken a view that there is no justification as to why rule applicable to paradahnashin ladies on the ground of their ignorance and illiteracy should be restricted to that class only and should not also apply to the case of a poor lady who is equally ignorant and illiterate, but is not paradahanashin, simply because she does not belong to that class, the object of the rule of law being to protect the weak and the helpless, the distressed and the down-trodden and it should not be restricted to a particular class or community. Even in the case of a lady who is outside the paradahnashin class, it is for those who deal with her to establish that she had the capacity of

understanding that she has been entering into the transaction voluntarily and with full knowledge and import of what the transactions actually meant. In case of Prasanna Kumar Giri vrs. Radhashyama Paul and others; 70 (1990) CLT 720, it has also been so held. Same is the view taken in case of Kumadei vrs. Md. Abdul Latif : 1993 (II) OLR 568. Reliance has been placed upon the decision in Smt. Kharbuja Kuer vrs. Jangbahadul and others: AIR 1963 SC 1203, that as regards documents taken from a paradahnashin women, the Court has to ascertain that the party executing them has a free agent and has been duly informed of what she was about that reason for the rule is; that ordinary presumption that a person understands the document to which he has affair his name does not apply in case of a paradahnashin women: that burden shall always rests upon the person who seeks to sustain a transaction entered into with a paradahnashin lady to establish that the said document was entered into by her after clearly understanding the nature of the transaction: that it should be established that it was not only her physical act but also her mental act and that the burden can be discharged not only by proving that the document was explained to her and that she understood it but also by other evidence direct and circumstantial.

13.1 In case of “Krushna Chandra Patra and another Vrs. Kami Bewa and another” 1988 (2) OLR 582, it has been enunciated that the situation relating to the document executed by paradanshin women and illiterate person, the onus lies on the person who derives the benefit under the document to prove and establish that the executant had executed the document after having full knowledge of the contents as well as its effect and consequences. Further in case of “Rankanidhi Sahu Vrs. Nanda Kishore Sahu”:AIR 1990 Orissa 64, this Court while holding the principles governing proof of execution of document taken from paradanashin woman to be actually applicable to the document taken

from an illiterate woman, reiterated further that the burden is heavy on the person getting advantage under the document to establish that the contents of the document were read over and explained to her, she understood the same, she had independent advise at the relevant time, and that the execution of the document was not only a physical act, but also a mental act. In the said case, while alternatively holding that the document under challenge therein was not merely executed, it was held to be void and inoperative document conferring no title in respect of immovable property covered under the said transaction.

13.2 This Court in case of “Narayan Mishra and two others Vrs. Champa Dibya”; (60) 1985 CLT 487 have held that the disposition of such nature made must be found to have been substantially understood and must really be the mental act, as its execution is the physical execution of the person who makes it. The words of caution for the court are that the court must be satisfied that the deed has been explained to and understood by the party under disability either before execution or after it, under situations showing that the deed has been executed with the full knowledge and comprehension. Mere execution by such a person although not accompanied by duress, protest or obvious signs of understanding or one of comprehension itself not the real proof of true understanding mind of the executant. It must be proved affirmatively and concluded that the deed was not only executed by but also explained to and really understood by the grantor. The courts have been asked to insist the proof that the lady had independent legal advise although in variable terms depending upon the facts and circumstances of each case to case. Generally, the Courts have to demand affirmative to prove on the subject of the lady’s intelligent understanding and execution of deed and the court would not repeatedly hold that this onus to have been discharged where it has not been shown that the lady had any

independent advise. The true nature of transaction must be proved to have been understood by the executant.

The protection application to a pradahnashin woman can be extended to illiterate and rustic village woman or to documents made by old, invalid infirm and illiterate persons (Krisha Mohan Kul vrs. Pratima Maity; Air 2003 SC 4351).

13.3. In case of “Karunamayee Vrs. Maya”: AIR 1948 Cal. 84, it has been emphatically held that those who seek to affect paradanashin woman with liability under the instrument are bound to prove that they had knowledge of the nature and character of the transaction, that they had some independent and disinterested adviser in the matter; and that they executed the instrument fully understanding what they were about in doing so. In several other cases, it has also been held that when a Court in dealing with disposition of property by pradahnashin woman ought to be satisfied that the transaction was explained to her specially in case where, without legal assistance, she executed document written in a language she did not understand, which deprived of all her property {Ashgar v. Delroos ILR -3 Cal. 324 (P.C.) and Amarnath Vr. Achan I.L.R. 14 All. 420 (PC)} Where an instrument has not been properly explained so that she did not understand its contents and effect or did not know what liabilities she was incurring, the transaction cannot stand.”

In case of Satish v. Kali Dasi 34 C.L.J.-529:-

“The position settled is that when the court is called upon to deal with a deed executed by a pardanshin lady, it must satisfy itself or evidence, first fact that the deed was actually executed by her with full understanding of what she was about to do;

secondly, that she had full knowledge of the nature and effect of the transaction in which she is said to have entered; and thirdly, that she had independent and disinterested advice in the matter. The cases fall broadly into two groups, namely, first the cases where the person who seeks to hold the lady to the terms of her deed is one who stood towards her in a fiduciary character; and secondly, the cases where the persons who seeks enforce the deed was an absolute stranger. The court in former class of cases will act with great caution and will presume confidence put and influence exerted, in the later class of cases the court will require the confidence and influence to be proved intrinsically. If the confidence is reposed and it is abused, the court will grant relief.”

In *Shree Thakurjee Vrs. Ramdei*, 59 M.L.J. 14 (P.C.) it has been held that where the facts disclose a confidential relation between the parties and also establish that the deed was harsh and unconscionable, the burden of proving absence undue influence rests on the party seeking to support the deed.

It is also the position settled in a plethora of decisions standing in a confidential relation towards others cannot entitle themselves to hold the benefits which those others have conferred upon them unless they can show to the satisfaction of the court, the person by whom the benefits have been conferred had competent and independent advice in conferring them.

14. In the touchstone of the above principle, the Courts below are thus have found to have rightly gone for elaborate discussion of evidence on record with record to ascertain whether the Defendant has discharged the aforesaid burden of proof resting upon the Defendant. It is the

specific stand of the Plaintiff that she has never sold the suit land to the Defendant at any point of time. She has deposed that during the year 2003, the Defendant brought her to Malkangiri Tahasil Office and took her thumb impressions over stamp papers and in different registers by assuring to provide all sorts of maintenance in looking after her and her family as if her son. According to her, those promises and assurances were all false, came to her notice about a year prior to the filing of the suit when the Defendant neglected her and her daughter and sold away of her houses for Rs.8,000/-and grabbed away the entire money. So she had to bring it to the notice of the Gram Samiti and subsequent thereto, it was known that the Defendant had obtained the sale deed fraudulently and mutated the land in his name without her knowledge and consent of the Plaintiff by taking advantage of her illiteracy and simplicity abusing the confidence that she had reposed on her at that time. P.Ws. 2 to 5 are the co-villagers. They state that the Defendant was cultivating the land of the Plaintiff on her behalf and only when the Plaintiff complained before the village Committee about the neglect shown by the Defendant, it was known that the Defendant had created the sale deed.

The written statement is not specific on the point that the Plaintiff was correctly told and apprised of and made to understand the details of the document and its implication before her thumb impressions appeared thereon. The witnesses examined on behalf of the Defendant have not stated in clear terms in that light. The evidence on record do not disclose that the Plaintiff was having any independent advice at the time of execution of the document. On 2.4.2003 as stated by D.W.4, the Defendant himself, all had gone to Tahasil Office. The Plaintiff is said to have contacted the deed writer and the Defendant then had given a sum of Rs.10,000/- to the Plaintiff to purchase the stamp papers for registration. The stamp papers in total is worth Rs.9,100/-. This D.W.4

has stated to have then paid the rest amount of Rs.75,000/-. He states that in presence of Bimal Mistry and Rebati Ranjan Haldar, the deed was read over and its contents were explained to the Plaintiff and when asked about the receipt of consideration, the Plaintiff so agreed before them. The Plaintiff then agreed before the Sub-Registrar. This payment of consideration in two installments is not pleaded in the written statement. D.W.7, the deed writer has admitted that she has not seen the factum of payment of consideration by the Defendant to the Plaintiff. D.W. 2 Bimal Mistry has stated to have not seen Defendant giving money to the Plaintiff. The sale deed Ext. A shows that ten numbers of stamp papers have been used therein. The sale deed has been registered on 2.4.2003. Out of the ten stamp papers, two have been purchased on 29.3.2003; two on 30.3.2003; two on 31.3.2003 and the rest on 1.4.2003 and 2.4.2003. There is no explanation in removing this suspicious feature from the side of the Defendant rather he stated that on the very day i.e. 2.4.2003 the money being paid to the Plaintiff she, with the help of the same, purchased the stamp papers. Ext. A the sale deed does not contain the endorsement of the scribe as to who has taken thumb impression of the Plaintiff over the sale deed and it has not been so indicated in the very deed. The scribe has simply put her signature stating to have written the sale deed.

With all these evidence on record further having read, the lengthy paragraph-6 of the Trial Court's judgment as also the paragraph-8 of the judgment of the Lower Appellate Court, this Court finds absolutely no justification to hold that the Defendant has discharged the burden of proof as to execution of the said document by the Plaintiff. This Court thus finds no infirmity in the said finding recorded by the courts below in saying the findings of the Courts below cannot be sustained. Upon

thorough examination of the evidence, this Court also finds itself in full agreement with the finding of the Courts below on that score.

15. Next the Courts below on the admitted factual settings and circumstances further viewing the factors concerning the Plaintiff are found to have held the Defendant has failed to prove by leading clear, cogent and acceptable evidence that for said transaction the consideration of Rs.85,000/- had been paid to the Plaintiff which she had received. This being the factual findings concurrently recorded by the Courts below are hereby affirmed.

The next important aspect arises to address is whether the passing of title under Ext.A=Ext.3 was dependent upon passing of consideration or it was so independent. The recitals of the sale deed on that score are not found to be free from ambiguity in showing clear intention of the executant (vendor) in that regard. So now the said intention has to be gathered from the surrounding circumstances as those emerge from the evidence let in by the parties. Except the factum of mutation of the suit land in the name of the Defendant after few months of the existence of that impugned registered sale deed, no such other favourable and attending circumstance emanate to cull out the intention of the executants (vendor) that notwithstanding the passing of the consideration, she had intended that the title of the suit land involved under the transaction would pass on the hands of the Defendant (vendor).

In that view of the matter, this Court finds that the said concurrent findings of the Courts below are unimpeachable.

16. Coming to address the substantial question of law, it has been noted that the specific case of the Plaintiff that the Defendant was possessing the suit land and maintaining her and her family. While

disclosing the cause of action at para-11, of the plaint it has been stated as under:-

“That the cause of action for the suit arose in the year 1963 when the suit land along with other lands were allotted to the father of the plaintiff, and then in the year 1991 when final R.O.R. was issued in the name of deceased Santosh Kumar Bala the father of the plaintiff and after his death in the year 2000 when the Plaintiff became the absolute owner being only living heir of the recorded owner Santosh Kumar Bala. And then on 18.4.2003 when the Plaintiff came to know that the Defendant fraudulently managed to obtain the impugned sale deed and when the S.D.M., Malkangiri on 12.8.08 instructed plaintiff to take shelter in the Civil Court.”

But as the vendor (Plaintiff) remained in possession which has also been found from the evidence, that it was with the Defendant as her agent, the limitation starts running from the date when over the property, the Defendant claimed the right as its owner as to have purchased the same and thereby the dispossession was sought to be made, there thus was no need for the Plaintiff to file a suit resorting to Article 59 of the Indian Limitation Act. The right of the Plaintiff being disputed by said dispossession by the Defendant claiming as the owner by so-called purchase, the suit too is not found to be hit under Article 56 of the Limitation Act. Thus, this Court is of the considered opinion that in the facts and circumstances, the provision of Article 56 and 59 of the Indian Limitation Act do not stand as a bar for entertainment of the suit for the reliefs claimed.

Accordingly, the substantial questions of law receive their answers against the Plaintiff and claim of the Defendant and in favour of confirming the judgments and decrees passed by the Courts below.

17. In the wake of aforesaid, the Appeal stands dismissed. There shall, however, be no order as to cost.

***(D. Dash),
Judge.***

Aksethy

