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**(2018) 04 OHC CK 0108**  
**In the Orissa High Court**  
**Case No : SA No.229 of 1994**

SAMBHU SETHI AND OTHERS

APPELLANT

Vs

MADHUSUDAN TARIA AND OTHERS

RESPONDENT

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**Date of Decision :** 30-04-2018

**Acts Referred:**

**Citation :** (2018) 04 OHC CK 0108

**Hon'ble Judges :** DR. A.K. RATH

**Bench :** Single Bench

**Advocate :** D.P. Mohanty, R.K. Mohanty, Sumitra Mohanty

**Final Decision :** Allowed

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## **Judgement**

Dr. A.K.Rath, J.

1. Defendants are appellants against a reversing judgment.
2. Mst. Dulana, predecessor-in-interest of the respondents, as plaintiff instituted the suit for a declaration that the registered gift deed dated 12.6.1985 is void, confirmation of possession or in the alternative for recovery of possession, if she is dispossessed from the suit land and permanent injunction.
3. An area of Ac.8.51 dec. of land appertaining to Khata No.169/107 and Ac.0.15 dec. of land appertaining to Khata No.127 of Mouza-Marjakud, District-Boudh is the subject-matter of dispute. Case of the plaintiff is that the suit land belonged to her father. After the death of her father, she succeeded to the same. She was issueless. She brought defendant no.1 to her house to look after the cultivation. Gradually defendants shifted their family members to her house. They used to reside in the suit house. She was a rustic illiterate woman. Defendant no.1 and his father brought the plaintiff to Boudh to execute the mortgage deed for securing a loan from the

Government. On the pretext of mortgage, they managed to execute the gift deed on 12.6.1985. She could know the same on 18.4.1987, when the defendants 1 and 2 approached the settlement authorities. With this factual scenario, she instituted the suit seeking the reliefs mentioned supra.

4. Defendants filed a written statement stating, inter alia, that the plaintiff was an intelligent woman. She was able to read and write Oriya. She

alienated Ac.4.41 dec. of land to one Rama Majhi by means of a registered sale deed dated 24.10.1959, vide Ext.B. She was treating defendant no.1

as son. She had incurred a loan from the Cooperative Bank, Athamallik. As a friendly gesture, defendant no.2 gave her Rs.10,000/- to repay the loan.

She brought defendant no.1 to her house. She was looked after by defendant no.1. She executed the gift deed in favour of defendant no.1 and

delivered possession. The gift deed was acted upon.

5. Stemming on the pleadings of the parties, learned trial court framed eleven issues. Parties led evidence, both oral and documentary. Learned trial

court dismissed the suit holding, inter alia, that the plaintiff purchased the stamp papers on 10.6.1985 and instructed the scribe to scribe the deed. She

put her signature in the registered sale deed executed by her in favour of one Rama Majhi in the year 1959, vide Ext.B. She put her signature in the

gift deed dated 12.6.1985, vide Ext.A. She was not an illiterate Paradanashin lady. The plaintiff had failed to prove fraud. The gift deed had been

acted upon. The plaintiff was in sound disposing state of mind. She executed the gift deed out of her own volition and will. Gift deed is a valid one.

Defendant no.1 has right, title and interest over the suit land. Donee is in possession of the land and house. Felt aggrieved, the legal heirs of the

plaintiff filed Title Appeal No.4 of 1993 before the learned District Judge, Phulbani. Learned appellate court came to hold that "So, this court is of

the view that Dulana was a self-styled illiterate lady, devoid of getting independent advice although". Defendant nos.1 and 2 have not breathed a

word that the gift deed was explained to Dulana before she put her signature. Fraud had been practised on the donor. Placing reliance on the decision

of this Court in the case of Krushna v. Kami, 1988 (2) OLR 582, learned appellate court allowed the appeal. It is apt to state here that during

pendency of the suit, the sole plaintiff died, whereafter her legal representatives have been substituted.

6. The second appeal was admitted on the following substantial question of law;  
â??Whether the lower appellate court committed error in holding that the doner of the properties under Ext.A was a paradanashin lady which was  
contrary to the evidence on record and therefore wrong in decreeing the plaintiffâ??s suit.â??

7. Heard Mr. D.P. Mohanty, learned counsel for the appellants and Mr. R.K. Mohanty, learned Senior Advocate along with Ms. Sumitra Mohanty, learned counsel for the respondents.

8. Mr. Mohanty, learned counsel for the appellants submitted that the plaintiff was not examined as a witness. Learned appellate court has discarded the evidence of D.Ws.1 and 3 regarding relationship of the plaintiff on the ground that the plaintiffâ??s classmates had not been examined. The

plaintiff used to sell vegetables in the market. She alienated Ac.4.41 dec. of land to Rama Majhi in the year 1951 by means of a registered sale deed.

She attended the office of the Registrar. Learned trial court has rightly held that the plaintiff was not an illiterate lady. But then, the learned appellate court upset the same on untenable and unsupportable grounds.

9. Per contra, Mr. Mohanty, learned Senior Advocate for the respondent no.1 submitted that the appellate court is a final court of fact. On an

assessment of the evidence on record and pleadings learned appellate court held that the plaintiff was an illiterate lady. Fraud had been played on her.

It is highly inconceivable that the plaintiff will execute a gift deed in favour of a stranger. He further submitted that on 26.6.1996 the appellants were

appointed as receivers of the suit schedule property subject to deposit of a sum of Rs.10,000/- for each year commencing from 1995-96. Since the

amount was not deposited, they were discharged from the receivership on 9.4.2008. In view of the same, the appellants were directed to deposit the

amount before the court below. He placed reliance on the decision of this Court in the case of Ichhabati Mohanty v. Bishnu Charan Paital AIR 1983

Orissa 59.

10. On a bare perusal of the gift deed, vide Ext.A, it is evident that Mst. Dulana put her signature. The contents of the gift deed were read over and

explained to her and after understanding the same, she put her signature. On an anatomy of the pleadings and the evidence on record, learned trial

court held that the plaintiff purchased the stamp papers of the deed on

10.6.1985. She instructed the scribe to scribe the deed. She had executed the gift deed in the sound disposing state of mind. No fraud had been played. But then, the appellate court upset the finding holding that "So, this court is of the view that Dulana was a self-styled illiterate lady, devoid of getting independent advice although". What is the meaning of "self-styled illiterate lady". Does it mean that she is a literate and projects herself an illiterate lady? The law only protects an illiterate woman, not self-styled illiterate woman. The finding is perverse. Learned trial court has rightly held that the plaintiff was not a Paradanashin lady and no fraud had been played.

11. The decision in the case of Krushna Patra (supra) is distinguishable on facts. This Court held that protection effected to a Paradanashin lady is also applicable to an illiterate lady. There is no quarrel over the proposition of law. As held above, the plaintiff is not an illiterate lady. The substantial question of law is answered accordingly. 12. The next question crops up as to whether a direction can be issued to the appellants to deposit the arrear amount in the court below. Since the appeal is allowed and in the event the amount is deposited, the appellants shall withdraw the same. It will be an exercise in futility. Thus the order dated 9.4.2018 directing the appellants to deposit the amount is recalled.

Â 13. In the wake of the aforesaid, the impugned judgment is set aside. The appeal is allowed. There shall be no order as to costs.