

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION;

BHUBANESWAR

C.S. No. 73 / 2024

In the matter of;

Upendra Kumar Prusty

.....Plaintiff

Vs

Saraswati Ghosh

.....Defendant

**WRITTEN STATEMENT-cum-COUNTER CLAIM ON BEHALF OF
DEFENDANT**

The defendant states as follows:-

1. That the plaintiff filed aforesaid suit for eviction of the defendant from the suit scheduled property.
2. That the suit is not maintainable in law as well as in its present form as also on facts.
3. That the suit is barred by the principles acquiescence and estoppel.
4. That the proceeding is vitiate as no cause of action arises to bring this proceeding.
5. That the suit is misconceived, and suppression of facts so cannot be entertained by the learned court.
6. That the suit is speculative, harassing and for the purpose of squeezing money the suit has been falsely instituted by claiming eviction from the property.
7. That the suit is bad for misjoinder of necessary parties.

8. That the plaintiffs have got no right or locus standi to claim possession as the plaintiff's title is disputed in F.A. No. 98 of 2024 pending before the Learned District Judge, Khurda at Bhubaneswar.
9. That save and except what are specifically admitted in this written statement, these defendant emphatically denies the allegations made in the plaint and put the plaintiff to the strict proof thereof.
10. That for proper appreciation of the facts of the case and for affecting adjudication as well as counter claim these defendant state and submit:-
 - I. The plaintiff's vendor Balakrushna Sahoo who was allotted House bearing No. S-3/220-221 (Ground Floor & First Floor) by the BDA on entering an agreement for sale with BDA on dated 08.10.1993.
 - II. On 30.10.1996 the plaintiff registered Irrevocable Genral Power of Attorney (GPA) in favour of husband of the defendant Late Basant Kumar Ghosh with consideration of amount Rs. 2,36,554/- (Two Lakhs Thirty Six Thousand Five Hundred Fifty Four). As per conditions in GPA the petitioner has all rights as owner except the conditions laid down by the BDA in agreement for sale.
 - III. The Husband of the present defendant died on 2002. Thereafter Balakrushna Sahoo vendor of the present plaintiff further demand more money to register irrevocable power of attorney in favour of the defendant. The petitioner is poor widow lady having two child at that time, she could not arrange money as per demand of Balakrushna Sahoo. Having many difficulties taking hand loan with interest paid to Balakrushna Sahoo for registration of GPA. On 16.01.2008 the plaintiff registered irrevocable general power of attorney in favour the defendant.

- IV. The said General Power of Attorney (GPA) submitted to the BDA for acceptance. BDA vide Letter No.28600/BDA, Bhubaneswar Dated 24.12.2012 asked Balakrushna Sahoo to furnish affidavit to the effect of acceptance of GPA deed No. 586/ dtd. 16.01.2008 registered in favour of the defendant.
- V. On dated (Nil) Balakrushna in reference to letter dated 24.12.2012 filed affidavit to the BDA for acceptance of GPA dtd 16.01.2008 executed and registered in favour of the defendant.
- VI. After acceptance of GPA dtd 16.01.2008 BDA had requested the defendant to submit documents and fees for registration of lease deed in her favour. Accordingly the defendant submitted all documents and fees on 21.05.2013 for registration of lease deed in her favour.
- VII. After submission of documents the BDA vide letter No. 27573/BDA dated 11.07.2013 informed the defendant to be present in the house for inquiry and accordingly inquiry was done for the purpose of registration of lease deed in favour of the defendant.
- VIII. Thereafter BDA asked the defendant to wait for notice of registration of lease deed. Suddenly on 11.07.2018 Vide Letter No. 19552/BDA returned the documents submitted by the defendant for registration of lease deed. It was stated therein that original allottee(Balakrushna) was intimated to submit documents for registration of lease deed. It is beg to state here that at that point of time GPA dtd 16.01.2008 has been in force. It is clear that the Balakrushna being influenced by present plaintiff illegally returned the documents to the defendant by the BDA to defeat her interest over the property.

- IX. Having received the said notice the defendant raised her objection through legal notice dated 06.08.2018 before the BDA. After that BDA has not proceed further and also not addressed to the objection of the defendant for which the present plaintiff managed to get over the property.
- X. The defendant did not receive her deposited fee for registration of lease deed. In the mean time on 22.12.2020, Balakrushna intentionally by doing fraud managed to get registration of lease deed in his favour without any notice to the defendant. The BDA also did not issue notice to the defendant having known that there is existence of GPA and by virtue of GPA the defendant has right to know about the property. It is also stated here that the plaintiff committed fraud taking into innocence of defendant widow poor lady .
- XI. On 01.10.2021, Balakrushna served pleader notice asking the defendant come for cancellation of GPA as the Balakrushna already got registration of lease deed. The said registration itself is bad in law as no transaction can be made unless earlier registered deed is cancelled or declared void by the competent court arising out of same property. Even if Balakrushna got the property, as per GPA the defendant has right over the property. In this case GPA was in force when the registration of lease deed was done. The plaintiff and BDA both committed irregularity doing this fraudulent act.
- XII. On 07.03.2022 the defendant received notice in C.S. No. 404/2022 from this Hon'ble Court filed by the Balakrushna for revocation of GPA. The defendant was asked to appear on 29.03.2022.

11. After received of notice in the aforementioned case, the defendant contacted **Madhu Madhab Jena, Advocate** to appear on her behalf and conduct the case on her behalf. She had also signed two vakalatnama authorizing learned Advocate to appear in Civil Suit and other one for filing 1.C.C. case against the Balakrushna and BDA.
12. That the aforesaid advocate could not appeared in the aforesaid suit proceedings and the suit was decreed ex-parte. Ex-parte decree was not in the knowledge of the defendant. After receipt of pleader notice on 17.10.2023 on behalf of the present plaintiff, the defendant came to know that her power of attorney was challenged and the same is cancelled vide ex-parte decree in C.S. No. 404/2022. Knowing the same the defendant filed CMA No. 234/2023 U/o-9, R-13 CPC for setting aside Ex-parte decree. The CMA was filed having delay. The delay was not condoned by the learned trial court and the CMA was dismissed. Being aggrieved by the same the defendant filed F.A.O. No. 98 of 2024 before the learned District Judge, Bhubaneswar which is yet to be admitted.
13. That although present defendant have right to counter claim of such property as her right was exhausted by the Ex-parte decree and the same is challenged the before the learned court in F.A. No. 98 of 2024. So there is every chance of restoration of suit for fresh adjudication. As there is GPA exists in favour the defendant she will have all rights of possession of suit scheduled property.
14. That the defendants reserves right to counter claim of possession over the suit property and title as per GPA registered in her favour by the vendor of the present plaintiff. Also the defendant reserves right to raise other grounds at the time of hearing.
15. That with regard to eviction is concerned the defendant state to submit that there is no cause of action and the cause of action alleged never arose on the alleged date and place and there being no cause of action the suit is

liable to be dismissed with costs. The suit is speculative, harassing and manufactured one.

16. That the plaintiffs have not valued the suit property and not paid the sufficient court fees. The counter claim valued of Rs. 50,000/- for possession. As the defendant is a lady is exempted from court fees.

17. That in the circumstances the plaintiffs suit is liable to be dismissed with costs of these defendants those are entitled to retain scheduled properties according to law.

VERIFICATION

I, Saraswati Ghosh, aged about 43 years, W/o- Late Basant Kumar Ghosh , House No. S-3/220-221 (FF), BDA Chandrasekharpur Phase-II, Housing Scheme, Niladri Vihar, P.O.- Sailashree Vihar, Bhubaneswar, Dist- Khurda, Pin- 751021, do hereby verify that the contents from paras 1 to 11 are correct and true to the best of my knowledge and 12-17 the rest of the contents are based on legal advice, which I believe to be true. Affirmed at Bhubaneswar this 23rd Day of August 2024.

VERIFICANT

AFFIDAVIT

I, Saraswati Ghosh, aged about 43 years, W/o- Late Basant Kumar Ghosh , House No. S-3/220-221 (FF), BDA Chandrasekharpur Phase-II, Housing Scheme, Niladri Vihar, P.O.- Sailashree Vihar, Bhubaneswar, Dist- Khurda, Pin- 751021, do hereby solemnly affirm state as follows:

1. That I am the defendant in this case.
2. That the facts stated above are correct and true to the best of my knowledge.

Identified by

Deponent

Advocate