

IN THE HIGH COURT OF ORISSA AT CUTTACK

S.A. No.140 of 2002

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 05.01.2002 and 16.01.2002 passed by the learned Additional District Judge, Kendrapara in Title Appeal No.16 of 1995 confirming the judgment and decree dated 25.02.1995 and 28.03.1995 respectively passed by the learned Civil Judge, Senior Division, Kendrapara in Title Suit No.45 of 1988.

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Natabar Nayak (Since Dead) Appellants
through his LRs and Others

-versus-

Sri Kama Charan Nayak (Since Dead) through his LRs and Others ***Respondents***

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellants - Mr.N.C. Pati and
Mr.Budhiram Das
(Advocates)

For Respondents - Mr.R.K. Mohanty,
Senior Advocate

CORAM:
MR. JUSTICE D.DASH

Date of Hearing : 16.05.2022 :: Date of Judgment:20.06.2022

The Appellants, by filing this Appeal under Section- 100 of the Code of Civil Procedure (for short, ‘the Code’) have assailed the judgment and decree dated 05.01.2002 and 16.01.2002 passed by the learned Additional District Judge, Kendrapara in Title Appeal No.16 of 1995.

By the same, the Appeal filed by these Appellants, as the unsuccessful Defendants in challenging the judgment and decree dated 25.02.1995 and 28.03.1995 respectively passed by the learned Civil Judge, Senior Division, Kendrapara in Title Suit No.45 of 1988, has been dismissed whereby the judgment and decree passed by the Trial Court in decreeing the suit filed by the Respondent No.1 as the Plaintiff declaring his right, title and interest and possession over the property described in Schedule-Gha of the plaint and holding these Appellants (Defendants) as having no manner of right, title and interest over the same, having not so acquired by virtue of their purchase under the registered sale deed dated 26.10.1981, have been confirmed.

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 Suit.

3. The Plaintiff's case is that the property described in Schedule-Ka of the plaint was the ancestral property of his father, namely, Sricharan Nayak and it was recorded in his name in C.S. ROR. The Plaintiff was serving at Calcutta and Bhagalpur since 43 years prior to institution of the suit and used to regularly remit money to his father. It is stated that out of the said funds provided by the Plaintiff, his father acquired the property in Schedule-Kha in his name. The properties described in Schedule-Ga, which are movables are also stated to have been purchased by spending the money which was being sent by the Plaintiff.

It is next stated that the property described in Schedule-Kha of the plaint was blended with Schedule-Ka properties being thrown to the common stock and properties of both the schedules, those were being treated as joint family properties. The dissension having arisen between

the Plaintiff and Defendant No.1, who are the brothers and son of Sricharan in the year 1971, they began to live in separate mess having separate residence. In the presence of village gentlemen, partition of Schedule-Ka and Kha property had taken place. It was done amicably by metes and bounds wherein Schedule-Gha property fell to the share of the Plaintiff and Schedule-Una properties fell to the share of Defendant No.1. On 09.05.1975, in acknowledgement of the said amicable partition, which had taken place in the year 1971 one 'Kachha Farda' had been prepared wherein their father and other gentlemen signed. It is stated that since the parties possessed their properties, as allotted to them in their share, the possession was separate as of their share. Schedule-Ga properties remained with their parents towards the maintenance of the parents by the two brothers in turn. The Plaintiff, when returned to the village, the Defendants 2 and 5 claiming to have purchased the same lands from his father and began to interfere with his possession over Schedule-Ga properties. It was then, on enquiry, came to be known that Defendant No.1 fraudulently obtained a sale deed in the name of his sons, i.e., Defendants 2 to 5 from the father of the Plaintiff, namely Sricharan. It was registered at Cuttack instead of Marsaghai. It is stated that said sale was without any consideration to serve the mischievous purpose of depriving of the Plaintiff of his legitimate claim and share.

4. The Defendants 1 and 5, in their joint written statement, while traversing the plaint averment, sated that Schedule-Kha properties is the self-acquired property of Sricharan, which he acquired from out of his own income by selling milk and carrying on business of grains as well as by incurring loan to some extent. It is, however, stated that the Plaintiff was getting a meager salary and he was never sending any

money to his father whereas he was all along staying at the place of his service with his family and it is Defendant No.1, who used to meet all such expenses here. He also met such expenses in the performance of obsequies of his parents. It is averred that Sricharan sold Schedule-Kha to Defendants 2 to 5 on receipt of valuable consideration of Rs.7000/- on 26.10.1981 and accordingly, the land has been recorded in their names in the current settlement record. The factum of execution of 'Kachha Farda' in the year 1975 has been denied and it is contended that Defendant No.1 had handed over some blank papers to the Plaintiff at Chowdwar with his signatures and thump impressions, which he had converted as such in projecting those as 'Kachha Farda', which too is invalid for want of registration and as such inadmissible for being looked into for any purpose whatsoever. It is further stated that they had never acted upon the said document.

5. The Trial Court, faced with the above rival pleadings, having framed 8 issues, has first of all arrived at a conclusion that 'Kacha Farda' admitted in evidence and marked Ext.1 is not a deed of partition, but a document evidencing the family arrangement, as had been made four years before and as such does not require to be registered. Thus, the sale deed dated 26.10.1981 (Ext.R) has been held to be void and it is said that the vendors, under the said sale deed, have not been conferred with any title over the land involved thereunder and as such it is not required to advance a prayer for declaration of title over the said land. Having said so, the right, title, interest and possession of the Plaintiff over Schedule-Gha land has been declared. The suit thus having been decreed, as aforesaid, the Defendants 1, 2, 4 and 5, having carried the First Appeal have been unsuccessful.

It may be stated here that the original Appellant before this Court, Natabara Nayak, who was the Defendant No.1 in the Trial court and Appellant No.1 before the First Appellate Court having died his legal representatives, have come on record in joining with other parents to pursue the Appeal.

6. The present Appeal has been admitted on the following substantial question of law:-

“Whether the Courts below are right in admitting the unregistered document (Ext.1) in evidence and relying upon the same in support of the case of the Plaintiff that his father, namely, Sricharan Nayak, was then having no title over the properties, which he sold by him by registered sale deed (Ext.R) to the Defendant Nos.2 and 5 that had already been allotted towards the share of the Plaintiff in an amicable partition held in the year 1971 subsequently reducing into writing for the sake of evidence under (Ext.1).”

7. Mr.B.Das, learned counsel on behalf of Mr.N.C.Pati, learned counsel for the Appellants submitted that the above concurrent finding of the Courts below that Schedule-Kha property was the property acquired by Sricharan with the money provided by the Plaintiff is the outcome of perverse appreciation of the evidence on record. He submitted that when the Plaintiff in a vague manner, has stated that he was sending money at different point of time to his father Sricharan from his service place, the same ought not to have accepted as without any supporting document when the acquisition of the said land admittedly has been made in the name of Sricharan carrying a presumption as such. He, therefore, contended that the Courts below ought to have held that the property in Schedule-Kha to be the self-acquired property of Sricharan and accordingly, the sales made by him

when have been proved through evidence, the right, title and interest of the purchasers, i.e, the Defendants 2 to 5 ought to have been declared.

8. Mr.R.K.Mohanty, learned Senior Counsel for the Respondents submitted that the above finding of fact that Schedule-Kha property although stands purchased in the name of Sricharan that it was with the aid of the funds provided by the Plaintiff having been concurrently rendered by the Courts below, there surfaces no such perversity for being interfered with in the Second Appeal. He further submitted that practically that question has no significance in the case when the subsequent fact stands proved through evidence that there was an amicable partition amongst the parties in the year 1971, which was evidenced by a document, i.e., 'Kachha Farda' (Ext.1), which is merely a list of properties stated to have been fallen in the share of the parties in the prior amicable partition by metes and bounds held amongst them. He submitted that the said document (Ext.1) does not require registration as by that document, in fact no partition has taken place and by the same, only the prior partition being acknowledged has been reduced to writing for the sake of evidence. According to him, when the blank paper theory projected by the Defendants that Ext.1 has been so created utilizing the signed blank papers given to the Plaintiff has not been proved by leading clear, cogent and satisfactory evidence of higher degree and more-so, when no such explanation has been given by the Defendants as to why such signed blank papers were given to the Plaintiff and to serve what purpose, the final decision in the suit and First Appeal that the Plaintiff has the right, title, interest and possession over the suit land are to hold the field.

10. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint, written statement and have perused the evidence both oral and documentary adduced by the parties.

11. There stands no dispute that Schedule-Kha property is the ancestral property of the parties. It is also not disputed by the Plaintiff that Schedule-Kha property had been purchased/acquired in the name of Sricharan. When the Plaintiff contends that he contributed the amount paid towards the consideration for such purchase of the lands in Schedule-Kha, the Defendants 1 to 5 claim that Sricharan, by spending money from his own income, had so purchased the land. All these purchases appear to be stretching over a period. The Courts below, on analysis of evidence, have arrived at a conclusion that Sricharan was having no separate income so as to be enough to acquire Schedule-Kha properties.

It has come in evidence that Schedule-Kha properties, which was the ancestral properties in the hands of Sricharan was measuring Ac.1.93 decimals and it was in a flood affected area, which has not only been averred in the written statement, but also stated by D.W.2 when D.W.6 has also stated that there was no surplus income from out of said ancestral property. But that alone is not sufficient to hold that it is not the property of Sricharan but of the person/s who contributed towards the consideration. In case of purchase of immovable property; the person/persons just paying the consideration cannot become the beneficiary of the transaction unless it is established that they thereby were the real beneficiary and the person named as vendee was merely a name lender, i.e., benamdar and for that the surrounding circumstances

as to the parties and properties must be so clinching when in this case at hand are not so.

When the evidence stands thus, the Plaintiff has also come up with the case that Schedule-Kha properties were amicably partitioned in the year 1971 and parties having accordingly possessed the same pursuant thereto, in the year 1975, the 'Kachha Farda' (Ext.1) had been prepared wherein the Plaintiff, Defendant No.1 and their father Sricharan are the parties and by that the prior partition between them in metes and bounds which had taken place in the year 1971 was admitted and the list of the properties under the separate possession of the parties, pursuant to the said partition, had been prepared. When the Defendants have taken the plea of blank paper theory to nullify the effect of Ext.1, it appears that the Plaintiff as also the Defendant No.1 and their father with local gentlemen have put their signatures. The document being examined, apparently no such suspicious/doubting feature is marked. The tenor of writing, the place of putting of the signatures being marked, do not give hint that the writings have been managed within the space so available. The Defendants have not pointed out any such features so as to push the document under thick cloud. The Courts below, in my considered view, thus are right in accepting that document in question as the partition list, which in view of the settled position of law, is not a compulsorily registerable document so as to hold that the same has been improperly admitted in evidence and thus to be ignored. The document being merely a document evidencing the previous partition of the properties between the parties, the Courts below are right in relying upon the same in holding the case of the Plaintiff to have been proved on that score. So, if it is accepted as such, then Sricharan was having no right, title and interest over the said property, by the time it is

stated to have been sold by him by executing registered sale deed dated 26.10.1981 (Ext.R) in selling the same to Defendants 2 to 5.

In that view of the matter, the Courts below are found to have not committed any error in holding Ext.R as void and to have not clothed Defendants 2 to 5 with any title in respect of the land cover thereunder and merely because this Ext.R is a registered sale deed, the Courts below in the above circumstance when the vendor had no title over the property in question are right in holding that to be of no aid and assistance to the claim of the Defendants 2 to 5 over the properties covered thereunder. The substantial question of law is accordingly answered in favour of the case/claim of the Plaintiff over the suit properties, which in turn goes to confirm the judgments and decrees passed by the Courts below in holding the present Appeal to be devoid of merit.

12. In the result, the Appeal stands dismissed. There shall, however, be no order as to cost.

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

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