

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.462 of 2005

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree dated 05.08.2005 and 20.08.2005 respectively passed by the learned District Judge, Cuttack in R.F.A. No.114 of 2003 confirming the judgment and decree dated 28.08.2003 and 19.02.2003 respectively passed by the learned Civil Judge, Junior Division, 1st Court, Cuttack in T.S. No.471 of 2001.

Minati Sethi & Others

....

Appellants

-versus-

*Sachidananda Das @
Sachinandana Das & Another*

....

Respondents

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

For Appellants - M/s.P.K.Sahoo, A.Ch. Mohapatra and
A.K. Panda
(Advocate)

For Respondents - M/s.D.P.Mohanty, R.K. Nayak,
B.Das, T.K. Mohanty,
P.K.Swain & M.Pal
(Advocate for R.4)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 29.06.2022 : Date of Judgment:04.07.2022

D.Dash,J. The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 05.08.2005 and 20.08.2005 respectively passed by the learned District Judge, Cuttack in R.F.A. No.114 of 2003.

By the same, the Appeal filed by the present Appellants, being the unsuccessful Plaintiffs before the Trial Court under section 96 of the Code has been dismissed and thereby the judgment and decree dated 28.08.2003 and 19.02.2003 respectively passed by the learned Civil Judge, Junior Division, 1st Court, Cuttack in T.S. No.471 of 2001, 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 Trial Court.

3. The Plaintiffs' case is that one Gopaljew Thakur was the owner of Schedule-A property. The Marfatdar Harekrushna Das, who happens to be the father of Defendant No.2 and grandfather of Defendant No.1, had executed registered sale deed dated 29.05.1970 in favour of Defendant No.1 then a minor represented by his father guardian (Defendant No.2). Subsequently, the Defendant No.2 executed a sale deed in favour of one Rabindra Kumar Sethy, the husband of Plaintiff No.1 and father of Plaintiff Nos.2 to 5 for a consideration of Rs.4750/- concerning the land of an area of Ac.0.10 decimals, which is the subject matter of the suit as described in Schedule-B of the plaint. It is stated that from the date of purchase of the suit land, said Rabindra remained in possession of the same and on his death, these Plaintiffs, being his legal heirs and successors, are in possession and enjoyment of the suit land. It is their case that as Rabindra was remaining away from his village and for most of the time staying at Angul for his business, he could not produce the sale deed before the Settlement Authority. So, the land in the suit stood recorded in the name of Hare Krushna Das, the Marfatdar of Deity in the settlement record. It is their case that the Defendants had all such

knowledge regarding the sale deed and the physical possession of the suit land. Taking advantage of the absence of Rabindra, the Defendant No.1, with a view to grab the property, instituted a collusive suit, i.e., T.S. No.196 of 1987 in the Court of the learned Civil Judge, Senior Division, First Court, Cuttack impleading his father as the Marfatdar of the Deity, namely, Gopaljew Thakur. The prayer was for correction of the Hal Record of Right by including the name of Defendant No.1 as the owner of Schedule-A property, which includes Schedule-B property. The suit was decreed in terms of the compromise on 25.01.1990. The Plaintiffs having no knowledge about the suit and its disposal, as aforesaid, when found the Defendants to be in a mood to forcibly dispossess them from the suit land in Schedule-B, the suit has come to be filed.

4. The Defendant No.1, coming to contest the suit, in his written statement, has questioned the validity of the sale deed projected by the Plaintiffs as the document of title in respect of the suit land on the ground that it is void in the eye of law as the same was not with the prior permission/sanction of the Court, as mandatorily required under law. It is his case that he has been all along in possession of the suit land.

5. On the above rival pleadings, the Trial Court framed as many as eight issues. Coming to answer all those issues, upon examination of the evidence and their evaluation, it has been held that the sale deed (Ext.3) executed by Defendant No.2 in respect of the suit land is invalid in law being not with prior permission of the Court, as required under Hindu Minority and Guardianship Act, 1956 (for short, 'the HMG Act') and, therefore, the Plaintiffs have not acquired any right, title and interest over the suit property through that Ext.3. The next important answer has

been that the Plaintiffs have failed to prove that they were/are in possession of the suit property at any given point of time. The suit having been dismissed, the Plaintiffs being non-suited the Trial Court, had carried an Appeal, which too stands dismissed.

6. This Appeal has been admitted on 28.07.2010 to answer the following substantial questions of law:

“(A) Whether the Courts below are justified in saying that a minor was not required to file a suit within three years of his attaining majority, to set-aside the alienation Ext.3?”

7. Mr.P.K.Sahoo, learned Counsel for the Appellants submitted that Defendant No.1, having not filed the suit to set aside the sale deed (Ext.3) by which his father (Defendant No.2) acting as guardian of Defendant No.1, has sold the suit land to Rabindra, the predecessor-in-interest of the Plaintiffs, the Courts below ought not to have declared the said sale as invalid as such a sale being not void but voidable, has not been so avoided by the Defendant No.1 within the time period prescribed under Article 60 of the Limitation Act. He further submitted that the Courts below are not at all right in saying that the Defendant No.1 has in any way has avoided the said sale. He submitted that the findings of the Courts below that the Plaintiffs have failed to prove that they are in possession of the suit land are untenable being wholly contrary to the evidence on record and having resulted from perverse appreciation of evidence.

8. Mr.D.P.Mohanty, learned counsel for the Respondents submitted all in favour findings recorded by the Courts below. According to him, the concurrent finding of the Courts below that the Plaintiffs are not in possession of the suit property, which also stands inferred from the very

nature of the suit and the reliefs claimed when firmly holds the ground as there surfaces no such perversity therein, the conclusion arrived at by the Courts below is absolutely right that the Defendant No.1, even without filing the suit within three years of his attaining majority in challenging the said sale deed and getting a declaration to the effect that the same is void, can successfully thwart the suit has to sustain. He further submitted that the Courts below are right in dismissing the suit when the sale deed (Ext.3) has been rightly found to be void and the Plaintiffs to be not in possession of the suit land.

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

10. It is the case of the Plaintiffs that the Defendant No.2, being the father guardian of Defendant No.1, has executed the registered sale deed on 11.04.1975 in favour of Rabindra Kumar Sethy, the predecessor-in-interest of the Plaintiffs and he had been delivered with the possession of the suit land. The Defendant No.1 has challenged the sale deed to be void as it offends the provision of sub-section (2) of section 8 of HMG Act. Admittedly, the Defendant No.1 has not filed any suit impeaching the said sale transaction under Ext.3 as void on the ground that it was not with prior permission/sanction of the Court as required under sub-section-2 of section-8 of the HMG Act within the prescribed period of limitation.

11. The provision of law is well settled that as required under sub-section-2 of section-8 of the HMG Act, sanction of the Court is required to be taken for alienation of the land belong to/owned by the minor when his guardian proposes to sell the same and to finally sale the same.

12. In the given case, the Plaintiffs cannot and rather stand precluded to dispute the title of the suit land resting in favour of Defendant No.1 as they themselves are the beneficiaries under that sale deed executed by Defendant No.2 as the father guardian of Defendant No.1 in their favour. There was no prior sanction of the Court for the said sale transaction concerning the land of the minor. The provision of sub-section-3 of section-8 of HMGA is clear that such transaction stands voidable at the instance of the minor. The question as to when it can be said that the minor has avoided the said sale has been answered in catena of decision of Hon'ble Apex Court as well as this Court in saying that it would be open for the minor on attaining majority to avoid such sale by unilateral conduct or by filing a suit to set aside the sale. One such conduct may be to sell the same property to another person ignoring the sale by the guardian. Then if the minor is remaining in possession of the said property, he is not required to set aside the sale deed by filing a suit as required within the time stipulated under Article 60 of the Limitation Act. (Ref:- Chaniram Sahu –V- Samaru Nag and after him Murali Nag and others; 65 (1988) CLT 56 and Brundaban Mohanty –V- Abakash Rout; 75 (1993) CLT 522).

13. Coming to the case at hand, it is seen that the concurrent findings have been rendered by the Courts below that the Plaintiffs are not in possession of the suit land and the possession of the suit land rests with the Defendant No.1 as established through evidence. The First Appellate Court has, therefore, rightly proceeded to judge the sustainability of that finding of the Trial Court on the question of possession of the suit land. By referring to the evidence on record and undertaking an exercise of in-depth examination when on one hand, the Plaintiffs have not proved any document in support of their possession of the suit land and the

neighbouring land owners have not been examined from the side of the Plaintiffs and on the other hand the Defendant No.1 has filed the rent receipts and examined the neighbouring land owners to prove his case, it has arrived at a conclusion that the Plaintiffs are not in possession of the suit land but it is Defendant No.1, who is in possession of the suit land. This Court, on a careful reading of the evidence on record, finds no such perversity on the part of the Courts below in returning such a finding.

In that view of the matter, the answer to the substantial question of law is returned against the case/claim of the Plaintiffs, which thus leads to confirm the judgments and decrees passed by the Courts below.

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

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