

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.140 of 2016

Sushree Rashmi Rekha Mohanty* *Appellant

M/s. A. K. Mohapatra-1 and associates, Advocates
-versus-

Sarojini Panigrahy and others* *Respondents

Mr. Ashutosh Mishra, Advocate for Respondents 1 and 2

**CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH**

**ORDER
19.10.2022**

Order No.

I.A. No.831 of 2018

04. 1. For the reason stated, the application is allowed. The Intervener is permitted to assist the Court by placing its submissions.

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2. Aggrieved by an order dated 17th February, 2016 passed by the learned Single Judge allowing W.P.(C) No.527 of 2012 filed by the Respondents 1 and 2 herein, the Appellant has filed the present appeal.

3. The said W.P.(C) No.527 of 2012 was filed by Respondents 1 and 2 questioning an order dated 10th July, 2008 passed by the Tahasildar, Berhampur in Mutation Case (MC) No.9788 of 2007 directing that the record of rights (RoR) in respect of the land of a total area of Ac.0.542 decimals in Sabik Khata No.82, Plot

No.110 corresponding to original Hall Khata No.174/108, Hall Plot No.110 in Mouza-Nilakanthapur, Tahasil Berhampur, District Ganjam be recorded in favour of the present Appellant. It was averred in the writ petition that the original owners—Purusottam Patra and Natabara Sahu had sold the land in question to Respondents 1 and 2 herein and their names were recorded in the RoR. Subsequently, the present Appellant had filed CS No.266 of 2006 in the Court of learned Civil Judge (Senior Division), Berhampur against certain persons, without making the original owners or the present owners as parties to the suit. A compromise decree was passed in the said suit allegedly in collusion and on that basis, a mutation case i.e. MC No.9788 of 2007 was filed before the Tahasildar. The allegation was that in the proceedings in the aforementioned mutation case, a Vakalatnama was purportedly filed on behalf of the original owners—Natabara Sahu and Purusottam Patra on 1st July, 2008 and their no objection to the mutation in the RoR was recorded.

4. Both Respondents 1 and 2 i.e. the writ Petitioners were able to produce before the learned Single Judge, the copies of the death certificates of both Natabara Sahu and Purusottam Patra, which showed that their death to be on 24th September, 1990 and 4th June, 1993 respectively. Thus, the Vakalatnama produced before the Tahasildar on 1st July, 2008 (copy of which was also annexed to the writ petition as Annexure-4) purportedly showing that the said two persons had authorized the lawyer to appear on their behalf was clearly a fraudulent document.

5. Since fraud vitiates all transactions, the learned Single Judge has no hesitation in holding that the mutation of the RoR in favour of the present Appellant was *non est* and unsustainable in law.

6. Learned counsel for the Appellant submits that Respondents 1 and 2 had an efficacious alternative remedy of challenging the order of the Tahasildar before the Sub-Collector by way of an appeal and the writ petition therefore could not have been entertained.

7. Since this was a case of clear fraud having been played on the Tahasildar to get the mutation of the RoR in favour of the present Appellant, the learned Single Judge was justified in interfering with the said order in exercise of the jurisdiction under Article 226 of the Constitution of India.

8. The Court is not persuaded that any error has been committed by the learned Single Judge in entertaining and allowing the writ petition filed by Respondents 1 and 2. There is no merit in the present appeal and it is dismissed. The interim order passed earlier stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda