

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.232 of 2016

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 02.03.2016 and 16.03.2016 respectively passed by the learned 2nd Additional District Judge, Khruda in R.F.A. No.46 of 2013 confirming the judgment and decree dated 17.09.2013 and 30.09.2013 respectively passed by the learned Civil Judge, Senior Division, Khurda in C.S. No.141 of 2011.

Smt. Kiranabala Mandhata @ Mangaraj ***Appellant***

-versus-

Birajabala Mandhata & Another ***Respondents***

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

For Appellant - Mr.Soumya Mishra
(Advocate)

For Respondents - Mr.Bibekananda Bhuyan
(Advocate)

**CORAM:
MR. JUSTICE D.DASH**

Date of Hearing : 07.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellant, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 02.03.2016 and 16.03.2016 respectively passed by the learned 2nd Additional District Judge, Khruda in R.F.A. No.46 of 2013.

By the same, the Appeal filed by the present Appellant, being the unsuccessful Plaintiff, under section 96 of the Code has been dismissed. Thereby, the judgment and decree dated 17.09.2013 and 30.09.2013 respectively passed by the learned Civil Judge, Senior Division, Khurda in C.S. No.141 of 2011 have been confirmed. The Appellant, being the Plaintiff, has been non-suited when her suit against the Respondents (Defendants) for declaration, permanent injunction and correction of record of right has been dismissed.

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 Plaintiff's case is that the suit land originally belonged to one Upendra Mandhata. He had no son. The Plaintiff and Defendant are the two daughters of said Upendra. In the Consolidation Operation in the year 1998, the suit land stood recorded in their names with other co-sharers. It is stated that Defendant No.1 mischievously and fraudulently prepared the "NADABI PATRA" (deed of relinquishment) and obtained signatures of the Plaintiff in the Sub-Registrar's Office without her knowledge. It is further stated that the Plaintiff was having good relationship with the Defendants, i.e., her sister (Defendant No.1) and Defendant No.2, who is the adopted son of Mahendranath Mandhata. It is further pleaded that all said contents of that "NADABI PATRA" are false, fabricated and imaginary. The Defendants are said to have somehow managed to get their name recorded in the khata in respect of the suit land by deleting the name of the Plaintiff on the strength of that forged and fabricated "NADABI PATRA". When they came to create

disturbances over the peaceful possession of the suit by the Plaintiff, the suit has come to be filed.

4. The Defendants, entering appearance in the suit, neither have submitted the written statement nor participated in the hearing of the suit.

5. The Trial Court, on going through the evidence of the Plaintiff examined as P.W.1 and upon scrutiny of the “NADABI PATRA”, has ultimately held that the claim of the Plaintiff has no leg to stand. The suit has thus been dismissed.

The unsuccessful Plaintiff, having filed the First Appeal, has also failed in that move.

It may be stated here that before the First Appellate Court, the Defendants having entered appearance through their counsel, contended all in favour of the judgment and decree passed by the Trial Court against the case/claim of the Plaintiff.

6. The present Appeal has been admitted to answer the following substantial questions of law:-

“i. Whether the courts below are right in dismissing the suit filed by the present appellant as the plaintiff holding Ext.1 (Na Dabi Patra) to be genuine and valid as also having its play in the field on the face of the evidence placed from the side of the plaintiff as also the settled position of law more particularly, when the defendants who are the beneficiaries under the said deed (Ext.1) did not come forward to contest the suit?;

ii. Whether the finding of the lower appellate court that the suit is hit under Article 59 of the Limitation Act is legally tenable in view of the case as laid in the plaint as also the reliefs claimed?; and

iii. Whether in view of the final publication of the Record of Right in the Consolidation Operation in the year 1997, the suit as laid for the reliefs claimed is not entertainable in the eye of law?"

8. Learned counsel for the Appellant submitted that the Courts below have committed error by not considering the fact that said "Na Dabi Patra" was required to be attested by the attesting witness as the settled principles of law is that a registered instrument styled as a "released deed" whereby the executants releases his/her right, title and interest over the property in favour of the release, the attestation is a must. He further submitted that the Courts below ought to have held that Ext.1 to be null and void because of the fact that as required in law for the release of the immovable property valuable consideration and intention to effect a transfer must exist, which in the present case are lacking. He submitted that the conclusion of the First Appellate Court that the suit is hit under Article 59 of the Limitation Act and as such, is barred by limitation is contrary to the evidence on record. It was also his submission that when the Plaintiff has sought for a declaration that the document (Ext.1) is void, the same could not have so declared by the Consolidation Authority and, therefore, the suit is maintainable.

Learned counsel for the Respondents supported the findings as well as the final result rendered by the Courts below. He submitted that the Nadabi Patra's execution being not denied and that being a registered document raising presumption when the details of the fraudulent activities have not been pleaded and proved; the Courts below are right in accepting the same. He submitted that for this deed of question as hereunder the executants has relinquished her interest in favour of the other who too had the interest over her half; the relationship and love and affection can very well stand as the

consideration and such a document is not required to be mandatorily attested as per law.

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. The evidence both oral and documentary have also been perused.

11. According to the Plaintiff's case, as laid in the plaint as well as the evidence, the suit land stood recorded in the name of Upendra and then it came to be recorded in the name of the Plaintiff as well as in the name of Defendant No.1. It is stated that taking advantage of the relationship, the Defendant No.1 has obtained a "Na Dabi Patra" from the Plaintiff by getting her signatures on the said document, which she had given in good faith being so influenced by Defendant No.1 without going through the contents of the document nomenclature as "Na Dabi Patra".

The Plaintiff thus here does not dispute the fact that she is a signatory to the document. It is not stated by her that why at all she gave the signatures on such stamp papers and that to by going to the Office of the Sub-Registrar. It is also not stated as to why and for what or for what purpose or projecting which necessity then, the Defendant No.1 impressed upon the Plaintiff to so sign. The deed is a registered one and the contents of the same reveal that the Plaintiff relinquished her interest in favour of the other. There appears no such intention in effecting a transfer. In this case, no new title is being created under that document in favour of the beneficiary who is one also then an interest holder. It is one sister relinquishing her interest in favour of her other sister in respect of the property, which both have inherited. The Plaintiff has also

not pleaded all those detail facts relating to the fraud etc. as mandated under the provisions of Order 6 Rule 4 of the Code.

With such pleading in the plaint and the obtained evidence on record, this Court, finding no such infirmity in the conclusion arrived at by the Courts below that Ext.1 is a genuine and valid document and has to operate in the field, the suit has rightly been dismissed even when the Defendants had not contested the suit. The First Appellate Court having confirmed said decision of the Trial Court, did commit no mistake. The first substantial question of law is thus answered in favour of the Defendants.

For the aforesaid, the other substantial questions of law are no more required to be answered and the first answer is sufficient to decide the fate of this Appeal.

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

*(D. Dash),
Judge.*

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