

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.134 of 2013

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 20.12.2012 and 26.12.2012 respectively passed by the learned District Judge, Bhadrak in R.F.A. No.63 of 2009 confirming the judgment and decree dated 28.08.2009 and 10.09.2009 respectively passed by the learned Civil Judge, Junior Division, Chandbali in C.S. No.48/120 of 2008/04.

Nilamani Bal & Others *Appellants*

-versus-

Gayadhar Bal & Others *Respondents*

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

For Appellants - Mr.S.S. Rao
(Advocate)

For Respondents - Mr.A.R.Dash
(Advocate for R.4 & 5)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 10.10.2022 : Date of Judgment:20.10.2022

D.Dash,J. The Appellants, by filing these Appeals under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 20.12.2012 and 26.12.2012 respectively passed by the learned District Judge, Bhadrak in R.F.A. No.63 of 2009.

These Appellants, as the Plaintiffs, had filed C.S. No.48/120 of 2009/2004 in the Court of the learned Civil Judge, Junior Division, Chandbali. The suit was for a declaration that the registered sale deed dated 15.07.1971 is a fraudulent one and has conveyed no right, title and

interest in favour of the so-called vendee, namely, Ghanashyam Bal and to the subsequent purchasers, i.e., Respondents 4 and 5 (Defendants 4 and 5).

The suit having been dismissed, these Appellants, being the unsuccessful Plaintiffs, had carried the Appeals under section 96 of the Code, which have 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 Plaintiffs' case is that one Uchhab is their common ancestor. He had five sons, namely, Nabaghana, Krushna, Narottam, Pandan and Nilamani. Said Nilamani is Plaintiff No.1. The Plaintiffs 2 to 5 represent the branch of Nabaghana, who died in the year 1973. Krushna's branch is represented by Plaintiffs 6 to 8 and that of Narottam by Plaintiffs 9 to 13. Plaintiff Nos.14 to 16 represent the branch of Pandab. Their case is that after the death of Uchhab, his five sons inherited all his properties and remained in possession of the same. It is also stated that there has been no partition of the properties amongsts them in metes and bounds. The Defendants are stated to be the strangers. It is their case that Nabaghana and Narottam had incurred a loan of Rs.500/- from One Ghanashyam prior to the cyclone in the year 1971 and at that time, they had been to the Sub-Registrar Office at Chandbali for execution of a security bond in favour of Ghanashyam for smooth repayment of the loan. Nabaghana and Narottam had never intended to sale any land and fraudulently a registered sale deed had been obtained from them. It is stated that pursuant to the said document, the possession of the suit land was not parted with nor Ghanashyam had ever possessed the land.

Nabaghana, having died in the year 1973, Narottam and Plaintiff No.3 had been to the house of Ghanashyam some time in the year 1975 and then they had returned principal loan amount of Rs.500/- and had paid the interest of Rs.200/- The document then being asked to be given returned, Ghanashyam so assured to return the same later, which he did not do.

4. The Defendants 1 and 2, as who are the sons of Ghanashyam and so also the Defendants 4 and 5, the subsequent purchaser, assert that Nabaghana and Narottam had sold the suit land to their father Ghanashyam by executing registered sale deed dated 15.07.1971. It is stated that pursuant to the said sale, there was delivery of possession and that sale was with the knowledge and consent of Krushna, the father of Plaintiff Nos.6 to 8, who was a signatory to the said document. It is stated that five sons of Uchhab had partitioned their properties. It is further stated that Ghanashyam, having purchased the land, have got it mutated in his name and after him, his son Gayadhar (Defendant No.1) has sold the suit land to Defendants 4 to 5 by registered sale deed dated 05.06.2002 and had delivered possession of the said land to Defendants 4 and 5, who have got the same mutated in their name under separate khatahs.

5. On the above rival pleadings, the Trial Court, in total, has framed as many as nine issues. Upon examination of the evidence and their evaluation, findings being rendered against the Plaintiffs claim, the suit was dismissed in refusing to declare the registered sale deed dated 15.07.1971 as void and so also the subsequent transaction basing upon the same. The Plaintiffs (16 in numbers) having filed two First Appeals, have not been able to taste the success therein.

One Appeal, i.e., RFA No.63 of 2009 had been filed in contending that Nabaghana and Narottam since had no right to transfer the land, the Court should not have dismissed the suit as Krushna, Pandab and Nilamani are in possession of the land in question and, therefore, the Court should have injuncted the Defendants and the deed dated 15.07.1971 should not have been held to be a sale deed.

The other First Appeal had been filed in contending that the Trial Court should have held that the Defendants 1 to 5 have failed to prove the lawful execution of registered sale deed dated 15.07.1971.

Both these First Appeals have been dismissed. Therefore, now only the Plaintiffs as the Appellants have filed this Second Appeal.

6. Learned counsel for the Appellants submitted that the Courts below have proceeded completely on a wrong footing by ignoring the very case projected by the Plaintiff that Nabaghana and Narottam had intended to execute and accordingly executed a deed of security towards the payment of the loan which they had taken from Ghanashyam. He further submitted that the view taken by the Courts below by simply going through the said purported sale deed under challenge, which has been admitted in evidence and marked Ext.B (from the side of the Defendants), whose certified copy is Ext.9 (marked from the side of the Plaintiffs) in saying that its contents have all the trappings of sale deed is not tenable. He submitted that here when the very nature of transaction was in dispute, the Courts below should have gone for a deeper examination of evidence by further viewing all the surrounding circumstances as to the dealing of the property and other factors relating to valuation etc. He, therefore, submitted for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned counsel for the Respondents submitted all in favour of the findings returned by the Courts below. According to him, the Plaintiffs, by filing the suit in the year 2004, when have gone to challenge a registered sale deed dated 15.07.1971 which is after lapse of more than 30 years, on the face of the document (Ext.B), the other record of rights prepared pursuant to that Ext.B; further keeping in view the factum of possession of the suit land, the crucial issues have been rightly answered against the Plaintiffs.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. I have also gone through the plaint and written statement. The evidence both oral and documentary has been extensively travelled through.

9. In this suit filed on 17.03.2004, the Plaintiffs have assailed the registered sale deed executed by Nabaghana and Narottam, the predecessor-in-interest of Plaintiffs 2 to 5 and the predecessor-in-interest of Plaintiffs 9 to 13 respectively. way back on 15.7.1971. The suit has been filed after the Defendants 4 and 5 filed C.S. No.46/93 of 2009/2004 wherein the Defendants 4 and 5 as the Plaintiffs sought for a decree for permanent injunction against some of these Plaintiffs in respect of the land covered under the sale deed. They claimed that they have purchased that land from said Ghanashyam by registered sale deed dated 05.06.2002. In such situation when the Plaintiffs here have asserted that said Ghanashyam had fraudulently managed to obtain a registered sale deed from Nabaghana and Narottam instead of a deed of security, which they intended to execute and executed under that impression, the burden of proof certainly lies on the Plaintiffs and it is too heavy in view of the above standing circumstances. It may be stated

here that the details of the fraudulent acts committed by Ghanashyam or the fraud perpetrated in the matter have not been pleaded as required under Order 6 Rule 4 of the Code. The sale deed, being a registered one carries legal presumption that it has been executed and registered as such.

In fact, here the execution of the document is not denied but it is said that the executants had intended to execute a security deed and instead, they have been defrauded and this sale deed has been brought into. The Courts below have examined the evidence on this score. The concurrent finding has been that the Plaintiffs have failed to prove their case for declaration that registered deed dated 15.07.1971 is void being obtained by playing fraud upon Nabaghana and Narottam.

This Court, in the totality of the facts and circumstances of the case, as those emanate from the evidence, finds itself to be in agreement with the concurrent findings of the Courts below that the Plaintiffs have not been able to prove their case so as to be entitled to the relief of declaration that the registered sale deed dated 15.07.1971 is void.

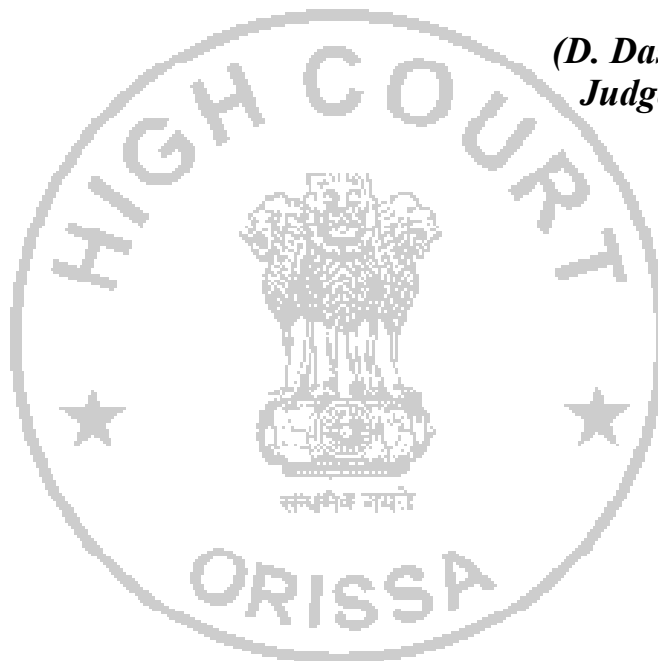
This, now leads to say that Nabaghana and Narottam, being the two sons of Uchhab when had executed the sale deed in respect of specific property in favour of that Ghanashyam, he being the purchaser under the said sale deed, as admittedly there is no partition of the joint family properties amongsts the members of the family of Uchhab, cannot, however, claim/had the exclusive right, title and interest over that very property. The said sale deed would thus remain valid only to the extent of shares of Nabaghana and Narottam and that would be the position in so far as the subsequent purchaser, i.e., Defendants 4 and 5 are concerned. Thus, it would be open for them to work out their remedy

in a duly constituted proceeding before the appropriate forum as per law, if they are so advised.

For all these aforesaid, this Court is not in a position to accept the submission of the learned counsel for the Appellants that the Appeal merits admission to answer any substantial question of law.

10. In the result, The Appeals stand dismissed. There shall, however, be no order as to cost.

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



Basu