

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.264 of 2018

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 13.04.2018 and 21.04.2018 respectively passed by the learned District Judge, Mayurbhanj, Baripada in R.F.A. No.32 of 2016 setting aside the judgment and decree dated 18.04.2016 and 29.04.2016 respectively passed by the learned Additional Senior Civil Judge, Baripada in C.S. No.102 of 2014.

Sumitra Barik

....

Appellant

-versus-

Pravat Kumar Barik & Others

....

Respondents

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

For Appellant

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Mr.Kshirod Kumar Rout
(Advocate)

For Respondents

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Mr.P.N. Das
(Advocate for R.1)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 11.10.2022 : Date of Judgment:20.10.2022

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 13.04.2018 and 21.04.2018 respectively passed by the learned District Judge, Mayurbhanj, Baripada in R.F.A. No.32 of 2016.

By the same, the Appeal filed by the Respondent No.1 being the aggrieved Plaintiff in C.S. No.102 of 2014 of the Court of the learned Additional Senior Civil Judge, Baripda under section 96 of the Code,

has been allowed. The Respondent No.1, having filed the suit as the Plaintiff, when had lost before the Trial Court and had been non-suited therein, his suit has been decreed by the First Appellate Court declaring the so-called registered partition dated 18.12.1991 as null and void as also the consequential action relating to the preparation of record of right pursuant to the said deed.

The present Appellant (Defendant No.1) has, therefore, filed this Second Appeal.

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 his father Nityananda Barik was the absolute owner of the land described in Schedule-C of the plaint and he was in possession of the same on his own right till his death. It is stated that upon the death of Nityananda, the parties jointly inherited the said property and possessed the same. Nityananda had another brother, namely, Ramakananta and their father was Radhamohan.

The Defendants 3 to 6 had earlier filed T.S. No.65 of 1991 for partition of their joint family property amongst the members of the branches of Nityananda and Ramakanta. The property in Schedule-C was, however, not the subject matter of that suit. It is further stated that on 09.10.2013 when the Plaintiff requested the Defendants that they should sale the land under Schedule-C; being in need of money for his eye surgery, one of the sons of Defendant No.1 then made a disclosure that the suit land stands recorded in the name of late Chittaranjan and, therefore, the Plaintiff as such has no claim over the same and it is the Defendant No.1, who alone is entitled to get the same being the sole heir

of said Chittaranjan. The Plaintiff having further enquired into the matter, to his surprise, found a registered deed of partition dated 18.12.1991 to have been created by practicing fraud and it was found to be at the instance of Chittaranja. The partition deed was executed during the pendency of the earlier suit for partition. By the said deed, Schedule-C land was partitioned between Nityananda and his son Gokuli. Nityananda gave Ac.0.84 decimals of land to Gokuli whereas kept 0.35 decimals of land for himself without providing any reason as to why the other son Manoranjan and daughter Sufala were not made parties to the deed and were thereunder not given any benefit. It is also stated that Nityananda had no independent advice and under duress, had done so. It is stated that Chittaranjan has mutated the land behind the back of the Plaintiff and other legal heirs of Nirmal by gaining over the revenue staff. The Plaintiff thus claims to be having his right over the suit land.

4. The Defendant No.1, entering appearance, has denied the factum of possession of the suit land by Nityananda with the help of the parties till his death. It is also stated that after Nityananda, the parties had not jointly inherited, owned and possessed the suit land.

5. On the above rival pleadings, the Trial Court, having framed seven issues, has answered issue nos.5 and 6 with regard to the sustainability of the registered deed of partition and also consequential mutation against the Plaintiff. It has also been held that the Plaintiff is having no interest over the suit land and, therefore, is not entitled to get the relief as prayed for. Practically, the above answer with the other answer that there is lack of cause of action for filing the suit, which is the consequential one, the Trial Court has dismissed the suit.

The unsuccessful Plaintiff, having carried the First Appeal, has been successful in obtaining a decree.

6. Learned counsel for the Appellant submitted that the First Appellate Court is not at all right in holding that the said partition deed has been created by practicing fraud. It was also submitted that the reasons given by the First Appellate Court in holding that the said deed of partition has no value in the eye of law and has conveyed no right, title and interest over the property in question in favour of Chittaranjan is not sustainable. He, therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

7. Learned counsel for the Respondent No.1, assisting the Court during the admission hearing, submitted all in favour of the findings returned by the First Appellate Court. Inviting the attention of the Court to Paragraphs-10 to 16 of the judgment of the First Appellate Court, he submitted that under no circumstance, this deed of partition dated 18.12.1991 (Ext.1) can stand to the legal scrutiny. According to him, the First Appellate Court, examining the same from every possible angle, has been right in disagreeing with the Trial Court's conclusion on that score in finally granting the relief to the Plaintiff.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

9. Chittaranjan Barik is the son of Gokuli Barik. The Plaintiff, namely, Pravat is the son of Nityananda and Gokuli is his full blooded brother. The registered deed of partition dated 18.12.1991, which has been admitted in evidence and marked Ext.1 contains no such recital giving out any reason for effecting such a partition that to at the behest

of Nityananda with his grandson Chittaranjan. The deed does not contain any statement relating to the other sons and daughter of Nityananda. Nirmal is another son of Nityananda and Kamala is his daughter. Nothing is stated about them nor even anything is indicated with regard to the other son and daughter of Gokuli, namely, Manoranjan and Subhagini respectively.

Nirmal, son of Nityananda, being dead, his wife Sakuntala had filed T.S. No.65 of 1991 against her father-in-law Nityananda, Pravat, the brother-in-law and the Sumitra, the wife of Gokuli and her children and Ramakanta son of Radhamohan, the brother of Nityananda and others. It is seen from Ext.2 that said suit was decreed on compromise on 05.07.1994, which is admittedly after the execution of this disputed partition deed when the institution of the said suit was prior to the execution of that partition deed. This property in question was not brought to the hotchpotch and as such was not the subject matter therein.

The Defendant No.1 states that that it is the property of Chittaranjan, being given under Ext.1. The deed of partition under all these circumstances has been rightly found to be having no legal base when all heirs of Nityananda are having the interest over the property, the partition in such a manner, as has been effected under Ext.1, has been rightly held as not standing to legal scrutiny and thus of no legal existence for its acceptance as such.

In the above state of affairs, in my considered view, the First Appellate Court has committed no error in recording the finding that Ext.1 cannot be sustained and is void.

For the aforesaid discussion and reasons, the submission of the learned counsel for the Appellant fails and this Court this Court finds

that no substantial question of law surfaces for being answered meriting its admission of this Appeal.

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

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



Basu