

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 25811 OF 2011

Gopal Chandra Gadnayak and another Petitioners

Mr. Debaranjan Mohapatra, Advocate

-versus-

Braja Prasann Tripathy Opp. Party

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
25.11.2022**

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 28th June, 2011 (Annexure-7) passed by learned Civil Judge (Senior Division), Angul in C.S. No.125 of 2003, whereby an application filed by the Petitioners under Order XIII Rule 8 C.P.C. read with Sections 33 and 35 of the Indian Stamp Act, 1899 (for short 'the Act') has been rejected.
3. Mr. Mohapatra, learned counsel submits that the Petitioners are the Defendants in the aforesaid suit. In a family partition, the suit land was allotted to the share of one Jagannath Garnaik and after his death his wife Jemamani Garnaik possessed the same. Due to her legal necessity, she sold the suit land to the Defendant-Petitioner No.2 for consideration of Rs.6,400/- in presence of local gentries and token thereof executed an unregistered agreement on 31st May, 2000. Since the document was unregistered one, the Defendants filed an application under Order XIII Rule 8 C.P.C. read with Sections 33 and 35 of the Act to impound the document and admit it in

evidence. The said application was dismissed vide order at Annexure-7. Hence, this writ petition has been filed.

4. Upon hearing learned counsel for the Petitioners and on perusal of Annexure-1, it appears that the said unregistered agreement relates to Plot No.4065 of Khata No.159 and on perusal of the plaint at Annexure-3, it appears that the suit schedule property pertains to Plot No.4065 of Khata No.616/112. On perusal of the written statement filed by the Defendant-Petitioner No.2 at Annexure-4, it reveals that there is no pleading to the effect that the suit schedule property correlates to the property under Annexure-1.

5. Thus, this Court is not in a position to find out as to whether the document under Annexure-1, which the Defendant No.2 sought to be impounded correlates to the suit property. Although Mr. Mohapatra, learned counsel for the Petitioners strenuously urged that it is the self-same property, but he could not produce any document to that effect. Thus, steps for impounding the document under Annexure-1 will not only be futile but also it will be wastage of judicial time.

6. In view of the above, the impugned order under Annexure-7 warrants no interference.

7. Accordingly, this writ petition being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge