

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.55 of 2007

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree dated 10.10.2006 and 17.10.2006 respectively passed by the learned Additional District Judge, Kendrapara in R.F.A. No.6 of 2002 setting aside the judgment and decree dated 22.12.2001 and 23.01.2002 respectively passed by the learned Civil Judge, Senior Division, Kendrapara in Title Suit No.169 of 1984.

Chandra Sekhar Sahu & Another* *Appellants

-versus-

Nrusingha Charan Jena (Since Dead) through his LRs & Others* *Respondents

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

***For Appellants* - Mr.S.P. Mohanty,
Smt. R. Mohanty, P.K. Lenka &
P. Lenka
(Advocates)**

***For Respondents* - Mr.B.C. Panda & S. Mishra
For R.1(a) to R.1(d)**

Mr.R.K. Kar & S.K. Perai

Mr.K.Ray. B.B.Mohapatra

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

Date of Hearing : 30.03.2022 : Date of Judgment:25.04.2022

The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure (for short, 'the Code'), have assailed the judgment and decree dated 10.10.2006 and 17.10.2006 respectively

passed by the learned Additional District Judge, Kendrapara in R.F.A. No.6 of 2002.

By the same, the First Appeal filed by the original Respondent No.1 (Plaintiff) under section 96 of the Code has been allowed whereby the judgment and decree dated 22.12.2001 and 23.01.2002 respectively passed by the learned Civil Judge, Senior Division, Kendrapara in Title Suit No.169 of 1984, have been set aside.

The suit filed by Respondent No.1, as the Plaintiff, has been decreed setting aside the sale deeds dated 06.10.1980 (Ext.C & D). It has been further directed that the Trial Court would determine the shares of the Plaintiff and the branches of his two sisters as well as of his step brother, the predecessor-in-interest of Respondents 3 to 6, who had been arraigned as the Plaintiff, since had prayed for partition of the properties described in Schedule-A of the plaint. The suit having been dismissed by the Trial Court, the Respondent No.1 being the aggrieved Plaintiff had carried the First Appeal wherein he has been successful and, therefore, these Appellants, who were the Defendants 4 & 6 in the Trial Court have filed the Second Appeal.

It may be stated here that Nrusingha Charan Jena, the Respondent No.1 (Plaintiff) having died during pendency of this Appeal, his legal representatives have come on record as Respondent No.1(a) to 1(e).

The Defendant No.1 having died during pendency of the First Appeal, his legal representatives are now before this court as Respondents 3 to 5.

Similarly Respondent No.15 was Defendant No.9 in the Trial Court and he having died, his legal representatives are Respondent No.15(a) and 15(b). Respondent No.16 having died during pendency of

this Appeal, his legal representations are before this Court as Respondent No.16(a) to 16(b).

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 Suit.

3. Plaintiff's case is that Maguni had two wives, namely, Taramani & Saraswati. Through Taramani, Maguni has a son Nrusingha and two daughters, namely, Satyabhama and Tilotama. One son Dibyasingha is the son of Maguni born to the second wife Saraswati. It is stated that Magtuni was the Karta of the family. The family possessed agricultural lands and homestead land as stated in Schedule-A of the plaint which includes Schedule-B, C, C/1 and D. It is further stated that Maguni gifted Schedule-C and C/1 lands and alienated Schedule-D properties during the year 1967 to 1977 in respect of which compromise decree has been passed on 08.08.1991 and 26.10.1992.

The present Plaintiff had also filed one Title Suit, i.e., T.S. No.331 of 1979 against Maguni, Saraswati and Dibyasingha to restrain them from alienating the family properties in Schedule-B land. It is alleged that despite restraint against the transferer passed in Misc. Case No.127 of 1980 and Misc. Appeal No.51 of 1980, the Defendants 4 to 6 obtained two registered sale deeds from Maguni on 06.10.1980, one in favour of Defendant No.4 in respect of Ac.0.84 decimals and the other in respect of Defendants 5 and 6 for an area of Ac.0.80 decimals. When T.S. No.331 of 1979 was pending, Maguni died. The Plaintiff, therefore, withdrew the suit on 25.10.1984 obtaining leave to file a suit for partition.

It is stated that the family possessed vast agricultural lands which eventually were recorded in the name of Maguni as per the records of 1930 settlement. Two sons of Maguni were serving with the Government and remitting money to their father. So, there was no legal necessity for Maguni to transfer the immovable property in order to raise funds. Maguni when was 92 years old, blind, weak, mentally unsound as also physically unfit under the influence of second wife Saraswati and son Dibysingha, the documents relating to transfer of the portions of the suit land have been obtained from him without payment of any consideration and delivery of possession. It is stated that in order to deprive the Plaintiff, such document have been obtained from Maguni.

4. The Defendants 4 to 6, in their written statement have denied the fact that Schedule-B properties are the ancestral properties in hands of Maguni. They also deny that there was no legal necessity for Maguni to sell the land and that the sale deeds were obtained from him taking advantage of his age etc. without paying consideration. It is stated that Maguni had executed those documents consciously and those are all legal and valid. It is also stated that they had taken over the possession of the suit land pursuant to those documents and have been possessing the same.

5. Faced with the rival pleadings, the Trial Court framed as many as seven (7) issues. Rightly taking up issue no.3 first, upon examination of the evidence and their analysis, the answer has been recorded that the properties are not the ancestral properties in the hands of Maguni. Having said so, the Trial Court has taken up issue no.5 which concerns with the sale deeds dated 06.10.1980 executed by Maguni in favour of

Defendants 4 to 6. The answer on that issue has also been recorded against the Plaintiff. Other issues then having been answered against the Plaintiff, the suit has been dismissed and the Plaintiff has been non-suited.

In the Appeal filed by the Plaintiff, the registered sale deeds dated 06.10.1980 under Exts.C & D have been set aside and the suit has been preliminary decreed directing the Trial Court to determine the shares as already stated.

6. The present Appeal has been admitted on 13.07.2004 for answering the following substantial questions of law:-

“(a) The execution of the sale deeds under Exts.C & D by the plaintiff’s father in favour of defendant nos.4 to 6 having not been challenged by the plaintiffs and in view of the categorical finding of the trial court that the suit property was the self acquired property of the plaintiff’s father, whether the lower appellate court was legally justified in holding that defendant nos.4 to 6 failed to prove execution of the sale deeds, without setting aside the finding of the trial court that the suit property was the self acquired property of the plaintiff’s father?”

7. Mr.S.P. Mohanty, learned counsel for the Appellants (Defendants 4 & 6) submitted that besides the above substantial question of law, the following substantial question of law also arises and those are:-

“(a)whether the Plaintiff is entitled to the relief of declaration to set aside sale deeds (Exts.C & D) beyond the period of limitation taking the shelter of liberty granted in the previous suit for partition only; and

(b) whether the Plaintiff is entitled to seek for a declaration to set aside the sale deeds executed by his father Maguni Jena in respect of his self acquired properties sold in favour of Defendants 4 and 6.”

It was submitted that the First Appellate Court having completely ignored the categorical findings of the Trial Court on the issues framed therein, has proceeded to decide the matter in respect of which no issue had been framed. It was submitted that the First Appellate Court has not at all appreciated the evidence on record in their proper perspective and that without any justification, it has set aside the same.

8. Mr.B.C. Panda, learned counsel for the Respondents (Plaintiff) submitted that the First Appellate Court having formulated the points for determination as regards the validity of the registered sale deeds under Exts.C & D, has arrived at a right conclusion on appreciation of evidence that due execution of those sale deeds having not been proved, as required under law, those are not to be given effect to.

9. Keeping in view the submissions made, I have carefully gone through judgments passed by the Courts below.

10. It is the settled position of law that with the above surrounding circumstances, it is the duty of the Court to ascertain from evidence that the party executing them had been a free agent and duly informed of what he/she was about to do. The reason for the rule is that the ordinary presumption that a person understands the document to which he/she has affixed his/her name does not apply in the case where an executants is old and physically unfit or disabled. The burden of proof shall in such a case rests not with those who attack, but with those who found upon the deed as its beneficiary and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor. In such cases it must also, of course, be established that the deed was not signed under duress, but arose from the free and independent will of the

grantor. It has also been held that having regard to the proved personality of the settlor, the nature of the settlement, the circumstances under which it was executed, and the whole history of the parties, whether it is reasonably established that the deed executed was the free and intelligent act of the settler bears importance and occupies the field. It is only when the answer is in the affirmative, those relying on the deed can be said to have discharged the burden shifting the onus upon the challenger/s.

Admittedly, as per the records of 1930 settlement, the land stood recorded in the name of Maguni. Although it is stated that those properties are the ancestral properties in the hands of Maguni, no such evidence is available on record. Two sale deeds under dispute have not been admitted in evidence and marked Exts.C & D. Those are dated 06.10.1980. As it is there in evidence, the executant Maguni was then aged about 90 years. His L.T.Is appear in the documents. The vendees under Exts.C & E are Defendants 5 and 6, who were then minors and at the time of filing of the suit, were minors too represented by their father Sadhu Charan Sahu. Maguni knew to sign as it reveals from a sale deed dated 03.11.1969, which has been admitted in evidence and marked Ext.E but in a sale deed dated 25.01.1977, which has been admitted in evidence and marked Ext.F, he has not signed as he by then had lost his power of vision. Madhusudan Sahu (D.W.10), who happens to be the father of Defendant No.4 was present at the time of preparation and execution of the sale deeds under Exts.C & D. He has stated that Maguni then was semi-blind and his hands were trembling and with him, nobody had accompanied to the place. It has also been stated by that D.W.10 that the executants Maguni was then unable to see because of his old age.

As regards possession of the lands involved under those sale deeds, the Plaintiff has tendered evidence through P.Ws.1 to 4 that he, with his brother, are in possession of the same all through and they have also proved the rent receipts under Ext.10 series in support of the same. Above being the evidence from the side of the Plaintiff, the Defendants through D.Ws.2 and 7 have led evidence that those purchased lands are under their possession when they have also proved few rent receipts vide Ext.L series.

With such state of affair emanating from the evidence on record, the First Appellate Court has rightly proceeded to examine as to whether due execution of those documents by Maguni has been proved as required under the law.

11 In that exercise, on the available evidence on record as to the age of the executant Maguni and his health condition rightly the burden of proof of due execution has been placed upon the Defendants.

The Defendants, in order to discharge the burden, have examined D.Ws.3 and 10. D.W.3 is one of the contesting witness and D.W.10 is the father guardian of Defendant No.4. The scribe of the other document and the other contesting Defendants have not been examined nor any explanation on that score has been offered. Admittedly, Maguni was a party to the Title Suit No.331 of 1979 wherein he had been restrained from alienating the suit lands. D.W.10 has stated that he had no knowledge of the pending litigation between the father Maguni and son, the Plaintiff. At such age of Maguni, having the physical and mental fragility, none of his relations or any well wishers was present at the relevant time when the deeds came into being.

12. In view of all these above, this Court finds that the conclusion arrived by the First Appellate Court that the Defendants, who seek to sustain the document executed by Maguni have not been able to discharge the burden of proof of due and valid execution of the sale deeds is not liable to be tinkered with. It is also not the case of the vendors that the consideration money had been paid before the Sub-Registrar.

13. Now, coming to the question as to other substantial questions of law, as pointed out by the learned counsel for the Appellants to be framed for being answered; the Plaintiff having withdrawn the first suit, i.e., T.S. No.331 of 1979 on 25.10.1994 taking the leave of the Court to file the present suit for partition, the suit even though has been filed after four years of the execution of the sale deeds, cannot be said to be barred in law as the period of limitation does not come to stand on the way in so far as the relief of declaration to set aside the sale deeds under Exts.C & D is concerned as the Plaintiff has claimed partition of those properties and therein the prayer has been advanced to ignore the sale deeds in the partition. The Plaintiff is certainly entitled to seek for a declaration to set aside the sale deeds executed by his father Maguni on the grounds as have been taken and merely because the properties are the self acquired properties of Maguni, such grounds cannot be said to be not available for him to impeach the sale deeds.

Therefore, in my considered view, no further substantial question/s of law arise in this Appeal for being answered.

14. In the wake of aforesaid, the answer to the substantial question of law stands returned in favour of affirming the findings of the First Appellate Court, which in turn, leads to confirm the judgment and

decree passed by the said Court in favour of the Plaintiff granting him the relief, as stated therein.

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

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



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