

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 19196 of 2022

Golbadan Padhan and another* *Petitioners

Mr. Gouri Mohan Rath, Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Ajodhya Ranjan Dash,
Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

08.09.2022

Order No.

2. This matter is taken up through Hybrid mode.
2. Petitioners in this writ petition seek to assail the order dated 28th June, 2022 (Annexure-7) passed in Misc. (Registration) Appeal Case No. 04 of 2022, whereby District Registrar-cum-Additional District Magistrate, Sambalpur, confirmed the order of refusal of registration of the sale deed in question passed by the Sub-Registrar, Rengali and communicated to the Petitioners vide letter No.183 dated 11th March, 2022 (Annexure-3).
3. Mr. Rath, learned counsel submits that Petitioners are co-sharers in respect of the property in Plot Nos.906, 908 and 910 under Khata No.20 situated in mouza in mouza Telkoi in the district of Sambalpur (for short, 'the case land'). Petitioners for their legal necessity intended to alienate their share in the suit property. Accordingly, they executed a sale deed in favour of M/s. NLC India Limited (not made party to the writ petition) and presented it before the Sub-Registrar, Rengali- Opposite Party No.5 for registration. Accordingly, the document was allotted

vide ID No.1652200212 dated 11th March, 2022. The Sub-Registrar exercising his power under Section 71 of the Registration Act, 1908 (for short 'the Registration Act') refused to register the sale deed in question and communicated his decision to the Petitioners vide letter No.183 dated 11th March, 2022 (Annexure-3). The reason of refusal disclosed that '*the vendors have mentioned the exact plot details of the property which they want to sell to the purchaser which is not allowed under Section 44 of the Transfer of Property Act, 1882. Hence your document is not legally tenable and registration of this document cannot be allowed.*'

3.1 Assailing the aforesaid refusal under Annexure-3, Petitioners preferred appeal bearing No.4 of 2022 under Section 72 of the Registration Act before District Registrar-cum-ADM, Sambalpur-Opposite Party No.4. It is submitted that the District Registrar, without recording any specific finding only reiterated the grounds of refusal recorded by the Sub-Registrar, and dismissed the appeal. It is his submission that Sections 21 and 22 of the Registration Act stipulates that a vender has to provide exact description of the property in the sale deed. Section 21 of the Registration Act commensurates with a non-obstante clause. It provides that no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same. The land in question is an agricultural land. Hence, Section 21 of the Registration Act is applicable to the case at hand. Further Rule-23 of the Odisha Registration Rules, 1988 (for short 'the Rules') requires that the document presented for registration must contain descriptions of the property. Rule-22

provides that description of the property can also be provided by supplementary documents. Rule-24(2) provides in the case of villages where survey and settlement operations are complete and final record-of-rights issued, the description of property shall contain all the details as described in the record-of-rights, viz. Village Number, Khata Number, Plot number, classification of land and the area noted in the record-of-rights and the local names, if any, used. Sub-rule (3) of Rule 24 of the Rules provides in case of part-plots, the four boundaries shall be furnished.

4. It is submitted by Mr. Rath, learned counsel that the Petitioners have provided description of the case land in the sale deed in compliance of the aforesaid provisions. It is further submitted that the registering authorities under the Registration Act do not perform quasi-judicial power. They only exercise administrative functions while exercising power under different provisions of the Registration Act. Thus, they are neither required nor competent to go into the intricacies of law and are only required to find out whether the vender has any title over the property or not. He also relies upon decision of the Hon'ble Supreme Court in the case of ***V. Kalyanaswamy (D) by Lrs. and another Vs. L.Bakhavatsalam (D) by Lrs. and others***, reported in 2020 SCC Online SC 584, wherein the Hon'ble Court in para-150, 153 and 155 held as under:-

“150. We, however, notice also the following:

“The claim of a transferee from a co-parcener to work out the transfer is no doubt an equitable claim in the sense that he must be a transferee for value and in cases where the transfer relates to a specific portion of the family property, he has no legal right, any more than his transferor himself, to insist on that specific portion being allotted to the

share of the vendor. Being a purchaser for value he will have an equity to have such portion or so much thereof as is practicable so allotted, if that can be done without prejudice to the interests of the other sharers. In any suit which may be brought by him to enforce the sale, all the members of the family should be joined as parties as in a partition suit, the subject-matter of the suit being the family property as it existed at the date of the transfer.”

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153. *In M.V.S. Manikayala Rao v. Narasimhaswami and others, a case which arose against the impugned order of the High Court of Andhra Pradesh, it involved an auction sale therein the Court held as follows:*

‘....Now it is well settled that the purchaser of a coparcener’s undivided interest in the joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share(sic) of the coparcener who share he had purchased....’

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155. *Thus, in the case of an alienation by a Hindu, even if it is of a specific property belonging to the joint property, it would be dealt with on an equitable basis, should the alienee bring an action to enforce the same in a properly constituted Suit. The conclusion we would arrive at is that the sale of such a right even over specific immovable property by a coparcener in a Mitakshara Hindu Joint Family does take effect in law where it is permitted and it would not be a case of a void transaction. The purpose of undertaking this discussion is to appreciate the law relating to the power of the coparcener to transfer specific items even if there has been no partition in the sense of a division of title so that we are in a better position to appreciate the question as to whether in a case where a Hindu executes a Will prior to the Hindu Succession Act could, he, by a Will, after a division is brought about in the family bequeath specific immovable property.”* (emphasis supplied)

In view of the above, he submits that there is no legal bar for the Petitioners to alienate a specific portion of their share from the undivided property. He also places reliance upon a decision in the case of ***Sitarani Rath Vs. Inspector General of Registration, Odisha and others***, reported in (2015) 120 CLT 1069, wherein this Court held as under:-

“7. Rule 25(5) of the Rule envisages that if the document is a non-testamentary one and relates to immovable property, the description thereof is sufficient. A whole reading of Section 21(1) of the Registration Act, 1908 read with Rules 23 and 24 of the Registration Rules and Rule 25(5) mandates requirement of particulars of the land such as registration, district Sub-Registrar, Tahasildar, Thana, Mouza and the description as evident in the record-of-right. Therefore, reading of the description made in the sale deed based on a record-of-right gives a clear identification of the property as required under the above provisions as an indication satisfying the mandatory requirements. Further, the provisions contained in Section 44 of the Transfer of Property Act confers a power on the co-owner of immovable property for transferring his share of such property or any interest therein creating transferee's right to joint possession or other common on part enjoyment of the property and it be needed to enforce a partition of the same for complying the conditions and liabilities affected at the date of the transfer. It is, under the circumstances and on conjoint reading of the provisions contained in Sections 21 and 22 of the Act read with Rules 23, 24 and 25 of the Rules further read with Section 44 of the Transfer of Property Act, this Court is of the view that in view of carving out of definite share in the property in favour of the petitioner, she has a right to alienate the property by sale or mortgage and, therefore, there is no illegality in presenting the sale deed for registration. Both the opposite party Nos. 2 and 3 have acted contrary to law and illegally refused the registration of the sale deed.” (emphasis supplied)

He further placed reliance upon the case of **Satya Pal Anand Vs. State of Madhya Pradesh and others**, reported in (2016) 10 SCC 767, where in the Hon'ble Court at Para-40 and 41 held as follows:-

40. The Andhra Pradesh High Court, in the case of Yanala Malleshwari (supra) was called upon to consider whether a person can nullify the sale by executing and registering a cancellation deed and whether the Registering Officer like District Registrar and/or Sub-Registrar appointed by the State Government is bound to refuse registration when a cancellation deed is presented. The fact remains that if the stipulation contained in Sections 17 and 18 of the Act of 1908 are fulfilled, the Registering Officer is bound to register the document. The Registering Officer can refuse to register a document only in situations

mentioned in Sections such as 19 to 22, 32 and 35. At the same time, once the document is registered, it is not open to the Registering Officer to cancel that registration even if his attention is invited to some irregularity committed during the registration of the document. The aggrieved party can challenge the registration and validity of the document before the Civil Court. The majority view of the Full Bench was that if a person is aggrieved by the Extinguishment Deed or its registration, his remedy is to seek appropriate relief in the Civil Court and a Writ Petition is not the proper remedy.

41. Section 35 of the Act does not confer a quasi-judicial power on the Registering Authority. The Registering Officer is expected to reassure that the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document as such. The examination to be done by him is incidental, to ascertain that there is no violation of provisions of the Act of 1908. In the case of Park View Enterprises (supra) it has been observed that the function of the Registering Officer is purely administrative and not quasi-judicial. He cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument. We agree with that exposition.

He, therefore submits that case of the Petitioners does not fall within the scope of Sections 19 to 22 and 32 and 35 of the Registration Act. Thus, the registering authority could not have refused to register the document presented by the Petitioners. He therefore submits that the impugned order under Annexures-3 and 7 are liable to be set aside and the Sub-Registrar, Rengali should be directed to register the sale deed presented by the Petitioners.

5. Mr. Dash, learned AGA objecting to the above submission contended that a writ petition against order of refusal passed by the District Registrar is not maintainable. Petitioners, if aggrieved have to file properly constituted suit under Section 72 of the Registration Act to assail the legality and validity of the said order.

5.1 He further submits that in view of the provision under Section 44 of the TP Act, Petitioners are only permitted to alienate their share or interest in the joint property. They are not competent to execute a sale deed in respect of specific parcel in the joint property. Thus, the authorities under the Registration Act have committed no error in refusing registration of the document.

6. Heard learned counsel for the parties and perused the materials on record and case laws cited by learned counsel for the Petitioners. Before delving into the issues, this Court makes it clear that there is no dispute that by virtue of sale deed presented by the Petitioners they proposed to alienate specific portion of the joint family property. Section 44 of the TP Act envisages that where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the condition and liabilities affecting, at the date of the transfer; the share or interest so transferred. Learned counsel for the Petitioners submits that taking into consideration the scope and object of Section 44 of the TP Act, Hon'ble Supreme Court in *V. Kalyanaswamy (D) by Lrs. (supra)* has categorically held that in cases where the transfer relates to a specific portion of the family property, he has no legal right, any more than his transferor himself, to insist on that specific portion being allotted to the share of the vendor. Being a purchaser for value he will have an

equity to have such portion or so much thereof as is practicable so allotted, if that can be done without prejudice to the interests of the other co-sharers. But the said observation read with the observation in para-155, makes it clear that the sale of such a right even over specific immovable property by a coparcener in a Mitakshara Hindu Joint Family does take effect in law where it is permitted and it would not be a case of a void transaction. In the instant case, there is nothing on record to show that the Petitioner has been permitted by any act or law to sell the aforesaid parcel of land from the joint family property. The ratio of the decision in the case of *Sitarani Rath (supra)*, this Court has not also specifically dealt with this aspect of the matter.

7. Coming to the issue of competency of the registering authority to delve into intricacies of law by applying the provision of Section 44 of the TP Act to refuse registration, it can be said that Section 22-A (2) of the Registration Act (Odisha Amendment) provides that the registering officer shall not register any document presented to him for registration unless the transferor produce the record of rights for the satisfaction of the registering officer that such transferor has right, title and interest over the property so transferred. In the case of *Dhabal Prasad Pradhan Vs. State of Orissa and others*, reported in 2014 (II) OLR 902, this Court has clarified that the transferor need not have to produce the ROR published in his/her name, but the vendor should produce the document/evidence to the satisfaction of the registering authority that he has right, title and interest to transfer the property mentioned in the sale deed. Further, Section 22-A(1)(c) of the Registration Act provides that the registering officer shall refuse to register any instrument

relating to transfer of immovable property, the alienation or transfer of which is prohibited under any State or the Central Act. In the instant case, although Petitioners have right to alienate their share in the joint family property, but they have no right to alienate any specific parcel of the land as provided under Section 44 of the TP Act. Thus, the registering officer before registration has the duty to examine as to whether the Petitioners have right to transfer specific parcel of the land, which is admittedly absent in the instant case and there is no material to establish that the said particular parcel of the land is allotted to their share. The Registering Officer cannot be a mute spectator to the infraction of law. In that view of the matter, the Registering Officer has competence to delve into the issue as provided under Section 44 of the TP Act.

8. Thus, in view of the discussions made above, I find no infirmity in the impugned orders under Annexures-3 and 7. Accordingly, the writ petition being devoid of any merit stands dismissed.

(K.R. Mohapatra)
Judge