

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 21064 OF 2022

Gadadhar Sahoo

....

Petitioner

Mr. Bhaskar Chandra Panda, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

14.12.2022

Order No.

- 5.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the order dated 15th March, 2022 (Annexure-3) passed by the Additional District Magistrate-cum-District Registrar, Cuttack in Refusal Appeal Case No. 2 of 2020, whereby the order dated 13th May, 2020 (Annexure-2) passed by the Sub-Registrar, Athagarh in Refusal Case No. 1 of 2020 has been confirmed.
 3. Mr. Panda, learned counsel for the Petitioner submits that the land in question stood recorded in the name of common ancestor, namely, Banchanidhi Sahoo. During his life time, there was an oral partition between his sons, namely, Lingaraj Sahoo, Gadadhar Sahoo and Judhistira Sahoo. Accordingly, the co-sharers enjoyed their property separately. Several transactions have been made by the co-sharers independently. Likewise, a gift deed was executed by the present Petitioner, Gadadhar Shoo, in favour of one of the sons, namely, Rama

Chandra Sahoo on 29th February, 2020 and it was presented for registration. The Sub-Registrar as well as District Registrar holding that no partition deed has been filed to evident the oral partition refused to register the gift deed. Hence, this writ petition has been filed.

4. Mr. Panda, learned counsel for the further submits that that an oral partition is permissible, but when it is reduced to writing, the same is required to be registered. In the instant case, on the basis of the oral partition, the co-sharers are enjoying their property independently and have executed different deeds. Hence, there is no reason as to why the gift deed executed by Gadadhar Sahoo should not be registered. He, therefore, prays for setting aside the impugned order under Annexure-3 and to remit the matter back to the Sub-Registrar, Athagarh with a direction to register the gift deed dated 29th February, 2020.

5. Mr. Mishra, learned Additional Standing Counsel vehemently objects to the same and contends that no material whatsoever was placed either before the Sub-Registrar, Athagarh or before the District Registrar, Cuttack to show that there was, in fact, an oral partition between the parties. The transactions referred to in the gift deed cannot be stated to have been executed pursuant to such alleged oral partition. In absence of any material, the Registering Authority has committed no error in refusing to register the gift deed. He, further submits that if there is an oral partition, all the co-sharers should have been given written consent for registration of the

gift deed intended to be registered by the Petitioner. In absence of the same, the prayer for registration of the gift deed is not sustainable. He, therefore, prays for dismissal of the writ petition.

6. In view of the submissions made by learned counsel for the parties, it emanates that the Petitioner claims that there was an oral partition during life time of his father and all the brothers of the Petitioner are dealing with the properties independently pursuant to such partition. But neither any material was produced before the Registering Authority nor before this Court to come to a definite conclusion as to whether the transactions referred to in the gift deed were, in fact, pursuant to such oral partition. In the case of ***Golbadan Padhan and another –v- State of Odisha and others*** in W.P.(C) No. 19196 of 2022, it is held at paragraph-7 as under:

*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.”

7. Mr. Panda, learned counsel for the Petitioner, however, submits that there are materials to show that in fact, there was an oral partition and pursuant to such oral partition, the transactions more-fully described in the gift deed itself were executed.

8. It is also observed that the Petitioner does not have a right to alienate the property either by way of sale or gift or mortgage any specific parcel of land in a joint family property. Thus, the Petitioner has to establish that there was, in fact, an oral partition and pursuant to such partition, the land in question fell to his share and he has alienable right to execute a gift deed in respect of specific parcel of the land allegedly fell to his share.

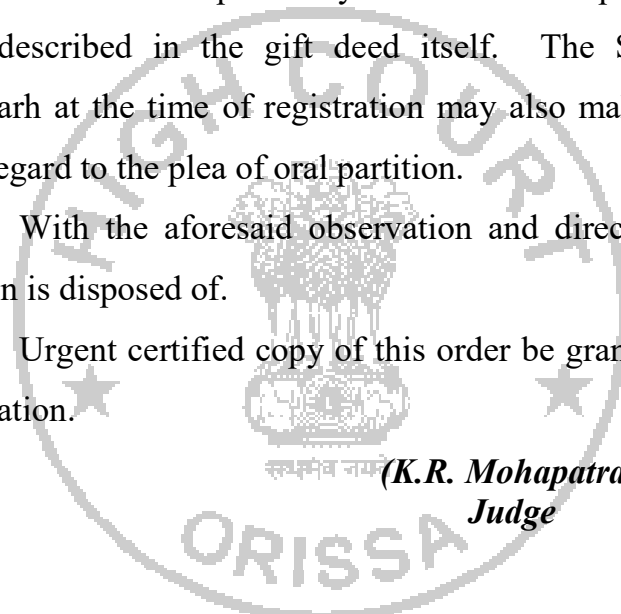
9. Since learned counsel for the Petitioner submits that there are materials to be produced to establish that there was an oral partition and pursuant to the same, the sale deeds as

mentioned in the gift deed were executed, an opportunity should be given to him for the same.

10. In that view of the matter, the impugned order under Annexure-3 is set aside and the matter is remitted back to the Sub-Registrar, Athagarh-Opposite Party No.3 to re-examine the matter, giving opportunity of hearing to the Petitioner to produce the materials in support of his submission that there was, in fact, an oral partition and pursuant to such partition, the co-sharers have independently dealt with the property more fully described in the gift deed itself. The Sub-Registrar, Athagarh at the time of registration may also make an enquiry with regard to the plea of oral partition.

11. With the aforesaid observation and direction, the writ petition is disposed of.

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

A large, faint, circular watermark seal of the Orissa High Court is centered on the page. It features the text 'ORISSA HIGH COURT' around the perimeter and 'ORISSA' at the bottom. In the center is a crest with a book and a lamp, with the motto 'सत्यमेव जयते' (Satyameva Jayate) in Devanagari script below it.
(K.R. Mohapatra)
Judge

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