

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.34131 Of 2021  
(Through video conferencing mode)**

***Batakrushna Mallik and another* ... *Petitioners***

Mr. R.N.Parija, Advocate

*-versus-*

***State of Odisha and others* ... *Opposite parties***

Mr. R.K.Tripathy, ASC

**CORAM: JUSTICE ARINDAM SINHA**

**ORDER  
12.01.2022**

**Order No.**

- 01.** 1. Mr. Parija, learned advocate appears on behalf of petitioners. He submits, his clients want to sell their coparcenary property. The registering authority cannot refuse as bound by clarification dated 9<sup>th</sup> June, 2017, issued by Board of Revenue, Odisha, Cuttack. The clarification is at anneucree-5. He relies on paragraphs 5 and 6 of the clarification. Said paragraphs are reproduced below:-

*“ 5. The Hon’ble High Court of Orissa in the matter of Sitamani Rath Versus IGR and Others vide their judgment dated 19.02.2015 in this connection have made it clear under paragraph 7 to the extent that the buyer without consent of his other coparceners cannot create possession except however he or she has right to sue for partition. That apart, the Hon’ble Court has made it amply clear that there is absolutely no prohibition in sale of a coparcener’s undivided property and as such there cannot be any obstruction*

*in registering such documents by the Registering Officer.*

*6. In view of the above, if the seller or mortgagor in a sale deed or mortgage document, prefer to transfer the undivided proportionate share in the joint-hold property without the consent of the other coparceners by involving the power under section 44 of the Transfer of Property Act, 1882 without giving boundaries of transacted share, the document shall be registered as per the existing provisions of the Registration Act.”*

2. Mr. Tripathy, learned advocate, Additional Standing Counsel appears on behalf of State and submits, the clarification was issued pursuant to judgment mentioned therein, passed in respect of the coparceners interest in land. This cannot be extended to, inter alia, homestead since the right under the Partition Act, 1893, may be involved.

3. Petitioners will present their document for registration to opposite party no.3. Said opposite party will ascertain whether the subject matter of the document is covered by the clarification. If that is so, the document will be registered. Otherwise there will be issued refusal memo stating the reasons. Neither Act of 1882 nor Act of 1893 bare transfer by co-owner.

4. The writ petition is disposed of.

**(Arindam Sinha)**  
**Judge**