A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A No.320 of 2005

In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908

Sanjukta Sahu .... ***Appellant***

-versus-

Joginath Sahu & others .... ***Respondents***

Appeared in this case:-

For Appellant : *Mr. P.K. Sahoo, Advocate*

For Respondents : *None*

CORAM:
JUSTICE A.C. BEHERA

JUDGMENT
Date of hearing :11.03.2026 / date of judgment : 10.04.2026

A.C. Behera, J. This 2nd appeal has been preferred against the reversing judgment.

2. The *respondent* No.1 in this 2nd appeal (Joginath Sahu) was the sole plaintiff before the learned Trial Court in the suit vide Title Suit No.26 of 1997 and appellant before the learned 1st Appellate Court in the 1st appeal vide Title Appeal No.23 of 2003.

The respondent No.3 (Bhagaban Sahu) in this 2nd appeal was the defendant No.2 before the learned Trial Court in the suit vide Title Suit

No.26 of 1997 and respondent No.2 before the learned 1st Appellate Court in the 1st appeal vide Title Appeal No.23 of 2003.

The respondent No.2 in this 2nd appeal i.e. Manguli Sahu was the defendant No.1 before the learned Trial Court in the suit vide Title Suit No.26 of 1997 and the respondent No.1 before the learned 1st Appellate Court in the first appeal vide Title Appeal No.23 of 2003.

When during the pendency of the 2nd appeal, Manguli Sahu expired, then the appeal is continuing between the appellant and respondent Nos.1 and 3.

The appellant in this 2nd appeal (Sanjukta Sahu) was the defendant No.3 before the learned Trial Court in the suit vide Title Suit No.26 of 1997 and respondent No.3 before the learned 1st Appellate Court vide Title Appeal No.23 of 2003.

3. The suit of the plaintiff - Joginath Sahu (respondent No.1 in this 2nd appeal) vide Title Suit No.26 of 1997 against the defendants before the learned Trial Court was a suit for declaration.

As per the case of the plaintiff, his grandfather was Khali Sahu. Khali Sahu had three sons i.e. Sanatan Sahu, Manguli Sahu (defendant No.1) and Abhiram Sahu.

Manguli Sahu (defendant No.1) is the father of the plaintiff (Joginath Sahu). Manguli Sahu (defendant No.1) has two sons i.e. plaintiff (Joginath Sahu) and defendant No.2 (Bhagaban Sahu). Defendant No.3 (Sanjukta Sahu) is the wife of the defendant No.2 (Bhagaban Sahu).

The suit properties along with other properties were the ancestral properties of his grandfather (Khali Sahu). After the death of Khali Sahu, the suit properties along with their other ancestral properties devolved upon his three sons i.e. Santan Sahu, Manguli Sahu (defendant No.1) and Abhiram Sahu.

On the basis of the partition of the ancestral properties between him (Manguli Sahu - defendant No.1) and his two brothers, the suit properties along with some other properties fell into the share of Manguli Sahu (defendant No.1).

As such, the suit properties are the ancestral properties of the plaintiff, defendant Nos.1 and 2. Defendant No.1 (Manguli Sahu) being the father of the plaintiff and defendant No.2 was the Karta of their joint family. The suit Plot No.222 is Ac.0.02 dec. which is their Bari land, the same adjoining to suit Plot No.223 Ac.0.01 dec. of their Ghara land.

The parties are Hindus and their sub-caste is Teli and their profession is business. The plaintiff and the defendant No.2 are two

brothers and they are doing their own separate business at Birat Bazar and Kedarswar Bazar respectively and they (Plaintiff and defendant no.2) are in separate mess.

In the year 1976, the father of the plaintiff and defendant No.2 i.e. defendant No.1 went to Charibatia for business purpose along with the plaintiff and defendant No.2 and stayed there. The plaintiff and the defendant No.2 are also staying at Charibatia.

The defendant No.1 (Manguli Sahu) has imbalanced mind. So, taking the advantage of the imbalanced mind of the defendant No.1, the defendant No.2 managed to execute sale deed No.408 dated 5.2.1996 in respect of the suit properties from him (defendant No.1-Manguli Sahu) in favour of his wife i.e. defendant No.3 (Sanjukta Sahu) without the knowledge of the defendant No.1 relating to the execution and registration of the said sale deed in favour of the defendant No.3 in respect of the suit properties. Subsequent thereto, when the plaintiff came to know about the execution of such fictitious sale deed in respect of the suit properties from Manguli Sahu (defendant No.1) in favour of Sanjukta Sahu (defendant No.3), he (plaintiff) asked about the same to the defendant Nos.2 and 3, but they paid deaf ear to the same. For which, he (plaintiff) applied for the certified copy of the said sale deed No.408 dated 5.2.1996 and obtained the same on 9.1.1997. From the said

certified copy of the sale deed No.408 dated 5.2.1996, he (plaintiff) was sure that, the defendant No.2 (Bhagaban Sahu) has managed to execute and register the said sale deed No.408 dated 5.2.1996 in respect of the suit properties from the defendant No.1 (Manguli Sahu) by practicing fraud and misrepresenting him (defendant No.1) and narrating false things in that sale deed without payment of any consideration amount to the defendant No.1 and without taking the delivery of possession of the suit properties. The suit properties are the joint house and homestead land of the plaintiff and the defendant Nos.1 and 2 and the same has not been partitioned/divided between them. So, the defendant No.1 executed and registered a deed of cancellation bearing No.148 dated 13.1.1997 cancelling the sale deed No.408 dated 5.2.1996 in favour of the defendant No.3. In spite of cancellation of the sale deed No.408 dated 5.2.1996 by the defendant No.1 through deed of cancellation No.148 dated 13.1.1997, the defendant No.3 applied for mutation of the suit properties to her name on the basis of the sale deed No.408 dated 5.2.1996 in her favour by filing Mutation Case No.449 of 1996 before the Tahasildar, Banki, to which, the plaintiff objected, for which, the said Mutation Case No.449 of 1996 of the defendant No.3 was disallowed by the Tahsildar, Banki on dated 22.4.1997. Thereafter, he (plaintiff) approached the Civil Court by filing the suit vide Title Suit No.26 of

1997 against the defendants praying for a declaration that, the sale deed No.408 dated 5.2.1996 said to have been executed by the defendant No.1 in favour of the defendant No.3 in respect of the suit properties as void and to intimate the Registering Officer about the same along with other reliefs, to which, he (plaintiff) is entitled for.

4. The defendant No.1 filed his written statement supporting the case of the plaintiff taking his stands in his written statement that, the plaintiff and the defendant No.2 are his two sons and he is the Karta of his joint family. Since 1976, he left for Charibatia for business purpose with the plaintiff and the defendant No.2. In due course of time, the plaintiff and the defendant No.2 i.e. his both sons are doing business separately and independently. As he (defendant No.1) is old, for which, he required assistance of his sons. His both sons i.e. the plaintiff and the defendant No.2 were/are not pulling well with each other, for which, he (defendant No.1) tried for settlement of their disputes through local gentries, but the same was not fruitful. On 5.2.1996, he was seriously ill. His youngest son Bhagaban Sahu (defendant No.2) brought him to Cuttack for the execution of a power of attorney from him in his favour to manage his business. When he (defendant No.1) reached at Cuttack, the so-called sale deed was already scribed by the Moharir of the defendant No.2. The same was not read over and explained to him (defendant No.1). He had

signed on the said sale deed on good faith according to the say of his son (defendant No.2). Later, he could know that, the said sale deed is a false one and the defendant No.2 has managed to execute the same in favour of his wife i.e. defendant No.3. After knowing about the same, he (defendant No.1) cancelled to that sale deed on dated 13.1.1997 through a registered deed of cancellation. For which, the defendant No.3 has no interest in the suit land. So, the said sale deed No.408 dated 5.2.1996 is to be declared as void.

5. The defendant Nos.2 and 3, both husband and wife, were set ex parte. Though, they (defendant Nos.2 and 3) had filed their joint written statement, but the same was not accepted by the learned trial court.

In the said suit vide T.S No.26 of 1997 altogether five numbers of issues were framed by the learned Trial Court and the said issues are:-

I S S U E S

1. Is the suit maintainable?
2. Has the plaintiff any cause of action for the suit ?
3. Is the registered sale deed no.408 dated 5.2.1996 void being tainted with fraud ?
4. Has the plaintiff right, title, interest over the suit land?
5. To what relief, if any, is the plaintiff entitled ?

6. In order to substantiate the aforesaid reliefs sought for by the plaintiff against the defendant Nos.2 and 3, he (plaintiff) examined four

witnesses from his side as P.Ws.1 to 4 including him as P.W.1 and exhibited two documents on his behalf vide Exts.1 and 2.

The defendant No.1 had also adduced evidence as D.W.1 and had relied upon the document vide Ext.A.

7. After conclusion of hearing, an ex parte judgment and decree was passed in that suit vide Title Suit No.26 of 1997 against the defendant Nos.2 and 3, to which, the defendant Nos.2 and 3 challenged by preferring an appeal vide Title Appeal No.35 of 2000.

That appeal vide Title Appeal No.35 of 2000 filed by the defendant Nos.2 and 3 was allowed and the ex parte judgment and decree passed in that suit vide Title Suit No.26 of 1997 was set aside and the Title Suit No.26 of 1997 was remanded back to the learned Trial Court for its re-trial giving a scope to the defendant Nos.2 and 3 for participating in the hearing of the arguments of the said suit without filing any written statement.

8. Accordingly, after hearing from both the sides, the learned Trial Court dismissed that suit vide Title Suit No.26 of 1997 of the plaintiff on contest as per its judgment and decree dated 3.1.2003 and 21.01.2003 respectively answering all the issues against the plaintiff assigning the reasons that :-

"The plaintiff has failed to plead and prove relating to the so called fraud alleged to have been practiced by the defendant No.2 for the execution and registration of the sale deed No.408 dated 5.2.1996 (Ext.1) in respect of the suit properties from the defendant No.1 in favour of the defendant No.3. For which through that sale deed No.408 dated 5.2.1996, title of the suit properties was conveyed in favour of the defendant No.3 and as such defendant no.3 has title in the suit properties. Therefore, the registered sale deed bearing No.408 dated 5.2.1996 executed by the defendant No.1 in favour of the defendant No.3 in respect of the suit properties is not tainted with fraud. So the plaintiff has no cause of action to institute the suit.

When the suit land still remains in jointness, it is open to him (plaintiff) to seek for the relief i.e. partition of the suit land, but the plaintiff has not done so. For which, he (plaintiff) is disentitled to the declaratory relief as prayed for in view of the Proviso to Section 34 of the Specific Relief Act."

9. On being dissatisfied with the aforesaid dismissal of the suit of the plaintiff passed by the learned Trial Court, he (plaintiff) challenged the same preferring the first appeal vide Title Appeal No.23 of 2003 being the appellant against the defendant Nos.2 and 3 arraying them as respondent Nos.2 and 3 and also arraying defendant No.1 as the respondent No.1.

10. After hearing from both the sides, learned 1st Appellate Court allowed that First Appeal vide Title Appeal No.23 of 2003 of the

plaintiff-appellant as per its judgment and decree dated 30.06.2005 and 12.07.2005 respectively and set aside to the judgment and decree of the dismissal of the suit of the plaintiff vide Title Suit No.26 of 1997 passed by the learned Trial Court and decreed the said suit vide Title Suit No.26 of 1997 of the plaintiff and declared the sale deed No.408 dated 5.2.1996 (Ext.1) executed by the defendant No.1 in favour of the defendant No.3 in respect of the suit properties as void and cancelled the same and intimated such cancellation to the concerned Sub-Registrar, assigning the reasons that,

"the suit properties are the joint family Gharabari land, wherein the plaintiff has a share and as the defendant No.1 has cancelled the sale deed vide Ext.1 through a deed of cancellation vide Ext.A and as the defendant No.1 is a fickle minded person having no independent mind to take proper decision, for which, the sale deed No.408 dated 5.2.1996 vide Ext.1 executed by him in favour of defendant No.3 is void".

11. On being aggrieved with the aforesaid judgment and decree dated 30.06.2005 and 12.07.2005 respectively passed by the learned 1st Appellate Court in Title Appeal No.23 of 2003 in favour of the plaintiff and against the defendant No.3, the defendant No.3 challenged the same preferring this 2nd appeal being the appellant against the plaintiff and the

defendant No.1 arraying them as respondent Nos.1 and 2 and also arraying her husband (defendant No.2) as proforma respondent No.3.

12. This 2nd appeal was admitted on 01.05.2007 on formulation of the following substantial questions of law:-

> *"1. Whether the findings of the learned 1st appellate court that the sale deed, Ext.1 is void without recording any specific finding on the allegation of fraud and misrepresentation is legally tenable ?*
>
> *2. Whether the learned 1st appellate court committed error of record and approached the issue in a perverse manner?"*

When during the pendency of this 2nd appeal, the respondent No.2 (Manguli Sahu) expired, then the appeal has been continuing for other parties.

13. I have already heard from the learned counsel for the appellant (defendant No.3) only, as, none appeared from the side of the respondent Nos.1 and 3 to participate in the hearing of this 2nd appeal.

14. When, the findings and observations made by the learned Trial Court and the learned 1st Appellate Court in their respective judgments and decrees on the basis of the pleadings and evidence, both the aforesaid formulated substantial questions of law are inter-linked having ample nexus with each other, then both the aforesaid formulated substantial questions of law are taken up together analogously for their discussions hereunder:

15. It is the own case of the plaintiff that, the suit properties are his ancestral properties and the suit properties have not been divided/partitioned between him (plaintiff), his father (defendant No.1) and his brother (defendant No.2) through any metes and bounds partition. He (plaintiff), defendant No.1 and defendant No.2 have equal interest/share in the suit properties.

The plaintiff (P.W.1) has deposed in his evidence by stating that, "*the suit properties are his ancestral properties"*.

The witnesses of the plaintiff i.e. P.Ws.2, 3 and 4 have also deposed specifically in their respective evidence that, "*the parties i.e. plaintiff and the defendants are in possession over the suit properties jointly"*.

16. The above evidence of the plaintiff and his witnesses is corroborating to the pleadings of the plaintiff and the same is going to show that, the suit properties are the joint and undivided properties of the parties and they are possessing the same jointly. The suit properties have not been partitioned/divided between them through any metes and bounds partition.

Now it will be seen,

Whether, there is material in the record to show about the execution and registration of the sale deed No.408 dated 5.2.1996 vide

Ext.1 by the defendant No.1 in favour of the defendant No.3 in respect of the suit properties with his intention and knowledge of such execution or without his intention and knowledge about the execution and whether by the unilateral cancellation of the said deed through the deed of cancellation dated 13.1.1997 vide Ext.A, the legal effect of the sale deed No.408 dated 5.2.1996 vide Ext.1 has been wiped out.

17. The plaintiff (P.W.1) has specifically deposed in Para No.4 of his deposition that,

when his father (defendant No.1) realized the mistake regarding the execution of the impugned sale deed No.408 dated 5.2.1996 vide Ext.1, then he executed and registered the deed of cancellation vide Ext.A.

18. The defendant No.1 has deposed in his examination-in-chief by stating that,

the sale deed vide Ext.1 was executed by him on the impression that, he is executing power of attorney, for which, on dated 13.1.1997, he executed the registered deed of cancellation bearing deed of cancellation No.148 dated 13.1.1997 vide Ext.A cancelling the sale deed No.408 dated 5.2.1996 vide Ext.1.

The above evidence of P.Ws.1 and 2 is going to show about the execution of the sale deed No.408 dated 5.2.1996 vide Ext.1 by the

defendant No.1 in favour of the defendant No.3 in respect of the suit properties with the intention and knowledge of the defendant No.1 about such execution, for the reason that, when the defendant No.1 realized that, he (defendant No.1) has committed a mistake executing the sale deed No.408 dated 5.2.1996 subsequent to its execution and registration, he (defendant No.1) cancelled the same through the deed of cancellation vide Ext.A.

As such, the execution of the sale deed No.408 dated 5.2.1996 by the defendant No.1 in favour of the Defendant No.3 with the intention and knowledge of the defendant No.1 about such execution and registration in respect of the suit properties is established.

Now it will be seen, what is the legal effect of unilateral cancellation of the sale deed by the defendant No.1 through execution and registration of the deed of cancellation bearing No.148 dated 13.1.1997, vide Ext.A.

19. The legal effect of an unilateral deed of cancellation has already been clarified in the ratio of the following decisions:

> ***(i)*** In a case between ***Thota Ganga Laxmi and Another vrs. Government of Andhra Pradesh and Others reported in (2010) (15) SCC 207 that,***
>
> *Cancellation of sale deed and registration of the same was wholly void and non-est and can be ignored altogether;*
>
> *There was no need for the appellants to approach the civil court as the said cancelation deed dated 4.8.2005 as well*

as registration of the same was wholly void and non-est and can be ignored altogether.

(ii) In a case between ***M/s.V.Marc India Limited vrs. Jaan Illahi and Another reported in 2025 (3) Civil Court Cases 190 (Uttarakhand) that,***

Cancellation of a registered sale deed by the executant unilaterally on the ground that he was not of stable mind at the time of execution of the same, the said cancellation of registered sale deed on the ground that executant was not of stable mind is not a ground for cancellation of a duly registered document.

(iii) In a case between ***Satya Pal Anand vrs. State of Madya Pradesh and others reported in (2016) 10 SCC 767 that,***

There is no express provision in the Registration Act, 1908 which empowers the Registrar or Sub-Registrar to recall or cancel any registered deed.

The power to cancel the registration is a substantive matter. In the absence of any express provision in that behalf, it is not open that, the Registrar or Sub-Registrar would be competent to cancel the registration of the documents in question.

When unilateral cancellation of a sale deed already executed deed by the vendor is not permissible under law, then at this juncture by applying the principles of law enunciated in the ratio of the aforesaid decisions to this suit/appeal at hand, it is held that, the unilateral deed of cancellation No.148 dated 13.1.1997 vide Ext.A is held as *non est* in the eye of law and the same has no legal value. For which, the said deed of cancellation vide Ext.A is excluded from the zone of consideration.

20. As per the discussions and observations made above, when it is held that, the suit properties are the ancestral properties of the plaintiff and the defendant Nos.1 and 2 and they have equal share in the same and the said suit properties have not been divided/partitioned between them as yet, then at this juncture, *it will be seen, whether the sale deed No.408 dated 5.2.1996 vide Ext.1* executed by the defendant No.1 in respect of the suit properties in favour of the wife of the defendant No.2 i.e. defendant No.3 is void or not.

21. It is very much clear as per the mandate of Section 44 of the T.P Act, 1882 that, a co-owner (co-sharer) is entitled to alienate his undivided share in the joint properties without acknowledging the rights of his/her co-owners in the sale deed. Such sale deed will not become void or voidable at the option of other co-owners.

On this aspect, proposition of law has already been clarified in the ratio of the following decisions.

> ***(i)*** In a case between ***Sitarani Rath vrs. The Inspector General of Registration, Odisha and Ors. reported in 120 (2015) CLT 1069 that,***
>
> *Joint family property - Transfer of immovable property by one of the co-owners is legally competent in that behalf. Held. Transfer is valid to the extent of the share of the transferor.*
>
> ***(ii)*** In a case between ***Dillip Kumar Sahoo vrs. Smt. Malati Rout and others reported in 2013 (1) CLR 570 that,***

Transfer by one of the co-owners remains valid to the extent of the share of the transferor.

(iii) In a case between ***Sk. Golam Lalchand vrs. Nandu Lal Shaw alias Nand Lal Keshri alias Nandu Lal Bayes and Others reported in 2024 SCC Online SC 2456 that,***

Joint properties not partitioned, the owners right to transfer to limited to his share and not beyond that.

(iv) In a case between ***Gangu Bai Raghunath Ayare vrs. Gangaram Sakharam Dhuri (D) Theirs Lrs And Ors. reported in 2025 (3) Civil Law Judgments 211 (Supreme Court) that,***

Registered sale deed executed by one co-sharer shall be valid for her share - purchaser cannot claim the entire properties which was the subject-matter of transfer by sale in view of Section 44 of the T.P. Act, 1882.

(v) In a case between ***Dhabal Prasad Pradhan vrs. Sate of Odisha and others reported in 2014 (II) OLR 902 that,***

Transfer passes forthwith all the interest of the transferor in favour of transferee and in the legal incidents thereof.

(vi) In the case between ***Gorakh Nath Dubey vrs. Hari Narain Singh and others reported in AIR 1973 SC 2451 that,***

Transfer by co-owner excess to his/her share - An alienation made in excess of power to transfer would be, to the extent of the excess of power, is invalid.

(vii) In a case between ***Gananath Sahu &another Vrs. Smt. Bulli Sahu & others reported in 1974(1) C.W.R. 222 that,***

Transfer of property more than the transferor's interest in lands jointly held with others is not invalid in toto. It would be valid and operative to the extent of the transferor's interest in the lands.

(viii) In a case between ***Gurdeep Singh & others vrs. Kulwant Singh & others reported in 2018 (1) Civil Court Cases 546 (P&H) that,***

Sale of specific portion of land – no co-share was recorded to be in possession of any specific portion of the joint

land – Since the vendors were not in exclusive possession of any portion of the joint land, they could not deliver possession of any such portion and the recitals regarding delivery of possession would create only symbolic possession of the purchaser even sale is made for specific portion of land would amount to sale of only a share in the joint land.

(ix) In a case between ***Jal Singh & others vrs. Gurmej Singh reported in 2010 (I) CLR (SC) 319 that,***

When a co-share sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers.

(x) In a case between ***FGP Ltd. Vrs. Saleh Hooseini Doctor &Anr. 2009 (4) Civil L.T 1 (SC) that,***

Co-owner of property is an owner of property till property is partitioned. (Para-46)

22. As per the discussions and observations made above, when it is held that, the suit properties are the joint and undivided properties of the parties and the defendant No.1 has executed a registered sale deed No.408 dated 5.2.1996 vide Ext.1 in respect of the suit properties in favour of the defendant No.3 and when Section 44 of the T.P Act, 1882 empowers a co-owner like the defendant No.1 for alienation of his undivided interest in the joint suit properties and when in view of the clarifications made in the ratio of the aforesaid decisions, sale made by the co-owner without consent of his other co-owners shall remain valid only to the extent of his/her share and when, even if, a co-owner sells a specific portion of the joint and undivided properties like the suit properties or sells the entire joint suit properties in excess of his share,

still then, it will be held as per law that, he has transferred/alienated only his interest in the suit properties and the said sale deed shall remain valid to the extent of the share of the vendor like the defendant No.1 and the vendee thereof like the defendant No.3 shall be entitled to get the joint interest in the suit properties without any specific portion in the said joint and undivided suit properties and when the said sale deed No.408 dated 5.2.1996 vide Ext.1 is neither void nor voidable as per law, then at this juncture, the judgment and decree passed by the learned 1st Appellate Court holding that, the sale deed No.408 dated 5.2.1996 as void as well as cancellation thereof cannot be sustainable under law, as the said sale deed No.408 dated 5.2.1996 vide Ext.1 is neither void nor voidable, but the transfer/alienation made through the same by defendant No.1 in favour of the defendant No.3 is valid to the extent of the interest/share of the defendant No.1 in the joint suit properties.

For which the impugned judgment and decree passed by the learned 1st Appellate Court in Title Appeal No.23 of 2003 reversing the judgment and decree of the dismissal of the suit vide Title Suit No.26 of 1997 of the plaintiff cannot be sustainable under law.

So, there is justification under law for making interference with the same through this 2nd appeal filed by the appellant (defendant No.3 of the suit).

As such, there is merit in the 2nd appeal filed by the appellant (defendant No.3). The same must succeed.

23. In the result, this 2nd appeal filed by the appellant (defendant No.3) is allowed on merit.

24. The impugned judgment and decree dated 30.06.2005 and 12.07.2005 respectively passed by the learned 1st Appellate Court in Title Appeal No. 23 of 2003 is set aside.

25. The judgment and decree dated 3.1.2003 and 21.1.2003 respectively passed by the learned Trial Court in Title Suit No.26 of 1997 in dismissing the suit of the plaintiff (respondent No.1) is confirmed.

(A.C. Behera)
Judge

Orissa High Court, Cuttack
The 10th April, 2026/ Pradeep.

Signature Not Verified
Digitally Signed
Signed by: PRADEEP KUMAR SWAIN
Reason: Authentication
Location: Orissa High Court, Cuttack
Date: 11-Apr-2026 18:36:12