

**HEADING OF DECISION IN THE ORIGINAL SUIT
IN THE COURT OF THE CIVIL JUDGE (SENIOR
DIVISION), 2ND COURT, CUTTACK**

Present: Sharat Kumar Sahoo
(J.O. Code: OD-00606)
Civil Judge (Sr. Div.), 2nd Court,
Cuttack.

**Dated, this the 11th day of August, 2026
C.S.No.533 of 2025-I(CIS No.533 of 2025)**

1.Bhabani Prasad Mohapatra, aged about 55 years,
S/O-Late Narendranath Mohapatra,
2.Bhagya Gobardhan Mohapatra, aged about 56 years,
S/O-Late Narendranath Mohapatra,
3.Bhanupriya Parida, aged about 49 years,
D/O-Late Narendranath Mohapatra,
4.Renubala Mohapatra, aged about 66 years,
W/O-Late Harekrushna Mohapatra,
5.Bhairaba Prasad Mohapatra, aged about 36 years,
S/O-Late Harekrushna Mohapatra,
6.Bhisma Ranjan Mohapatra, aged about 33 years,
S/O-Late Harekrushna Mohapatra,
7.Rajalaxmi Pradhan, aged about 39 years,
W/O-Khetramohan Mohapatra
D/O-Late Harekrushna Mohapatra,
All are of village-Bagalpur, P.O.-Sundargaon,
P.S.-Govindpur, Dist-Cuttack.....Plaintiffs.

-Versus-

Baikunthanath Acharya, aged about 80 years,
 S/O-Late Dibarkar Acharya, resident of
 At-New Colony, Rasulgarh, P.O.-Rasulgarh,
 P.S.Mancheswar, Dist-Khurda..... Defendant.

Counsel for the Plaintiffs: Sri B.Lenka &
 Associates, Advocates, Cuttack
 Counsel for Defendant : Sri Ratikanta Nayak &
 Associates, Advocates, Cuttack.
 Date of Argument :11.08.2026
 Date of Judgment :11.08.2026

J U D G M E N T

This suit has been filed by the plaintiffs for declaration, permanent injunction and other consequential reliefs.

2. The case of the Plaintiffs in brief is that the suit schedule property appertaining to Khata No.230 of mouza-Bagalpur, Tahasil-Niali stood recorded in the name of Narendranath Mohapatra, Harekrushna Mohapatra son of Khetramohan Mohapatra and Labani Mohapatra wife of Khetramohan Mohapatra. Labani Mohapatra died since long. Narendranath Mohapatra died leaving behind two sons namely Bhabani Prasad Mohapatra (Plaintiff No.1), Bhagya Gobardhan Mohapatra (Plaintiff No.2) and one daughter namely Bhanupriya Parida (Plaintiff No.3). Harekrushna Mohapatra died leaving behind Plaintiff Nos.4,5, 6 and 7. On dated 29.04.2011 the Defendant cunningly executed a sale deed bearing No.701 of 2011, Document No.10461100690 as purchaser from the successors of Late

Narendranath Mohapatra. But no transfer of possession or mutation in the name of the Defendant was made and the schedule property is still in possession of the Plaintiffs. The said sale deed was executed by Harekrushna Mohapatra only. So the Plaintiff raised objection to the validity of the same. By taking the previlage of the fraudulent sale deed the Defendant trying to take possession of the same. The Mutation Case No.576/2024 was rejected by Tahasildar, Kantapada on dated 25.04.2024 filed by the Defendant. Hence, the Plaintiffs prayed to declare the R.S.D. No.10461100690, dated 29.04.2011 and registered on dated 02.05.2011 obtained by the Defendant as illegal, void, invalid and the Defendant has no right, title, interest and possession over the said land and to pass a decree of permanent injunction restraining the Defendant to the suit schedule property and to confirm the possession of the Plaintiffs over the suit land.

3. On being summoned, Defendant appeared and filed his written statement. In his W.S. Defendant contended that the allegation of cunningly execution of sale deed on dated 29.04.2021 is completely false and on the date of the sale deed the defendant has been possessing the suit schedule property. Hence, he prayed this Court to dismiss the suit with cost.

4. In view of the pleading and documents relied upon by the plaintiffs; the following issues were framed for proper adjudication of the suit:-

ISSUES

- (i) Whether the suit is maintainable?
- (ii) Whether the Plaintiffs have any cause of action to file the suit?
- (iii) Whether the Plaintiffs are entitled for a decree of declaration that the R.S.D. bearing No.10461100690, dt.-29.04.2011 obtained by the Defendant from the Plaintiffs' father is illegal, void, invalid and the Defendant has no right, title, interest and possession over the said land?
- (iv) Whether the Plaintiffs are entitled for permanent injunction against the Defendant restraining him from entering upon the suit land, making construction thereon, creating any disturbance in the possession of the Plaintiffs?
- (v) To what other relief(s) Plaintiffs are entitled for?

5. In order to substantiate its case, the plaintiffs have examined as many as two witnesses. Plaintiff No.1 Bhabani Prasad Mohapatra has been examined himself as P.W.1. Plaintiff No.2 Bhagya Gobardhan Mohapatra has been examined himself as P.W.2.. Further, the Plaintiffs have filed and proved documents which are marked as Ext.1 to Ext.3. Ext.1 the certified copy of R-o-R of Khata No.230 of mouza-Bagalpur, Tahasil-Niali at present Kantapada. Ext.2 to Ext.2/h are the rent receipts and Ext.3 as the certified copy of R.S.D. No.10461100690, dated 29.04.2011. All the exhibits are marked without objection of the Defendant. On the other hand, Defendant Baikunthanath Acharya examined himself as D.W.1. Further, the Defendant has not filed or

proved any document on his behalf. Both the sides had filed their written notes of argument.

FINDINGS

6. ISSUE NO.III

This issue is taken up first being vital and backbone of the suit. Plaintiff No.1 examined himself as P.W.1 and exhibited three documents as stated above. From Ext.1 it is found that Khata No.230 of mouza-Bagalpur, Tahasil-Niali stood recorded in the names of Narendranath Mohapatra, Harekrushna Mohapatra sons of Khetramohan Mohapatra and Labani Mohapatra wife of Khetramohan Mohapatra. Plaintiff No.1, 2 and 3 are successors of Late Narendranath Mohapatra. Plaintiff Nos.4,5,6 and 7 are successors of Late Harekrushna Mohapatra. From Ext.2 to Ext.2/h it is found that the rent receipts are paid by the said family till 2025-26. From Ext.3 i.e. certified copy of R.S.D. No.10461100690, dated 29.04.2011 it is found that Harekrushna Mohapatra executed this R.S.D. in favour of the Defendant wherein he sold the schedule in Khata No.230, Chaka No.157, Plot No.211 of area Ac.1.24 dec. of mouza-Bagalpur, Tahasil-Niali. P.W.1 deposed that though in the sale deed many names including his name was mentioned only Harekrushna Mohapatra signed on it and that without the consent of the co-sharers it is not possible for sale to be completed. He again deposed that the Plaintiffs are still in possession of the suit schedule property and since Ext.3 is executed without prior knowledge and consent of other co-sharers, the said

R.S.D. should be declared as illegal, void. In his cross-examination he admitted that the vendor of Ext.3 also have a share in the suit property being the co-sharer. Plaintiff No.2 examined himself as P.W.2 and supported the version of P.W.1. The Defendant examined himself as D.W.1 and admitted the genealogy of the plaint and deposed that the Plaintiffs and predecessor of Plaintiff Nos.4 to 7 while in possession of the suit property, transferred the suit property to him by R.S.D. dated 29.04.2011 and delivered the possession of the same in his favour and since then he is in peaceful possession of the same. In his cross-examination he deposed that the R.S.D. was executed in connection with Chaka No.157, Khata No.230 and Plot No.211 of mouza-Bagalpur of area Ac.0.62 dec..

Section 44 of Transfer of Property Act envisages that transfer of undivided interest in a property by a co-owner is not prohibited and it should be within the limit of the share of the co-owner in the undivided property. In this particular case, from Ext.3 it is found that the only executant namely Harekrushna Mohapatra had executed document No.10461100690, dated 29.04.2011 in favour of the Defendant. The schedule mentioned in the said R.S.D. is Chaka No.157, Khata No.230 and Plot No.211 of mouza-Bagalpur of area Ac.1.24 dec.. It is clear that this is an undivided property of the Plaintiffs. So Harekrushna Mohapatra was not entitled to sell the entire Ac.1.24 dec. to the Defendant without the consent of the other co-shares.

The sale deed was executed on dated 29.04.2011. The recorded tenants as per Ext.1 are Harekrushna Mohapatra, Narendranath Mohapatra who are two brothers and Labani Mohapatra who is the mother of both.

The learned counsel for the Defendant admitted that though the sale deed was executed in relation to the entire Ac.1.24 dec. of land which is not the exclusive share of the executant namely Harekrushna Mohapatra but for the said reason the said sale deed cannot be declared as fully void or illegal. The learned counsel for the Defendant relied upon the decision in **2025 (I) CLR-331 Kailash Chandra Mohanty & Another v. Debendranath Kanungo and Others**. The relevant portions of the aforementioned judgment by Hon'ble Court runs as under:-

“Because, it is the settled propositions of law, as per Section 44 of the T.P. Act, 1882 that, transfer by one co-owner of his/her undivided interest in the joint/undivided properties is not prohibited under law.

So, the transfer of property more than the transfer's interest in the lands jointly held with others is not invalid in toto, but, it would be valid and operative to the extent of the transferor's interest in the said lands.”

In this case from Ext.3 it is found that Harekrushna Mohapatra had executed this R.S.D. in favour of the Defendant with regard to the whole area of Ac.1.24 dec. in

Khata No.230, chaka No.157 and Plot No.211 of mouza-Bagalpur. But at the same time, he was not entitled to sell the entire area at that time since there were other co-sharers available. From Ext.1 it is evident the other two co-sharers were Narendranath Mohapatra and Labani Mohapatra, who is the mother of Harekrushna and Narendranath. The said R.S.D. was executed in the year 2011. No evidence have been adduced by both sides whether Labandi Mohapatra was alive or dead by the time of execution of the sale deed in the year 2011. Hence, this Court finds it doubtful or incomplete to conclude whether Harekrushna Mohapatra had $\frac{1}{2}$ share or $\frac{1}{3}^{\text{rd}}$ share over Khata No.230, chaka No.157 and Plot No.211 at the time of execution of the said sale deed.

In obedience to the decision of the Hon'ble Court as mentioned above, it is clear that the R.S.D. No.10461100690, dated 29.04.2011 is not invalid in toto but it is valid and operative to the extent of the interest of Harekrushna Mohapatra in the said land. But for the aforementioned reasons this Court finds it difficult to determine interest of Harekrushna Mohapatra at the time of execution of the R.S.D.. That does not necessarily imply that the Defendant has no right, title, interest over the suit land since the Defendant's interest is equal to the interest of Harekrushna Mohapatra at the time of execution of the above mentioned R.S.D.. Hence, this issue is not answered in favour of the Plaintiffs.

7. **ISSUE NO.IV**

For the foregoing reasons, it is held by this Court that, the Defendant is a co-sharer having limited interest in the suit schedule property. It is a settled principle that the relief of injunction can be sought by a co-sharer against the other co-sharers when such co-sharer happens to be in exclusive possession of the land which is exclusive to the possession of the other co-sharer, but when the possession of all co-sharers are joint, relief of injunction cannot be sought by either of the co-sharers and the only relief is available to the co-sharer to seek partition. By purchasing share of Harekrushna Mohapatra, Defendant has become co-sharer of the suit land and Plaintiffs cannot seek permanent injunction against the Defendant restraining him to use the land since Defendant has a right and authority to use the joint property to the extent of the share of Harekrushna Mohapatra at the time of execution of R.S.D. No.10461100690, dated 29.04.2011 and registered on dated 02.05.2011. For the foregoing reasons, it is held that Plaintiffs are not entitled to permanent injunction against the Defendant restraining him from entering upon the entire suit land. Hence, this issue is not answered in favour of the Plaintiffs.

8. **ISSUE NOS.I, II & V**

As discussed above in the above mentioned paragraphs the suit is not maintainable and this being so there is no cause of action on the part of the Plaintiffs to file

the suit. Hence, in view of the above discussion and considering all the facts, I am of the view that the Plaintiffs are not entitled for any other reliefs as sought for.

Hence, it is ordered;

ORDER.

The suit be and the same is dismissed on contest against Defendant but in the circumstances without any order of cost. R.S.D. No.10461100690, dated 29.04.2011 and registered on dated 02.05.2011 is not void or illegal in toto but it is valid and operative to the extent of the share of Harekrushna Mohapatra in the suit schedule property existed at the time of execution of the said R.S.D..

Advocate's fee be assessed at a contested scale.

Civil Judge (Senior Division), 2nd Court,
Cuttack.

The judgment is typed to my dictation, corrected and signed by me and pronounced in the open Court today on this 11th day of August, 2026 given under my hand and seal of the Court.

Civil Judge (Senior Division), 2nd Court,
Cuttack.

List of witness examined on behalf of the Plaintiffs:

P.W.1: Bhabani Prasad Mohapatra
P.W.2: Bhagyadhar Gobardhan Mohapatra

List of witness examined on behalf of the Defendant:

D.W.1: Baikunthanath Acharya

List of Exhibits Marked on behalf of the Plaintiffs:

Ext.1: Certified copy of R-o-R bearing Khata
No.230 of mouza-Bagalpur.

Ext.2 to Ext.2/h: Rent receipts

Ext.3: Certified copy of Regd. Sale Deed bearing
No.10461100690, dated 29.04.2011

List of Exhibits Marked on behalf of the Defendant:-

Nil

Civil Judge (Senior Division), 2nd Court,
Cuttack.