

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CMP No.896 of 2025****CNR No. ODHC010405602025****along with****CMP No.1636 of 2025****CNR No. ODHC010655292025**

(In the matter of applications under Article 227 of the Constitution of India).

(In CMP No.896 of 2025)

*Saraswati Sishu Vidya Mandir,
Tulsipur & Anr.*

.... *Petitioner (s)*

-versus-

Swapanendu Samal & Ors.

.... *Opposite Party (s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner (s)

:

*M/s.Anjan Kumar Jena,
B. Mohanty, P. Jena, S. Acharya, Advs.
(for Petitioner in CMP No.896/2025)
M/s. Sourav Suman Bhuyan,
S. Sahoo, S.S Mohapatra, Advs.
(for Petitioner in CMP No.1636/2025)*

For Opp. Party (s)

:

*M/s. Sourav Suman Bhuyan,
Ms. Sujata Sahoo, S.S. Mohapatra,
Saswat Kumar Rout, Sushree Swapnali
Nayak, Advs.
(for O.P.1 in CMP No.896/2025)
M/s. Sk. Zafarulla,
Mr. Jagannath Kamila
Ms. Subhasmita Pattanaik Advs.
(for O.P.2 in CMP No.896/2025)
M/s. Anjan Kumar Jena,
B. Mohanty, C. Nayak, P. Jena,
S. Acharya, S. Sadual, Advs.
(for O.Ps.1 & 2 in CMP No.1636/2025)*



CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -19.08.2026

DATE OF JUDGMENT: -03.09.2026

Dr. Sanjeeb K Panigrahi, J.

1. Since both the aforementioned Civil Miscellaneous Petitions are interlinked, they were heard together and are being disposed of by this common judgment. For the sake of convenience, CMP No.896 of 2025 is being treated as the lead matter.
2. The Petitioners are the Defendant Nos.7 and 8 in C.S. No.339 of 2016 on the file of the learned Senior Civil Judge Athagarh. Opposite Party No.1 is the Plaintiff and Opposite Party Nos.2 to 6 is the Defendant Nos.1 and 3 to 6. They assail the order dated 15.05.2025 under Annexure-1 by which they were directed to amend their written statement cum counter claim on the question of valuation alone and to pay the deficit court fee.
3. The suit was instituted in 2016 for a declaration that the sale deed executed by the Defendant No.2 in favour of the Defendant No.1 Sakamat Khan is null and void. On coming to learn of a sale of the suit land by the Defendant Nos.3 to 5 to the Defendant No.6 the Plaintiff impleaded them amended the plaint to assail that sale deed and enhanced the valuation to the consideration recited therein. On coming to learn thereafter of a sale by the Defendant No.1 to the Petitioners he had them impleaded on 13.02.2024 amended the plaint afresh raised the valuation to Rs.35,00,000/- being the consideration recited in their



sale deed and sought a declaration that the said sale deed is also null and void.

4. The Petitioners entered appearance on 29.03.2024. Talks of settlement with the Plaintiff caused the time for filing the written statement to lapse and on those talks failing they filed the written statement with a counter claim on 27.10.2024 along with a petition for acceptance of the same. By the counter claim they assailed the sale deed dated 09.01.2002 by which the Plaintiff had purchased the suit land from one Jamuni Begum a stranger for a recited consideration of Rs.28,000/- and they valued the counter claim at Rs.50,000/-.
5. The Plaintiff objected to that valuation. By the impugned order the learned court below accepted the written statement and directed the Petitioners to pay court fee on Rs.35,00,000/-. Hence this CMP.

II. SUBMISSIONS OF THE PETITIONERS:

6. Learned counsel for the Petitioners made the following submissions in support of his contentions:
7. The present Petitioners, who are the Defendant Nos.7 & 8 challenged the sale deed of the Plaintiff dated 09.01.2002 by filing counter claim, for which the Defendant Nos.7 & 8 valued the counter claim as per the valuation mentioned in the sale deed dated 09.01.2002, but the learned court below directed the Defendant Nos.7 & 8 to pay the court fee as per the market value mentioned in the plaint by the plaintiff. According to the learned counsel for Petitioners the same is not permissible in law.



8. As per the Court Fees Act, the provision under Section-7(iv)(c) is for a declaratory suit and nowhere it has been mentioned that the valuation of the suit will be calculated as per the market value. In the present suit, the Defendant Nos.7 & 8 filed their W.S with counter claim challenging the sale deed in the year 2002 of the plaintiff, but the learned court below directed the Defendant Nos.7 & 8 to pay the court fee as per market value, which is illegal.
9. He further contends that by the decision in *Bharat Bhushan Gupta vrs. Pratap Narain Verma & Anr.*¹, the Hon'ble Supreme Court has decided that, "*valuation of the suit land not required to be valued at market value of property and valuation of suit always depends on nature of relief claimed-merely because subject matter of litigation involves immoveable property, market value would not become decisive of the suit valuation and such suit not required to be valued at market value*".
10. Furthermore, a co-ordinate Bench of this Court passed a judgment in *Parbati Dei & Ors. -vrs.- Sukanti Pattnaik & Ors.*² clarifying the position that, "*suit for declaration and for permanent and mandatory injunction-Court fee to be paid according to the valuation given in the plaint-order directing the plaintiff to correct the valuation of the suit land as per the market value and pay court fee accordingly is bad or cannot be sustained*". The above case laws have been decided in favour of plaintiff and the

¹ 2022 (II) CLR (SC) 322

² 2022(II) CLR 227



same principle/ratio is applicable to the defendants, who filed counter claim.

11. He, in the process, contends that in view of the point of law decided by the Supreme Court as well as a Co-ordinate Bench of this Court, the impugned order passed by learned Civil fudge Sr. Div. Athagarh dated 15.05.2025 may be set aside/ quashed.

III. SUBMISSIONS OF THE OPPOSITE PARTIES:

12. In his opposition, learned counsel for the Opposite Parties submits that the aforementioned Civil Miscellaneous Petition has been preferred by the Petitioners/Defendants No. 7 & 8 challenging the order dated 15.05.2025 passed by the learned Civil Judge (Sr. Div.), Athagarh wherein he directed the Petitioners/Defendants Nos.7 & 8 for depositing the deficit Court Fees as per the provision under the Court Fees Act, 1870. The Opposite Party No.1 being the Plaintiff instituted a suit vide C.S. No. 339 of 2016 before the Court of learned Civil Judge (Sr. Div.), Athagarh for declaration of his right, title and interest over the suit land and the sale deed executed by the strangers unconnected to the suit land as null and void and accordingly, for confirmation of the possession. In the alterative recovery of possession, permanent injunction and finally, prayed for a direction to the concerned Tahasildar for recording the suit land in his favour along with cost and other consequential reliefs.
13. He also contends that the averments made in the plaint are that the suit land was originally settled in favour of one Akbar Khan, S/o.



Mana Khan and the Record of Rights was granted in his favour. After his death, the suit property was purchased by the Plaintiff vide Registered Sale Deed dated 09.01.2002, but the purchased land could not be recorded in his name due to an on-going proceeding under Section 47 of Indian Stamp Act. After conclusion of the said proceeding, the Plaintiff received the original Registered Sale Deed on 23.08.2010, but the third persons/strangers having no connection to the suit land, sold the same in favour of the Defendant No. 1. Hence, the suit.

14. Furthermore, during the pendency of the suit said Defendant No. 1 sold the suit property in favour of the Defendant Nos. 7 and 8. Hence, they were made as *lis pendence* purchaser. After knowing the said fact, a petition under Order 1 Rule 10 of the CPC was filed and the Defendant Nos.7 and 8 were impleaded in the suit vide order dated 13.02.2024. During pendency of the Suit, the said Petitioners/Defendants No. 7 & 8 filed a W.S. cum Counter Claim much belatedly, which is yet to be formally accepted by the learned Court below.
15. He also contends that the Plaintiff/Opposite Party No.1 filed a petition dated 05.04.2025 claiming that the Counter Claim is not maintainable as appropriate Court fees have not been paid. During consideration of the said petition, the learned Court below found that the Court fees paid for the same is deficit and not as per the provisions of the Court Fees Act, 1870. According to him, there is no material or patent



illegality in the said order warranting intervention of this Court under the extraordinary jurisdiction granted under the Article 227 of the Constitution of India.

16. It is the admitted case of the Petitioners that they have purchased the land in question vide RSD for consideration amount of Rs.15,00,000/- and Rs.20,00,000/-, hence, when the right, title and interest is being claimed through the said Sale deeds, court fees has to be paid for the entire consideration amount as mentioned above.
17. Section 12 of the Court Fees Act, 1870 clearly empowers the Court to pass a decision on the valuation of suit which is final and binds the parties. Thus, the learned Trial Court has exclusive jurisdiction to decide on the issue of valuation of Court fees for the relief claimed in the Counterclaim. As per the provision under Section 7 of the Court Fees Act, 1870, the Court fees have to be paid on the valuation as mentioned in the Sale Deeds and cannot be self valued.
18. The Counter claim being treated like a suit needs to be properly valued and the Court fees claim to be paid under valuation is not permissible. In order to strengthen the case of the Opposite Party No.1, he also relies on the following decisions:
 - a. *Satyadhan Ghosal Vrs. Deorajin Debi* ³
 - b. *Sathappa Chhetiar Vrs. Ramanatha Chhetiar* ⁴
 - c. *Menakshisundaram Chhetiar Vrs. Venkatachalama Chhetiar* ⁵

³ (1991)3SCC141

⁴ AIR 1958 SC 245

⁵ 1979 SC 989



IV. FINDING OF THE TRIAL COURT:

19. Heard learned counsels for the plaintiff and defendant Nos.7 and 8 on the point of petition. Perused the petition, consolidated plaint, W.S.-cum-counter claim filed by defendant nos.7 and 8, RSD bearing no.126 date 09.01.2002 which was executed in respect of khata no.22/3, plot no.44/80 of area Ac.3.50 dec., RSD bearing no.10402302947 dated 03.11.2023 and mutation ROR of khata no.22/192 recorded in the name of defendant no.7, RSD bearing no. 2941 dt.03.11.2023 executed in favor of defendant no.8 and mutation ROR of khata no.22/191 recorded In the name of defendant no.8.
20. Learned counsel of plaintiff had filed this petition stating that in the counter claim-cum-W.S. filed by defendant nos. 7 and 8, court fees has not been properly calculated, defendant nos. 7 and 8 is required to pay ad voleram court fees as per the valuation of the land involved in two RSDs dated 03.11.2023 executed in their favour, and their counter claim is not maintainable. Further learned counsel of plaintiff during course of hearing of this petition had brought attention of this Court to the RSD dated 03.11.2023 executed in favour of defendant no.7 in which the valuation of land i.e. khata no. 22/115, plot no.44/80 of area Ac 1.50 dec is mentioned as Rs.1,50,000/- and RSD bearing no.2941 dated 03.11.2023 executed in favor of defendant no.8 in respect of khata no. 122/15 plot no. 44/80 of area Ac 2.00 dec. in which valuation of land is mentioned as Rs.20,00,000/-, so the learned counsel of plaintiff had contended that the defendant nos.7 and 8 is required to



pay ad voleram court fees on Rs.15,00,000/- and Rs.20,00,000/- respectively. From perusal of consolidated plaint, it appears that valuation of the land is mentioned as Rs.35,00,000/- and accordingly ad voleram Court fees of Rs.1,06,335/- is calculated, however, plaintiff was exempted from payment of court fees due to his income is less than Rs.1,00,000/-. From perusal of the W.S.-cum-counter claim of defendant no.7 and RSD dated 03.11.2013, though the defendant no.7 had purchased the suit land in the year 2013 for consideration of Rs.15,00,000/-, but he valued the same at Rs.50,000/- and he had paid only Rs.2,835/-. Similarly, perusal of the W.S.-cum-counter claim of defendant no.8 RSD dated 03.11.2023, though the defendant no.8 had purchased the suit land in the year 2023 for consideration of Rs.20,00,000/-, but he valued the same at Rs.50,000/- and he had paid only Rs.2,835/-.

21. As per Section 7(iv)(c) of the Court fees Act, 1870, "*in a suit to obtain a declaratory decree or order where consequential relief is prayed, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.*" The calculation of the court fees made by the defendant nos.7 and 8 are totally wrong, so in view of the aforementioned provision of the Court Fees Act, 1870, the defendant nos. 7 and 8 is required to pay ad voleram court fees on Rs.15,00,000/- and Rs.20,00,000/- respectively as the plaintiff had valued the suit land at Rs.35,00,000/-. Hence, in view of the aforementioned discussion, the petition filed by the learned counsel of



plaintiff on dated 05.04.2025 is, hereby, allowed and the defendant Nos.7 & 8 are directed to take steps for amendment of their W.S.-cum-counter claim only with regard to the valuation of the suit land as mentioned by them and also directed to pay the deficit court fees accordingly.

V. COURT'S REASONING AND ANALYSIS:

22. Heard learned counsel for the parties and perused the material on record. The controversy lies within a narrow compass. The Petitioners as counter claimants seek a declaration that the sale deed dated 09.01.2002 standing in favour of the Plaintiff is null and void. They have valued that relief at Rs.50,000/- and paid court fee accordingly. The learned court below has held that they must instead pay ad valorem court fee on Rs.15,00,000/- and Rs.20,00,000/- being the consideration recited in the two sale deeds dated 03.11.2023 by which they themselves acquired the land and has rested that conclusion on the circumstance that the Plaintiff had valued the suit land at Rs.35,00,000/-. The question is whether that course is open to the court below under Section 7(iv)(c) of the Court Fees Act 1870.
23. A counter claim is not an appendage to the written statement. Sub-rule (4) of Rule 6A of Order VIII of the Code of Civil Procedure directs that a counter claim shall be treated like a plaint and governed by the rules applicable to plaints. The learned court below correctly recognised as much. Having done so it was bound to carry the recognition to its conclusion. If the counter claim is a plaint then the



counter claimant is a plaintiff and whatever right of valuation the statute confers upon a plaintiff to exercise.

24. Section 7(iv)(c) provides that in a suit to obtain a declaratory decree where consequential relief is prayed, the fee shall be computed according to the amount at which the relief sought is valued in the plaint. The measure prescribed by the legislature is the valuation placed by the claimant himself. Where Parliament intended market value to be the measure it said so in terms as in clauses (v) and (x) of the same section. The absence of any such words in clause (iv)(c) is deliberate and a court cannot supply a measure which the statute has withheld. The impugned order quotes the provision in full and then decides against the very words it quotes.
25. This has been settled for close upon seventy years. In *S.Rm. Ar. S. Sp. Sathappa Chettiar -vrs.- S. Rm. Ar. Rm. Ramanathan Chettiar*,⁶ the Supreme Court held that in suits falling under Section 7(iv) the plaintiff is given the right to value his relief and the court fee follows that valuation. In *Meenakshisundaram Chettiar(supra)*, the same principle was reaffirmed and the correlation between Section 7(iv) of the Act and Section 8 of the Suits Valuation Act was explained. Both decisions are relied upon by the Opposite Parties. Neither of the citations assists them. They establish the contrary to the proposition for which they were cited.

⁶ 1958 SCR 1015



26. The right of valuation is not wholly unfettered. In *Tara Devi v. Sri Thakur Radha Krishna Maharaj*⁷ and in *Commercial Aviation and Travel Co. v. Vimla Pannalal*⁸ it was held that a valuation which is arbitrary or whimsical or unreasonable may be examined by the court and that where the plaint itself furnishes objective materials for a correct valuation the court may call upon the claimant to correct it. The enquiry however is confined to whether the relief claimed has been deliberately undervalued. It is not an enquiry into the market value of immoveable property. The distinction is one of substance. A court which asks what the land is worth instead of what the relief is worth has asked itself the wrong question.
27. Tested on these principles the impugned order cannot stand. The relief claimed in the counter claim is the avoidance of the Plaintiff's sale deed dated 09.01.2002. The subject matter of that relief is that deed and the consideration recited therein is Rs.28,000/-. The sale deeds dated 03.11.2023 by which the Petitioners purchased are the source of their own title. They are not assailed by the counter claim and no relief whatever is sought in respect of them. The court below has fastened the incidence of court fee to transactions which form no part of the claim before it. That is not a permissible measure under any clause of Section 7.
28. It is also the fact that Plaintiff's valuation of his own suit cannot be transposed to the counter claim. A counter claim is an independent

⁷ (1987) 4 SCC 193

⁸ (1988) 3 SCC 423



proceeding which survives the withdrawal or dismissal of the suit and is separately valued and separately decreed. Its valuation is not derivative of the plaint. The reasoning of the court below that the Petitioners must pay on Rs.15,00,000/- and Rs.20,00,000/- because the Plaintiff had valued the suit at Rs.35,00,000/- is a non sequitur twice over. The figures do not correspond and the premise is irrelevant. It may also be noticed that the Plaintiff's own valuation has never been tested by payment since he stood exempted from court fee on the ground of income.

29. Reliance on Section 12 of the Court Fees Act is misplaced. This provision makes the decision of the court on the sufficiency of court fee final between the parties. Finality attaches to a decision rendered within the four corners of the Act. It is not a source of power to determine court fee upon a measure which the Act does not prescribe. A provision which protects a decision from being reopened cannot enlarge the jurisdiction which produced it. *Satyadhan Ghosal & Ors. vs. Deorajin Devi & Anr.*⁹ which is cited alongside, deals with the binding effect of an interlocutory decision in the same litigation and has no bearing on the measure of court fee.
30. There is a further consideration. The Petitioners are strangers to the sale deed of 09.01.2002. They did not execute it and are not parties to it. In *Suhrid Singh v. Randhir Singh*¹⁰ wherein the Supreme Court drew the distinction between an executant who seeks cancellation of

⁹ AIR 1960 SC 941

¹⁰ (2010) 12 SCC 112



his own deed and who must pay ad valorem fee and a non-executant who seeks a declaration that the deed is invalid and does not bind him. The Petitioners fall in the latter class. The court below did not advert to this distinction at all.

31. This Court is conscious of the fact that the jurisdiction under Article 227 of the Constitution is supervisory and is not to be exercised to correct every error. But an order on court fee touches the maintainability of the counter claim itself and an order which proceeds upon a plain misconstruction of a statutory provision and casts a burden of fee which the statute does not authorise is an error of jurisdiction and not merely an error within jurisdiction. Interference is warranted.
32. It is left open to the learned court below to consider afresh whether the valuation of Rs.50,000/- is arbitrary within the meaning of the decisions noticed above should that objection be pressed. In fact, that enquiry must be directed to the value of the relief claimed in the counter claim and must not proceed on the market value of the suit land or upon the consideration recited in the sale deeds dated 03.11.2023.
33. In the result the CMP is **allowed**. The order dated 15.05.2025 passed by the learned Senior Civil Judge Athagarh in C.S. No.339 of 2016 under Annexure-1 is set aside. The petition dated 05.04.2025 filed by the Plaintiff shall stand restored for fresh consideration in the light of the observations made above. Nothing said herein shall be construed



as an expression of opinion on the merits of the suit or of the counter claim. There shall be no order as to costs.

34. It is, however, made clear that the observations made herein are confined to the adjudication of the present petition and shall not prejudice the trial court in any manner, which shall proceed independently in accordance with law.
35. In terms of the order passed above in CMP No.896 of 2025, the CMP No.1636 of 2025 is disposed of.
36. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd September, 2026 /*