IN THE HIGH COURT OF ORISSA AT CUTTACK
RSA No. 356 of 2026
CNR No. ODHC01-052993-2026

[In the matter of an appeal under Section 100 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908.]

AFR **Dr. Satya Narayan Mishra** ..... **Appellant**

Versus

Snigdharani Sarangi @ Mishra & Ors. ..... **Respondents**

Advocate(s) appeared in this case though hybrid mode:

For Appellant : M/s. B.S. Panigrahi, S. Pradhan & A.P. Bose, Advocates

For Respondents : Mr. Gopinath Mishra, Sr. Advocate With M/s. Mohammed Akhter raza Khan, Pragyan Paramita Mohanty, S. Samantaray, S. Parida

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CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
16.10.2026

SASHIKANTA MISHRA, J.

This is a plaintiff's appeal against a partly reversing judgment. The suit for partition was decreed by the trial Court but partly reversed in appeal preferred by defendant No.1. The present appeal seeks to assail the judgment passed

by the learned 3rd Additional District and Sessions Judge, Cuttack in RFA No. 103 of 2024 on 11.05.2026 followed by decree on 18.05.2026 in modifying the judgment passed by learned 2nd Additional Civil Judge, (Sr. Division), Cuttack on 27.12.2023 and decree passed on 06.01.2024 in C.S. (I) No.145 of 2002.

2. For convenience, the parties are referred to as per their respective status in the trial Court.

3. The plaintiff-appellant's case, briefly stated, is that one Harihar Panchanan was the common ancestor of the plaintiff and the defendants. His only son Baman Charan Mishra died on 11.08.1997 leaving behind the plaintiff and the defendants as his legal heirs. The plaintiff claims that the Schedule-B, C and D properties were the ancestral properties of his father and that the residential house of the family stands over the Schedule-D property. He further claims that the Schedule-E to L properties were the self-acquired properties of his father and his grandfather which were purchased in the name of his mother and siblings and that his wife's dowry articles under Schedule-M were also kept in the family house. As a result of the disputes that arose

between the parties over partition and possession of the above properties and return of dowry articles, the plaintiff filed the suit for partition and other reliefs.

4. The defendant no.1 to 3 filed a joint written statement denying the plaintiff's claims. The defendants further pleaded that the plaintiff had relinquished his rights over Schedule-D property in lieu of Rs. 65,000/- pursuant to a family settlement. The defendants further claimed that using the said amount, the plaintiff constructed a separate house and lived apart from the family ever since, thus, extinguishing his right over the said property on the plea of ouster.

5. Defendant no.4, the mother of the plaintiff, filed a separate written statement challenging the maintainability of the suit and claiming exclusive ownership over the Schedule-E, G and H properties which she acquired out of her Streedhan. She further claims that the other defendants individually own the properties recorded in their names. It is her further case that the plaintiff relinquished his right over the Schedule-D property basing on prior settlement and prayed for dismissal of the suit.

6. Basing on the rival pleadings the trial court framed the following issues for determination: -

> *"(i) Whether the suit is maintainable?*
> *(ii) Whether there is any cause of action for filing of the suit?*
> *(iii) Whether the plaintiff has any locus-standi to file the suit for partition?*
> *(iv) Whether the suit is bad for non-joinder and mis-joinder of necessary party?*
> *(v) Whether the plaintiff has got any share over the "D" schedule property?*
> *(vi) To what extent of share the plaintiff is entitled to get in schedule "B" & "C" property?*
> *(vii) Whether schedule "E" to "H" property are the self-acquired property of Bimala Devi defendant No.4 and partiable at the instance of the plaintiff?*
> *(viii) Whether the schedule J to L property have been acquired by other family members independently and the plaintiff has got any share in it?*
> *(ix) Whether the plaintiff is entitled to claim partition of schedule D to L property?*
> *(x) Whether the family settlement executed on 15.4.88 during the life time of Baman Charan Mishra is binding on the plaintiff?*
> *(xi) Is the plaintiff entitled to any other reliefs?"*

7. The trial court took up issue Nos. (v), (vi), (vii), (viii), (ix) and (x) for consideration jointly at the outset. After analysing the oral and documentary evidence on record, the trial court, inter alia, held that the plaintiff had a claim of 1/6th share in Schedule- B, C and D properties along with the existing defendants and their legal heirs basing on the fact that the property described in the document under Ext-A (family settlement) did not match the Schedule-D property under the plaint and that the document did not account for

the share of the daughters. Thus, the plaintiff is entitled to his share in the above property. The remaining issues were decided accordingly. The suit was decreed by directing partition of Schedule-B, C, and D properties among the parties leaving out the properties of Schedule-E to M in view of the admitted facts and legal impediments.

8. Feeling aggrieved, Defendant No.1(a) carried appeal being in RFA No. 103 of 2024. The first appellate Court, after reappreciating the evidence, modified the order of the trial court in respect of the Schedule-D property by holding that the plaintiff is not entitled to any share in the partition of Schedule-D property in view the prior family settlement.

9. Feeling aggrieved, the plaintiff has filed the present second appeal, which was admitted on the following substantial question of law: -

> *"(A) Whether the Family Settlement Deed dtd.15.04.1988 vide Ext.-A requires compulsory registration U/s 17 of the Registration Act, 1908 to have its legal effect and to make the same enforceable under law and the leamed lower appellate Court committed an error in accepting the same as a valid piece of evidence in the absence of registration thereof?"*

10. Heard Mr. A.P. Bose and Mr. Bhawani Shankar Panigrahi for the Plaintiff-Appellant and Mr. G.N. Mishra,

learned Senior Counsel, assisted by Ms. Pragyan Paramita Mohanty, learned counsel for the Defendant-Respondents.

11. Both Mr. Bose and Mr. Panigrahi would submit that the appellate court completely failed to appreciate the pleadings and evidence on record in the proper perspective to hold that the plaintiff had no share in Schedule-D properties basing on the family settlement deed (Ext.A) dated 15.04.1988. They argue that the said document being an unregistered one, could not have been accepted as it was contrary to the provisions of Section-17 of the Registration Act, 1908. It is further argued that the said deed does not completely cover the suit properties described under Schedule-D but the appellate court erred in presuming that the same had been executed with respect to the said property. Thus, the appellate court should not have accepted the same and denied the plaintiff's claim for partition in Schedule-D property. They further submit that the Schedule-D property, which also contains the residential house of the parties is under the joint possession of the parties and that an unregistered deed cannot be relied upon to deny partition. Since, according to the deed, the plaintiff relinquished his

claim/title over Schedule-D properties upon receipt of Rs.65,000/-, it amounts to conveyance of title in favour of the defendant no.1. This, brings it within the mischief of Section 17. Hence, being unregistered, it could not have been relied upon.

12. Mr. Mishra, learned Senior Counsel, on the other hand submits that the family settlement deed is not an instrument of partition inasmuch as the document did not lead to the partition within the family but is only a record of a previous arrangement already acted upon by the members of the family. The plaintiff has admitted such fact in the plaint as well as in his cross-examination. The property in question was recorded in favour of defendant No.1 basing on the concession of the other brothers in the OLR Case acting on the previous arrangement. Mr. Mishra further argues that receipt of Rs.65,000/- by the plaintiff cannot be treated as creation of new interest nor relinquishment of title/interest. Therefore, the document does not require compulsory registration.

13. Perusal of the evidence on record and the judgments and decree of the lower courts reveal that the

document under Ext.A purports to record a family settlement between the members, who are siblings including their father, namely, Baman Charan Mishra. Since, there is some doubt as regards description of the property under Schedule-D as compared to Ext-A, it would be better to deal with this aspect at first.

14. The property is described in Ext-A as follows: -

> *"ଭୁବନେଶ୍ୱର ଟାଉନ୍ ମୁକାମରେ ଏକର ୦.୩୨ ଡେସିମିଲ ସ୍ଥଳମାନ ଜରିବ ବନ୍ଦୋବସ୍ତ ରହିଅଛି। ଉକ୍ତ ଭୁବନେଶ୍ୱର ଟାଉନ୍ ମୁକାମରେ ଏକର ୦.୩୨ ରେ ସ୍ଥାୟୀ ପକ୍କା ଘର କରି ଘରବାଡ଼ି ରୂପେ ବ୍ୟବହାର କରି ଆସେ ସମସ୍ତ ପକ୍ଷ ମାନେ ଚଳାଚଳ ହେଉଅଛୁ ।"*

A loose translation of the above recitals is reproduced hereinbelow: -

> *"An area of Ac. 0.32 decimals of land situated at Bhubaneswar Town has been settled under JARIB Bandobast. All of us, being the parties concerned, have constructed permanent pucca houses over the said land and have been using the same for residential purposes."*

The property under Schedule-D of the plaint is described as follows: -

> *SCHEDULE 'D'*
>
> *District — Khurda, Tahasil — Bhubaneswar,*
> *Mouza — Bhubaneswar Sahar*
> *Unit No.28 — Goutam Nagar*
> *Khatian No. 750*

Plot No.	***Area***	***Value***
477	*A0.303 decimal*	*Rs.35,000/-*

(Rupees Thirty-Five thousand) only including buildings are standing thereon"

The descriptions, when compared, reveal minor discrepancies in the area. However, read as a whole including the place where it is situated, it is seen that the property described in the plaint schedule and in the document under Ext.A are the same. Thus, the trial court's reasoning that there is mismatch of description is factually incorrect.

15. Now, the principal question that remains to be answered is, whether Ext.A compulsorily requires registration under Section-17 of the Registration Act to be admissible. For reference, Section-17 is reproduced hereinbelow: -

> ***"S.17- Documents of which registration is compulsory.***
> *(1)The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,*
> *(a)instruments of gift of immovable property;*
> *(b)other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of*

one hundred rupees and upwards, to or in immovable property;
(c)non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and……..
xx xx xx xx"

16. Section 17(1)(b) of the Registration Act, 1908, requires registration of non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish rights in immovable property of the prescribed value. Section 17(1)(c), concerning instruments acknowledging receipt or payment of consideration on account of the creation or extinguishment of such rights, must also be considered in light of the terms and legal effect of the document. The requirement of registration must therefore be determined by examining the substance of Ext. A and the circumstances in which it was executed.

17. Perusal of the document under Ext-A reveals that during the time of its preparation, the parties i.e., the members of the family were possessing separate properties as per the schedules appended, though initially, they were residing jointly in the residential house at Bhubaneswar, which corresponds to Schedule-D property. It further states

that the plaintiff received a sum of Rs. 65,000/- from his parents, specifically his father, (Party no.5 in the said family settlement deed) because he had extinguished his right in the Schedule-D property. However, the mere recital of payment of consideration does not, by itself, establish that the relinquishment had been completed before the document was executed. The question is, whether the evidence on record establishes that the family arrangement had already been acted upon and Ext. A was drawn up only to record the arrangement, or whether the document itself was intended to effect the relinquishment.

18. Perusal of Ext. A, particularly page-3 thereof, reveals that Baman Charan Mishra, described as Party No.5 in the family settlement, stated that the plaintiff, described as Party No.1, was being paid a sum of ₹65,000 for building a separate house in the place of his liking because he was not given a share in the family house situated at Bhubaneswar i.e. Schedule-D property. The recital thus refers to the payment of the agreed amount to the plaintiff.

19. The aforesaid recital, read in the context of the document as a whole, supports the defendants' case that the

family arrangement had already been given effect to at and that Ext. A was intended to record the arrangement, rather than to effect it. This interpretation must, however, be considered alongside the other recitals in Ext. A and the evidence on record concerning the circumstances in which the arrangement was arrived at and the payment was made. The relevant recitals from Ext.A are reproduced hereinbelow:

> *"xxxxxxxxxxx ଏହିକି ଯେ ଜି:କଟକ, ଥାନା: ଆଠଗଡ ନ୪୭ମ୍ବର ମୌ: ନିଜଗଡ ଏନ. ଏ. ସି., ୱାର୍ଡ ନ୬ମ୍ବର ରାଧାନାଥପୁର ଶାସନରେ ଓ ହାଲରେ ଜି:ପୁରୀ, ଭୁବନେଶ୍ୱର ଟାଉନ ମୁକାମରେ ଆମ୍ଭମାନଙ୍କର ବାସସ୍ଥାନ ଅଟେ । ଆମ୍ଭେ ନଂ୫-୬ ମ୍ବର ପକ୍ଷ ଉଭୟ ସ୍ୱାମୀ ସ୍ତ୍ରୀ ଅଟୁ । ନ ୧, ୨, ୩, ୪ମ୍ବର ପକ୍ଷମାନେ ଆମ୍ଭ ମାନଙ୍କର ପୁତ୍ର ୱାରସ ଅଟନ୍ତି। ଆମ୍ଭ ନଂ୫ମ୍ବର ପକ୍ଷଙ୍କ ନାମରେ ଆଠଗଡ ଥାନା ନ୪୭ମ୍ବର ମୌ:ନିଜଗଡ ରକବାରେ ଏକ.୮୨ ଡେସିମିଲ ଉକ୍ତ ଥାନାର ନ୩୬ମ୍ବର ମୌ:ବିରକିଶୋରପୁର ରକବାରେ ଏ୦.୩.୫୮ ଡେସିମିଲ ଜି: ପୁରୀ ଟାଉନ: ପୁରୀ ପଶ୍ଚିମ ଦ୍ୱାର ବାଶେଳି ସାହି ଏ୦.୦୩.୦୨ ଜି:ପୁରୀ ଭୁବନେଶ୍ୱର ଟାଉନ ମୁକାମରେ ଏ୦.୩୨ ଡେସିମିଲ ସ୍ଥଳ ମାନ ଜରିବ ବନ୍ଦୋବସ୍ତ ରହିଅଛି, ଉକ୍ତ ଭୁବନେଶ୍ୱର ଟାଉନ ମୁକାମ ଏ୦.୩୨ ରେ ସ୍ଥାୟୀ ପକ୍କାଘର କରି ଘରବାରୀ ରୂପେ ବ୍ୟବହାର କରି ଆମ୍ଭେ ସମସ୍ତ ପକ୍ଷମାନେ ଚଳାଚଳ ହେଉଅଛୁ । ୧, ୨, ୩, ୪ମ୍ବର ପକ୍ଷମାନଙ୍କୁ ଯଥାଶକ୍ତି ଶିକ୍ଷା ପ୍ରଧାନ କରାଇ ଉପାର୍ଜ୍ଜନ କ୍ଷମ କରାଇ ପାରି ଅଛୁ। ଭବିଷ୍ୟତ ସୁଖ ସୁବିଧା ନିମିତ୍ତ ଆମ୍ଭେ ସମସ୍ତ ପକ୍ଷ ମାନେ ଏକତ୍ରରେ ମିଳିତ ଭାବେ ଏକ ଆପୋଷ ବଣ୍ଟନ ପତ୍ର ସମ୍ପାଦନ କରି, ତଫସିଲ ସିଡୁଲ ବର୍ଣ୍ଣିତ ଅଂଶ ସମ୍ପତ୍ତିରେ ଦାଖଲ କାର ଥାଇ ନିଜପଦରେ ଭୋଗ ଦାଖଲ କରି ଆସୁଅଛୁ। xxxxxxxxxx*

A loose translation of the above recitals is reproduced hereinbelow: -

> *"xxxxxxxxxx That our residence is at District: Cuttack, Police Station: Athagarh, Khata No. 47, Mouza: Nijagada N.A.C., Ward No. 6, Radhanathpur Shasan, and presently at Bhubaneswar Town, District: Puri. We, Party Nos. 5 and 6, are husband and wife. Party Nos.*

> *1, 2, 3 and 4 are our sons and heirs. There are lands measuring Ac. 0.82 decimals at Mouza: Nijagada, Khata No. 47, Police Station: Athagarh; Ac. 0.3.58 decimals at Mouza: Birakishorepur, Khata No. 36 of the said police station; Ac. 0.03.02 at Baseli Sahi, Puri Paschim Dwar, Puri Town, District: Puri; and Ac. 0.32 decimals at Bhubaneswar Town, District: Puri, in the name of Party No. 5, which have been surveyed and settled. On the said Ac. 0.32 decimals at Bhubaneswar Town, we have constructed a permanent pucca house and have been using it as a homestead, and all of us parties have been residing and carrying on our affairs there. We have provided Party Nos. 1, 2, 3 and 4 with education to the best of our ability and made them capable of earning. For future happiness and convenience, we, the parties, have jointly executed a mutual partition deed, and have been possessing and enjoying in our own rights the respective shares of the property described in the schedule. xxxxxxxxx"*

A plain reading of the recitals show that the members of the family were already possessing their respective shares, more fully described in the different schedules appended to Ext.A, which militate against the argument that such arrangement was intended to be given effect to for the first time upon execution of the document.

20. Now, the question is, whether such a deed requires registration compulsorily. It would be apposite in this context to refer to the judgment of the supreme court in the case of ***Tek Bahadur Bhujil Vs. Debi Singh Bhujil and Ors., AIR 1966 SC 292***, where the following was held: -

> ***"12.*** *The next contention for the appellant is that the agreement Exhibit 3 required registration and is of no*

effect as it was not registered under the Indian Registration Act. The trial Court and the first appellate Court held that the Registration Act was not in force in the area where the agreement was executed at the time of its execution in 1942. The High Court, on the basis of fresh evidence, was of opinion that the matter required further elucidation and that it was not necessary to remand the case for a finding on the point as in its opinion this agreement did not require registration even if the Registration Act was in force in that area at the time of its execution. We need not say therefore anything further about the applicability of the Registration Act in that area, but we have, however, still to consider the contention for the appellant that the agreement Exhibit 3 did require registration. If we agree with him on this point, it would be necessary for the final disposal of the ease that a clear-cut finding on the question of the applicability of the Registration Act in that area be recorded by the trial Court or the first appellate Court. We, however, do not agree with the contention of the appellant that the agreement Exhibit 3 required registration

13. *Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it is then that it would be a document of title declaring for future what rights in what properties the parties possess. The document Exhibit 3 does not appear to be of such a nature. It merely records the statements which the three brothers made, each referring to others as brothers and referring to the properties as joint property. In fact, the appellant, in his statement, referred to respondents 1 and 2 as two brother co-partners; and the last paragraph said:*

"We, the three brothers, having agreed over the above statement and having made our own statements in

the presence of the Panch called by us, and signed and kept a copy of each of this document as proof of it." The document would serve the purpose of proof or evidence of what had been decided between the brothers. It was not the basis of their rights in any form over the property which each brother had agreed to enjoy to the exclusion of the others. In substance it records what had already been decided by the parties. We may mention that the appellant and respondent No. 1, even under this arrangement, were to enjoy the property in suit jointly and it is this agreement of theirs at the time which has later given rise to the present litigation between the two. The document, to our mind, is nothing but a memorandum of what had taken place and, therefore, is not a document which would require compulsory registration under S. 17 of the Registration Act."

[Emphasis added]

21. In the present case, the plaintiff had already given up his rights over the Schedule-D property before 15.4.1988 and Ext.A merely recorded the plaintiff's relinquishment of his rights in the Schedule-D property in a written form. The document, therefore, did not itself operate to extinguish those rights. This is supported by the admission of the plaintiff's father within the settlement deed itself that the plaintiff had given up his rights prior to creation of the document under Ext-A as quoted hereinbelow: -

"xxxxx ଏହି ବନ୍ଧନପତ୍ର ସମ୍ପାଦନ କରି ସଚେତ କରୁଅଛୁ ଯେ ନଂ୨ର ପକ୍ଷଙ୍କ ନିର୍ଦ୍ଧାରିତ ମତେ ନଂ୧ର ପକ୍ଷ ଭୁବନେଶ୍ୱର ସ୍ଥିତ ବାସ ଗୃହରେ ଅଂଶ ପାଉ ନଥିବାରୁ ତାଙ୍କର ସୁବିଧା ମୁତାବକ ସ୍ଥାନରେ ବାସଗୃହ ତୟାର କରିବା କାରଣ ନଗଦ ଟ.୬୫,୦୦୦/- ପଞ୍ଚଷଠି ହଜାର ଟଙ୍କା ମାତ୍ର ପାଇବେ। xxxxx"

A loose translation of the above portion is reproduced hereinbelow: -

> *"xxxxxxxx. By executing this partition deed, we hereby declare that, as determined by Party No 5, since Party No 1 will not receive a share in the residential house situated in Bhubaneswar, he shall receive cash of Rs.65,000/- (Sixty-five thousand rupees only) for constructing a residential house at a place convenient to him. xxxxxxxxx"*

Thus, the document doesn't fall within the purview of section-17 (1)(b) of the Registration Act.

22. Similarly, on page-3 of the document, Party No.5 stated that the consideration of Rs.65,000/- was being paid to the plaintiff for constructing a house in a place of his liking because he was not getting any share from the Schedule-D property and not because of his relinquishment of his rights itself. This Court is therefore, not inclined to accept the contention raised that the document came into force on the date of receipt of the amount of Rs.65,000/- as proof of relinquishment of title. It was a sort of compensation paid to the plaintiff for depriving him of a share of Schedule-D property as per an arrangement already acted upon. For the above reasons also, Ext-A cannot be treated as a document compulsorily required to be registered.

23. For the foregoing reasons, this court holds that the requirement of compulsory registration under Section 17(1)(b) and (c) of the Registration Act, 1908 is not attracted to Ext-A, the same being a memorandum of a family arrangement already arrived at and acted upon by the parties and not an instrument by which the plaintiff's rights over the Schedule-D property were extinguished for the first time.

24. Consequently, this Court finds no ground to interfere with the judgment and decree passed by the learned first appellate Court in respect of the Schedule-D property.

25. In the result, the appeal fails and is dismissed. There shall be no order as to costs.

.....
Sashikanta Mishra
Judge

Orissa High Court, Cuttack
The 16th October, 2026/ A.K. Rana, P.A.

Signature Not Verified
Digitally Signed
Signed by: AJAYA KUMAR RANA
Designation: P.A.
Reason: Authentication
Location: HIGH COURT OF ORISSA, CUTTACK
Date: 16-Oct-2026 18:44:53