



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

**CRP No. 21 of 2025**

Application under Section-115 of the Code of Civil Procedure, 1998.

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**Jitendra Narayan Dash**

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**Petitioner**

- Versus -

**Swayamsiddha Singhsamant  
& Others**

.....

**Opp. Parties**

**Advocate(s) appeared in this case:-**

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**For Petitioner(s)** : Mr. S.K. Dash, Sr. Advocate  
M/s. P. Das, P. Harichandan  
S. Priyadarsan, P. Mohanty  
K. Banerjee & S. Dash,  
Advocates

**For Opp. Parties** : M/s. Biswambar Mohanty,  
S.L. Pattnaik, S. K. Sethi &  
K. K. Maharana,  
Advocates

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**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**

**12.03.2026**

**SASHIKANTA MISHRA, J.** The petitioner is Defendant No.2 in C.S.No. 6 of 2021 in the Court of learned Senior Civil Judge, Khandapara, wherein the present Opposite Party Nos. 1 to 3 are the substituted Plaintiffs and Opposite Party No. 4 is



Defendant No.1. The present revision is directed against order dated 09.02.2025 passed by the said Court rejecting the application filed by the Petitioner-Defendant No.2 for rejection of the plaint under Order VII Rule 11 of C.P.C.

2. The facts, briefly stated are that one Bibhuti Narayan Singhsamant filed a suit for partition against the deceased Plaintiff and Defendant No.1 registered as C.S. No.82 of 2004 in the Court of learned Senior Civil Judge, Nayagarh. The suit was decreed on compromise on 16.12.2014, inter alia, on the condition that if any of the parties intended to sell his share of the property, he shall give preference to the other co-sharers before selling it to strangers. On 18.05.2020, Defendant No.1 sold the suit property, which was allotted in his favour, to the Petitioner by a registered sale deed. On 12.01.2021, Plaintiff No.1(a), claiming to be the attorney holder of his father filed C.S. No. 6 of 2021 in the Court below, inter alia, seeking the relief of cancellation of the sale deed dated 18.05.2020.

3. The original Plaintiff expired on 10.04.2021, whereupon the present Opposite Party Nos.1 to 3 were



substituted in his place on 17.11.2023. The Petitioner-Defendant No.2, filed an application on 17.07.2024 for rejection of the plaint under Order VII Rule 11 of C.P.C. on the ground that the same is barred by law. By order dated 09.02.2025, the Court below rejected the application.

4. Heard Mr. S.K. Dash, learned Senior Counsel with Miss P. Mohanty, learned counsel for the Petitioner and Mr. B. Mohanty, learned counsel for the contesting Opposite Party Nos.1 to 3.

5. Mr. Dash would argue that the suit, as filed, was not maintainable being filed by a Power of Attorney Holder who was not authorized to deal with the suit property. The Power of Attorney lost its validity upon the death of the Plaintiff-principal. Though the Opposite Party Nos.1 to 3 were substituted, yet the relief claimed being cancellation of the sale deed dated 18.05.2020, is also barred by limitation.

6. Mr. Dash elaborates his argument by submitting that the contesting Opposite Parties were substituted on 17.11.2023, but the sale deed in question was executed on 18.05.2020. As per Article 59 of the Limitation Act, the



period of limitation for filing a suit to cancel an instrument is three years. Further, as per Section-21 of the Limitation Act, the suit shall be deemed to have been instituted from the date of their substitution. Viewed thus, the plaint must be held barred by limitation.

7. Per contra, Mr. B. Mohanty submits that the original plaintiff having expired, it is no longer open to the Petitioner Defendant No.2 to question the validity of the Power of Attorney in question. The substituted Plaintiffs are none other than the son, daughter and widow of the deceased Plaintiff. Therefore, they must be deemed to have had the knowledge of the execution of the sale deed dated 18.05.2020, on 28.11.2020, the date on which the original Plaintiff acquired knowledge about execution of the sale deed. Mr. Mohanty therefore submits that the impugned order warrants no interference.

8. Though both parties have also argued with regard to the applicability of the provisions of Order VII Rule 11 of CPC, this Court does not deem it necessary to go into the same in detail, as it has not been disputed that rejection of



the plaint can be sought for on the grounds enumerated under Order VII Rule 11 (a) to 11(d) of CPC. It would be useful to reproduce the provision:-

**“11. Rejection of plaint**-The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9

*[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”*

Considering the contentions raised Clause (d) would be relevant to the present case.



9. The first point raised is whether the suit, as originally filed, was maintainable or not. Admittedly, the suit was filed by the one Swayamsiddha Singhsamant (Power of Attorney Holder of the original Plaintiff, Mahesh Prasad Singhsamant). Order III Rule 2 reads as follows:-

**“2. Recognized agents.**-The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.”

10. Thus, a Power of Attorney Holder is ordinarily entitled to file a suit on behalf of his principal. A copy of the Power of Attorney, enclosed as Anneuxre-2 to the Revision Petition reveals that the same was executed by the principal due to his ill health and physical problems and his inability to attend to and look after all his properties, including those situated at his native place, Khandapara under Sub-Registrar/Tahasil, Khandapara, district-Nayagarh. Said



property has been specifically described in the schedule to the Power of Attorney as follows:-

**SCHEDULE**

*Mouza:Khandapara  
Tahasil;Khandapara  
Thana No. 138  
Dist-Nayagarh  
Khata No. 1155/1072*

<i>Plot No.</i>	<i>Kisam</i>	<i>Boundary</i>	<i>Area</i>
<i>4322/5859</i>	<i>Talia-1</i>	<i>N:Self S:Nala</i>	<i>0.700</i>
<i>4321</i>	<i>Taila-2</i>	<i>N. Bhima Barik Others S:Self</i>	<i>2.900</i>
<i>4548/5860</i>	<i>Taila-2</i>	<i>N:Forest S. Canal</i>	<i>1.550</i>
<i>4019</i>	<i>Gharabari</i>	<i>Bari</i>	<i>0.160</i>

In so far as the property sought to be dealt with is concerned, the same pertains to four plots recorded in Khata No.1155/1072.

11. According to Mr. Dash, the schedule to the plaint, involves a different property. The plaint schedule is quoted below:-

**SCHEDULE-A**

*District : Nayagarh  
Tahasil : Khandapara  
Thana No. : 128  
Mutated Khata : 1155/1071  
Plot No : 3667  
Kissam : Gharabari  
Area : Ac.0.100 Decimals*

12. On such basis it is strenuously urged that these are two different properties. In other words, the property



authorized by the principal to be dealt with by his Attorney Holder is not the same as that against which relief is claimed to the suit. As such, the Attorney Holder was not competent to file the suit on behalf of his Principal.

13. A close reading of the clauses of the Power of Attorney, particularly Clause-2 reveals that the Principal also authorized the agent to do certain other things. For immediate reference, Clause-2 is extracted below:

*“2. To demand, recover, enforce and give good and sufficient receipts, discharges, release and indemnities for and in respect of all property, money, securities and rights to which I am or may be entitled and to effect a compromise or release of any claim in respect thereof and to pay, satisfy or compromise any of my debts or liabilities or any claim against me.”*

As can be seen, the Power of Attorney also authorizes the Agent to *demand, enforce, recover....in respect of all property...to which the Principal is or may be entitled ....* The Suit has been filed on the basis of Clause-9 of the compromise decree which confers on the co-sharers the right of pre-emption. In other words, the Agent seeks to enforce such right in respect of the share falling to the share of defendant No. 1, which was alienated to defendant No. 2. Now, whether such a claim is legally valid or not is a matter



to be decided in trial but in view of the language employed in the Power of Attorney, it cannot be said at this stage that the same did not authorize the Agent to at least lay a claim therefor. This Court is therefore, not inclined to accept the contention of learned senior counsel for the petitioner that the suit is not maintainable being filed by a person not authorized.

14. The other ground raised by the petitioner is of limitation. It is contended that as per Section 21 of the Limitation Act, the suit by a party added must be held to have been instituted from the date of his addition as party. The present plaintiffs being substituted on 17.11.2023, the suit must therefore be held to be barred by limitation as per Article 59 of the Limitation Act. It becomes necessary to refer to Section 21, which is extracted below:

*“21. Effect of substituting or adding new plaintiff or defendant.—(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:*

*Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.*



*(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”*

Plain reading of the provision shows that the principle expressed in sub-section (1) shall have no application in case of substitution owing to devolution of any interest during the pendency of a suit. The original plaintiff having died, his legal heirs, being his son, daughter and widow, were substituted. Moreover, the interest of the original plaintiff in respect of the suit property devolved upon his legal heirs upon his death. The question of limitation therefore, does not arise at all.

15. Reading of the impugned order reveals that the court below has not considered the matter from the above perspective at all nor the effect of Section 21 of the Limitation Act and instead embarked upon a discussion on date of knowledge of the substituted plaintiffs regarding existence of the sale deed in question vis-a-vis Article 59. In the considered view of this Court, such discussion was unnecessary. What is important to note is, the plaintiffs, being the legal heirs were substituted in place of the original



plaintiff and hence, if the suit, as originally filed, was within the period of limitation, the same shall not become barred by limitation upon substitution. Otherwise, the very object of Order 22 of CPC would stand frustrated.

16. For the foregoing discussion, therefore, the application filed by defendant No. 2 for rejection of the plaint cannot be allowed. This Court would however, hasten to add that it has not expressed any opinion on merits of the plaintiffs' claim as laid. As already held, the validity of the claim of pre-emption is a matter to be decided in trial on the basis of evidence and this order should not be construed as upholding the same in any manner whatsoever.

17. In the result, the Civil Revision being devoid of merit, is dismissed.

**(Sashikanta Mishra)**  
**Judge**