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GOVERNMENT OF ODISHA
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
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No.RDM-Reg-CLRFIC-0003-2025 22638 R&DM/dtd. 23 JUN 2025

From

Shri Diganta Routroy, OAS (SAG)
Additional Secretary to Government

To

The Collector & District Magistrate
Bhadrak

Sub: Clarification on registration of joint properties without the consent of other Recorded Tenants (RTs).

Ref: Your letter No 1335 dated 07.02.2025.

Sir,

With reference to your letter on the subject cited above, I am directed to submit herewith the following clarification.

1. Section 44 of the Transfer of Property Act, 1882 states that "Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of transfer the share or interest so transferred". What is important in this provision is that the transferor must have an interest in the immovable property, and therefore he is legally competent to transfer the part of his interest in that immovable property.

2. Further, provisions contained in Section 44 of Transfer of Property Act, 1882 confers power on the co-owner of immovable property for transferring his/her undivided share in such joint property or joint family property having no dwelling house on and over the same. But, the transferee here is legally bound to enforce a partition of the same property for complying with the conditions and liabilities affected on the date of the transfer in order to carve out the transferred share in his favour for possession.

Therefore, by invoking the provisions contained in Section 44 of Transfer of Property Act,1882,

(i) A co-owner can transfer his/her own undivided share in the joint property without the consent of other co-owners.

(ii) After registration of the deed, the transferee will step into the shoes of the transferring co-owner with the remaining parties in sustaining the right to file a suit to effect partition of the transferred share in the property.

(iii) However, the transfer does not extend to any specific demarcated portion of the property, nor does it grant the transferee exclusive possession over any defined area, unless the property has been legally partitioned in metes and bounds prior to such transfer.

3. In this connection Hon'ble High Court of Orissa in the matter of Sitarani Rath versus IGR, Odisha and others vide their judgement dated 19.02.2015 in WPC No.24972/2014 have made it clear under paragraph 7 to the extent that the buyer without consent of the other coparceners cannot create possession except however he or she has the right to sue for partition. That apart, Hon'ble Court has made it amply clear that there is absolutely no prohibition in sale of a coparcener's undivided property and as such there cannot be any obstruction in registering such documents by the Registering Officer.

4. The summary of the above analysis of facts is that the transferee after registration of the deed only acquires a right to sue for partition. The transferor, being handicapped without consent of rest of the co-sharers, in agreement with the transferee may transfer the undivided share/interest in the property and basing on such agreement, the transferee shall be left with no choice except to sue for partition to have peaceful possession over the transferred share, which is subject to the decree or order of the civil court.

5. So far as the mutation is concerned, Orissa Mutation Manual enumerates a detailed procedure of mutation proceeding. Especially under Clause 36 to 47, it speaks about the service of notice on individual whose interest may, in the opinion of the Tahasildar, is affected and the necessary steps to be taken thereafter. However, when it is the settled principle of law that mutation is consequential to registration and such registration of the transacted undivided share without demarcation is subject to the decree or order of the civil court, the same mutation is not possible especially in view of the operative portion of section 44 of the Transfer of Property Act which was invoked by both the transferor and transferee as part of their own choice and mutual agreement.

This is for your information and necessary action.

Additional Secretary to Government
23/06/25

Memo No. 22639 /R&DM Dated 23 JUN 2025

Copy forwarded to All Collectors (Except Bhadrak) / IGR, Odisha / All ADM-cum-District Registrars / All District Sub-Registrars/ All Sub-Registrars for information and necessary action.

Additional Secretary to Government
23/06/25

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