

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 190 of 2015**

1. Jageshar Dewangan, S/o Late Gambhira Dewangan, aged about 58 Years;
 2. Dukhiya Bai, W/o Jageshar Dewangan, aged about 53 Years;
 3. Girdhar Dewangan, S/o Jageshar Dewangan, aged about 28 Years;
- All r/o Village Joratarai, Post Bori, Tahsil & District (Revenue & Civil)
Rajnandgaon Chhattisgarh

---- Appellants**Versus**

1. Teekam Dewangan, S/o Jageshar Dewangan, aged about 36 Years;
 2. Bhikhu Dewangan, S/o Jageshar Dewangan, aged about 33 Years;
 3. Jesu Dewangan, S/o Jageshar Dewangan, aged about 30 Years;
 4. Parvati Dewangan, W/o Jageshar Dewangan;
- All r/o Village Joratarai, Post Bori, Tahsil & District (Revenue & Civil)
Rajnandgaon Chhattisgarh
5. State of Chhattisgarh Through - Collector Rajnandgaon, Tahsil & District (Revenue and Civil) Rajnandgaon Chhattisgarh

---- Respondents

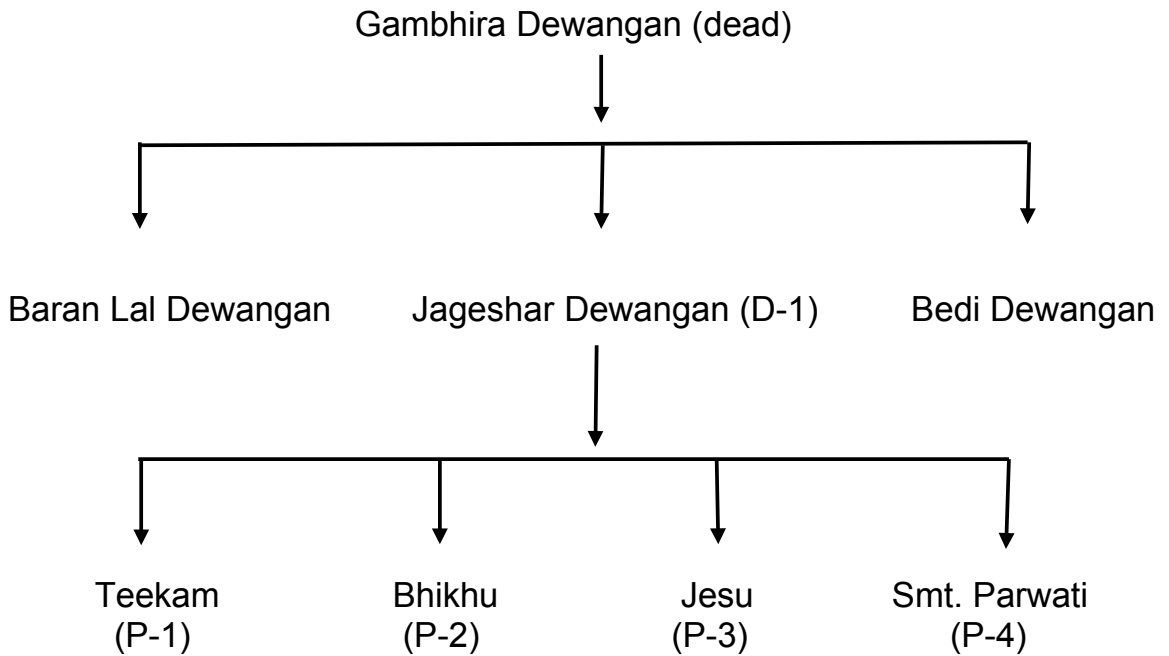
For Appellants	:	Mr. R.N. Jha, Advocate
For Respondent No.1 to 4	:	Mr. H.B. Agrawal, Senior Advocate with Mr. Pankaj Agrawal, Advocate
For Respondent No.5/State	:	Mr. Wasim Miyan, Panel Lawyer

Hon'ble Shri Justice Inder Singh Uboweja**C A V JUDGMENT****Passed on : 27/11/2015**

1. This is defendants' first appeal filed against the judgment and decree dated 01.07.2015 passed by the District Judge, Rajnandgaon in Civil Suit No. 45A/2012.
2. Facts in a nutshell, giving rise this appeal are as under :-

(i) Admittedly, defendant No.1 is the husband of plaintiff No.4 and father of remaining plaintiffs.

(ii) Family tree is as under :



3. The suit was filed by the plaintiffs claiming relief for declaration, permanent injunction and partition seeking 4/5 share in the suit land. It is the plaintiffs' case that the suit land total 09 khasra area 2.12 acre, situated in village Joratarai, Tehsil and District – Rajnandgaon was recorded in the name of defendant/appellant No.1 and same was being transferred to defendant/appellant Nos. 2 & 3, through registered sale deed dated 14.12.2011 vide Ex.P-2.
4. Further, it is the case of plaintiffs that total agricultural land 5.33 acre with total 16 khasras were under ownership of Gambhira Dewangan and after his death it had fallen in joint khata of Baran Lal, Jageshar and Bedi (all are the legal heirs of Gambhira Dewangan) whereas Bedi Dewangan had extinguished her right willfully.
5. Defendant/respondent No.1 extending to debar plaintiffs from their right and ownership upon suit land, unlawfully executed registered

sale deed on 14.12.2011 in favour of defendant Nos. 2 & 3, which was unlawfully void and not binding upon plaintiffs, because suit land, being obtained by defendant No.1 on partition between his brothers, has been acquired by himself and on due consideration the registered sale deed has been executed.

6. On the basis of available pleadings and materials on record, learned trial Court framed issues, recorded statements of the parties and witnesses, heard parties and passed the judgment impugned, decreeing plaintiffs' suit.
7. Learned counsel appearing for the appellants/ defendants submits that trial Court has committed patent illegality in deciding issue No.1, holding that the plaintiffs were in possession of 4/5 share of suit land. He also submits that trial Court has also committed patent illegality in deciding issue No.2, holding registered sale-deed dated 14.12.2011 not binding upon plaintiffs; whereas suit land being self acquired land of defendant No.1. In support of his arguments, he has placed reliance on the decision of Apex Court in the matter of **Union of India and others v. Vasavi Co-op. Housing Society Ltd** reported in **AIR 2014 SC 937** in which Apex Court in para 15 has held as under :-

“15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of

establishment of plaintiff's own title, plaintiff must be not-suited.”

8. On the other learned counsel for respondent Nos. 1 to 4/ plaintiffs opposed the appeal and submitted that trial Court has rightly held 4/5 share of plaintiffs upon suit land and the registered sale-deed dated 14.12.2011 was not binding upon plaintiffs.
9. I have heard learned counsel for the parties and perused the judgment and decree impugned including record of the trial Court.
10. The core question arising for determination of this Court is whether or not the trial Court was justified in granting decree of declaration of sale deed void and not binding on plaintiffs and entitlement of 4/5 share of plaintiffs in suit land, in the facts and circumstances of the case.
11. Plaintiff Tikaram (PW-1) and his witnesses Shankar (PW-2) and Dular (PW-3) have also clearly proved by their averments that suit land was ancestral property, therefore, without consent of the plaintiffs sale of suit land was not proper and legal.
12. Defendant No.1 Jageshar himself has admitted in his cross-examination in para-7 that when the suit land was purchased, he was about 12 years old and his brother Baran was 18 years old. He also admitted that he did not know through whom the suit land was purchased. He specifically admitted in his cross-examination in para-8 that when the suit land was purchased he was minor and he was not earning any income. He also admitted that his father Gambhira was taking care of him and suit land was purchased by his father Gambhira Dewangan. This admission is sufficient for holding the

fact that suit land was purchased by Gambhira Dewangan and not by Defendant No.1 Jageshar Dewangan. It is also proved by Ex.P-1 that suit land was succeeded by Baranlal, Jageshar and Bedi after the death of Gambhira Dewangan. It has also come in the cross-examination of Girdhar Dewangan (Defendant No.3) that he had paid only Rs.500/- for consideration against the executed sale deed, therefore, execution of sale deed (Ex.P-2) is not legal and proper.

13. In the instant case, defendants utterly failed to prove that the suit land was self-acquired property of defendant No.1 and he has sole right to sell the land to defendants No.2 & 3.
14. Considering all the facts and circumstances of the case and on minute scrutiny of the entire evidence, in my opinion, the defendants failed to prove that suit land was self-acquired property of defendant No.1 and he has no right to sell the land to other defendants.
15. For the aforementioned reasons, the appeal fails and is hereby dismissed.
16. Parties to bear their own costs.
17. A decree be drawn accordingly.

Sd/-
(I.S. UBOWEJA)
JUDGE