

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 92 of 2017**

1. Smt. Durga Bai W/o Late Sodhwa Lodhi, Aged About 70 Years R/o Village Umariya, Police Station & Tahsil Bilha, Civil & Revenue District Bilaspur, Chhattisgarh, Mo.No. 7389019711
2. Cholaram S/o Late Sodhwa Lodhi, Aged About 55 Years R/o Village Umariya, Police Station & Tahsil Bilha, Civil & Revenue District Bilaspur, Chhattisgarh, Mo.No. 7389019711
3. Manoj Ram S/o Late Sodhwa Lodhi, Aged About 52 Years R/o Village Umariya, Police Station & Tahsil Bilha, Civil & Revenue District Bilaspur, Chhattisgarh, Mo.No. 7389019711
4. Dadu Ram S/o Late Sodhwa Ram Lodhi, Aged About 50 Years R/o Village Umariya, Police Station & Tahsil Bilha, Civil & Revenue District Bilaspur, Chhattisgarh, Mo.No. 7389019711
5. Smt. Sawan Bai (Wrongly Mention Sachin Bai In Impugned Judgment) W/o Dwarika Prasad Rajpoot, Aged About 45 Years D/o Late Sodhwa Lodhi, R/o Nigarband Takhatpur, Police Station & Tahsil- Takhatpur, Civil & Revenue District Bilaspur, Chhattisgarh(Lrs Of Defendant No.1) **---- Appellants**

Versus

1. Ananda Bai W/o Gendram, Aged About 62 Years Cast Lodhi, R/o Village- Umariya, Police Station & Tahsil Bilha, Civil & Revenue District Bilaspur, Chhattisgarh
2. Urfi Bai D/o Sonu @ Ramphal, Aged About 32 Years Cast Lodhi, R/o Village- Umariya, Police Station & Tahsil Bilha, Civil & Revenue District Bilaspur, Chhattisgarh(Plaintiffs)
3. State Of Chhattisgarh, Through: Collector Bilaspur, Police Station Civil Lines, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh(Defendant No.2) **---- Respondents**

For Appellants:	Shri Ratnesh Kumar Agrawal, Advocate.
For Respondents:	None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****30.11.2017**

1. Heard on admission.
2. This appeal has been preferred by defendant No. 1- Sodhwa Lodhi under Section 100 of the Code of Civil Procedure(hereinafter referred to as

the CPC) against the judgment and decree dated 27.01.2017 passed by 6th Additional District Judge, Bilaspur in Civil Appeal No. 94-A/2015 by which, the lower appellate Court, while affirming the judgment and decree dated 30.06.2015 passed by the Civil Judge, Class-I, Bilha, District-Bilaspur in Civil Suit No. 31-A/2014, has dismissed the Appeal.

3. The undisputed facts of the case are that the Plaintiffs Ananda Bai and Urfi Bai instituted a suit claiming declaration of title and possession by submitting *inter alia* that the suit property bearing Khasra No. 161/3 admeasuring 0.48 acre situated at village Umariya, Tahsil-Bilha, District-Bilaspur had fallen in share of their predecessor-in-interest namely, Kashiram in a partition effected amongst his brothers in 1969, who, in turn, has executed a registered gift deed on 16.11.1984 by providing the suit property to them. It is pleaded further that based upon the registered deed of gift, revenue papers were mutated in their name however, they were disposed by defendant No. 1 on 13.07.2014, therefore, the plaintiffs have been constrained to file the suit in the instant nature.

4. Defendant No. 1 Sodhwa (since deceased now represented by his legal representatives) has contested the aforesaid claim by saying that though the partition was effected, but the suit property bearing Khasra No. 161/3 admeasuring 0.48 acre have come in share of his father-Hathiram and the revenue papers were also mutated accordingly and he was in possession over the suit property for the last 40 years. The suit as framed is therefore liable to be dismissed.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the suit property has fallen in share of predecessor-in-interest of the plaintiffs, namely, Kashiram and held further

that said Kashiram has executed a registered deed of gift in favour of his daughters who have been disposed of by defendant No. 1 Sodhwa on 13.07.2014. As a consequence, the trial Court has decreed the plaintiff's claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower Court in an appeal preferred by defendant No. 1 under Section 96 of the CPC.

7. Being aggrieved, defendant No. 1 has preferred this Appeal. Shri Ratnesh Kumar Agrawal, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below by holding that the suit property bearing Khasra No. 161/3 admeasuring 0.48 acre has fallen in share of Kashiram is apparently contrary to law. He submits further that without considering the documentary evidence in its proper perspective has erred in holding that the plaintiffs have become the owner of the said suit property on the basis of the registered deed of gift dated 16.11.1984. He therefore submits that the judgment and decree as passed by the Courts below deserves to be set aside.

8. I have heard learned Counsel for the Appellants and perused the entire record carefully.

9. The Plaintiffs have instituted a suit claiming declaration of title and possession on the ground that the suit property bearing Khasra No. 161/3 admeasuring 0.48 acre has fallen in share of their predecessor-in-interest, namely Kashiram and that by virtue of the registered deed of gift dated 16.11.1984 (Ex.P.-4) executed by him, they have become the owner of the suit property. In order to establish the said fact the plaintiffs have produced documentary evidence particularly Ex.P.-1 & Ex.P.-2 which shows very

specifically that on the basis of partition effected on 03.11.1969, the suit property has fallen in share of their predecessor-in-interest, namely, Kashiram. The contention of defendant No. 1 that the said suit property has, in fact, fallen in share of his father, namely, Hathiram cannot be accepted as he has failed to produce any documentary evidence in order to establish the said fact. Since the partition has already been admitted by defendant No. 1, therefore, the burden was heavily upon defendant No. 1 to establish this material fact that this suit property was, in fact, came in his father's share. Having failed so, the Courts below have not committed any illegality by holding that the suit has fallen in share of Kashiram. Since the suit property has fallen in share of Kashiram, therefore, he was competent to execute the registered deed of gift in favour of his daughters on 16.11.1984 and based upon the said document the plaintiffs along with one Chanda Bai the another daughter of Kashiram, have acquired their right, title and interest over the suit property. The Courts below have therefore not committed any illegality while decreeing the plaintiffs claim.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE