

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 597 of 2016**

1. Santoshi Bai D/o Sukhau, Aged About 38 Years R/o Village- Ghoghra, Tahsil- Bilha, District Bilaspur, Chhattisgarh
2. Birjha Bai D/o Sukhau, Aged About 34 Years R/o Village- Ghoghra, Tahsil- Bilha, District Bilaspur, Chhattisgarh(Defendants)

---- Appellants**Versus**

1. Chamarin Bai D/o Tulu, Aged About 55 Years R/o Village- Medpar, Tahsil- Takhatpur, District Bilaspur, Chhattisgarh(Plaintiff No.1)
2. Kanti Bai D/o Kartikram, Aged About 43 Years R/o Village- Lamti, Tahsil- Bhatapara, District- Balodabazar-Bhatapara, Chhattisgarh (Plaintiff No.2)
3. Kunti Bai D/o Kartikram, Aged About 40 Years R/o Village- Lamti, Tahsil- Bhatapara, District- Balodabazar-Bhatapara, Chhattisgarh (Plaintiff No.3)
4. Sunita Bai D/o Kartikram, Aged About 35 Years (Non Applicant No. 2 To 3 Are The Wrongly Mention Non-Applicant No. 2 To 3 Instead Of Non-Applicant No.2-4) R/o Village- Lamti, Tahsil- Bhatapara, District- Balodabazar-Bhatapara, Chhattisgarh(Plaintiff No.4)
5. State Of Chhattisgarh, Through- Collector Bilaspur, Tahsil And District Bilaspur, Chhattisgarh(Defendant No.3)

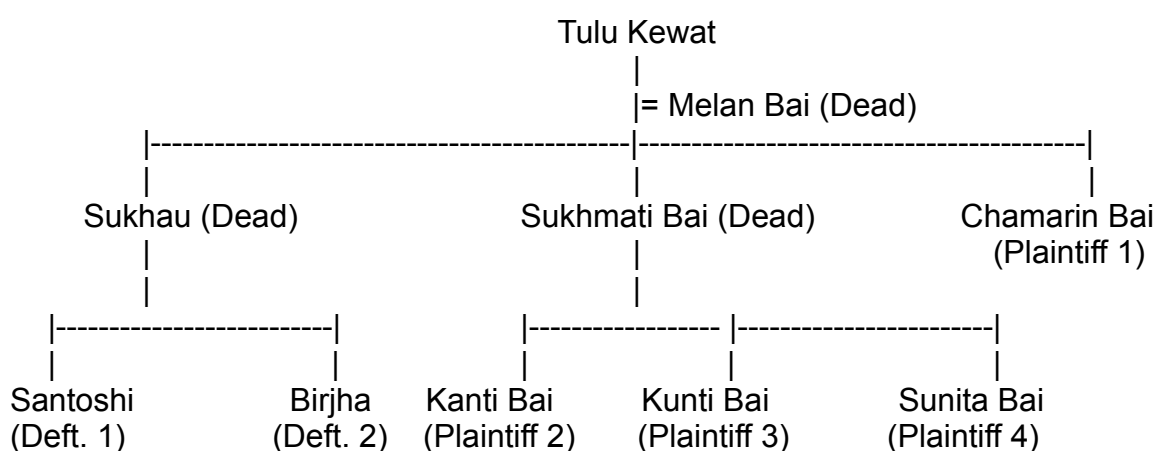
---- Respondents

For Appellants	:	Shri Hemant Gupta, Advocate.
For Respondent No.5/State	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****23/02/2017**

This is defendants' second appeal filed under Section 100 of the Code of Civil Procedure, 1908 by questioning the property of the judgment and decree dated 22.10.2016, by which the lower appellate Court while affirming the judgment

2. The undisputed facts of the case are that one Tulu Kewat was the erstwhile owner of the property in question, described in plaint para – 1. His genealogical tree shows as under:



3. The plaintiffs – Chamarin Bai and the daughters of her sister Sukhmat Bai had instituted a suit for declaration of title, partition and for separate possession by submitting, inter alia, that after the death of Tulu Kewat in the year 1994, the property in question was inherited by his heirs and their names were mutated accordingly in revenue records. It is pleaded that defendants No. 1 & 2, i.e., Santoshi Bai and Birjha Bai by playing fraud upon them had obtained their signatures on an application and based on which, had obtained the revenue papers corrected under Sections 115 and 116 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code, 1959'), vide order dated 03.12.2011 passed in Revenue Case No. 34-A-6A/2010-2011. It is pleaded further that based on the said revenue entries, the defendants have been creating doubt in their interest over the property in question, therefore, the plaintiffs have been constrained to file the suit in the instant nature, instituted on 07.11.2014.

4. The defendants No. 1 & 2 have contested the aforesaid claim of the plaintiffs and stated that the plaintiffs have already relinquished their interest with regard to the property in question, and therefore, they have no right whatsoever over the property in question. They stated further that in the year 1994-95, their names and name of their grandmother Melan Bai have already been mutated in revenue papers and that only for correction in the revenue papers, the application was submitted on 27.07.2011 as per the provisions prescribed under Section 115 & 116 of the Code, 1959. It was contested further on the ground that based on the said application, the Tahsildar, vide its order dated 03.12.2011 has corrected the revenue papers. The order as passed by the Tahsildar was affirmed further by the Sub-Divisional Officer (Revenue), in an appeal preferred by the plaintiffs.

5. The trial Court, after considering the evidence led by both the parties, has come to the conclusion that the property in question is the ancestral property, in which, the plaintiffs have equal share with that of the defendants and held further that the orders as passed by the Revenue Authorities are null and void and in consequence, held that the plaintiffs are entitled to get total 2/3rd share, i.e., 1/3rd share each to plaintiff No.1 and plaintiffs No. 2 to 4 jointly, with regard to the property in question and are entitled to get their separate possession, upon its partition as per the provisions prescribed under Order 20 Rule 18(1) and Section 54 of the Code of Civil Procedure, 1908.

6. Being aggrieved by the aforesaid judgment and decree, the defendants have preferred an appeal under Section 96 of the Code of Civil Procedure, 1908 and submitted that the judgment and decree as passed by the trial Court is not sustainable in the eye of law. Shri Hemant Gupta, learned counsel for the appellants has submitted further that since the revenue papers were already mutated in the year 1994-95, as evidence by the *Namantaran Panji* (Ex.P.2), therefore, the plaintiffs' suit as framed and instituted on 07.11.2014 is apparently barred by time.

7. I have heard learned counsel for the appellants and have perused the entire record carefully.

8. Undisputedly, the property in question was originally held by their predecessor-in-interest, namely, Tulu Kewat and after his death, the property left by him was inherited by his legal representatives and whose names were already recorded in the revenue papers. It is also not in dispute that no document was ever executed by the plaintiffs while relinquishing their right, title or interest with regard to the property in question. Therefore, merely on the basis of the order passed by the Tahsildar and *Namantaran Panji* (Ex.P.2) made in the year 1994-95 would not by itself confer any right or interest upon the defendants. The right or interest whatsoever could be conferred only by execution of a registered deed of document, as per the mandatory provisions prescribed under Section 17 of the Indian Registration Act. However, no such document is available on record which shows that the plaintiffs have ever relinquished their right or interest by executing a registered deed of relinquishment over the suit property as described in plaint para – 1.

9. In view of the aforesaid facts and circumstances, there is absolutely no infirmity committed by the Courts below in arriving at a conclusion that the plaintiffs' right or interest with regard to the property in question was ever relinquished in favour of the defendants/appellants. The Courts below have, therefore, rightly held that plaintiffs are entitled to total 2/3rd share over the suit property and are entitled to get their separate possession after its partition.

10. Further contention of Shri Hemant Gupta with regard to the institution of the suit as barred by time based upon the said *Namantaran Panji* (Ex.P.2) is noted to be rejected. What I observed from the record that the defendants have obtained the signatures of plaintiffs in the year 2011 on an application for correction of the revenue papers and have succeeded to get the revenue papers corrected on

03.12.2011 under Sections 115 and 116 of the Code, 1959. Meaning thereby, the defendants were very well aware even till the day when they obtained the signatures of the plaintiffs in the said application for correction of the revenue papers in their own name that the plaintiffs' interest is there in the suit property. Pertinently to be mentioned here that the defendants, after obtaining the revenue papers corrected in their names on 03.12.2011, started creating doubts with regard to the plaintiffs' interest over the suit property and then only the plaintiffs have instituted the suit in the instant nature. Even otherwise, the plaintiffs' interest being, co-owners could be divested only by execution of a registered deed of document, however the same was not found to be proved in the matter. Therefore, from any angle, the plaintiffs' claim cannot be held even to be barred by time.

11. In view of foregoing discussions, no questions of law, much less the substantial questions of law are involved. The appeal, being devoid of merit, is hereby dismissed at motion stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge