

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 613 OF 2016**

1. Pooran S/o Late Ramlal Dhobi, Aged About 52 Years (Presently Aged About 60 Years) R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
2. Surekha D/o Late Gajadhar Dhobi, Aged About 18 Years (Presently Aged About 26 Years) R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
3. Rekha D/o Late Gajadh Dhobi, Aged About 14 Years (Presently Aged About 22 Years) R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
4. Kanchan D/o Late Gajadhar Dhobi, Aged About 12 Years (Presently Aged About 20 Years) R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
5. Gule D/o Late Gajadhar, Aged About 10 Years (Presently Aged About 18 Years) R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
6. Smt. Brij Bai W/o Late Ram Lal Dhobi, Aged About 82 Years R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh
7. Smt. Ghasnin Bai D/o Late Ram Lal Dhobi, Aged About 50 Years R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh.....
(Defendants)

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1. Sant Ram S/o Late Samalia Dhobi, Aged About 48 Years R/o Village Khairi, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh.....(Plaintiff)
2. Chitrekha D/o Late Gajadhar Dhobi, Aged About 26 Years W/o Bhagwat Dhobi, R/o Village Sarragondi, Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh.....(Defendant No.2)
3. State of Chhattisgarh, through the Collector, Rajnandgaon, Chhattisgarh.....
(Defendant No.7).

---- Respondents

For Appellants	:	Mr. Ravindra Agrawal, Advocate
For Respondent No. 3/State	:	Mr. V. B. Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board

04/09/2017

Heard on admission.

1. This is defendants' appeal preferred under Section 100 of the CPC against the judgment and decree dated 5.10.2016 passed by the Additional District Judge, Khairagarh, District Rajnandgaon (C.G.) in Civil Appeal No. 31-A/2011, by which, the lower Appellate Court while affirming the judgment and decree dated 15.7.2011 passed by the Civil Judge Class-II, Chhuikhadan, District Rajnandgaon (C.G.) in Civil Suit No. 133-A/2008, has dismissed the appeal.
2. Undisputed facts of the case, are that, the plaintiffs have instituted a suit for declaration of title, partition and also for separate possession with regard to the property ad-measuring 11.87 acres, described in detail in plaint-schedule. It is pleaded that the property was originally held by one Chullu and after his death Samlu (plaintiff No.1) and his brother's son Santram (plaintiff No.2) have acquired the property in 1/3rd share along with one Ramlal, the other son of said Chullu. It is pleaded further that they have moved an application for partition under Section 178 of the C.G. Land Revenue Code, 1959 before the Tahsildar, Chhuikhadan, where said Ramlal who was predecessor-in-interest of defendants have raised an objection that by virtue of the document executed on 14.5.1967 (Ex. D-5), the plaintiffs are not entitled to get the partition as claimed by them. Upon receiving the said reply dated 10.4.2006, the plaintiffs have been constrained to file the suit in the instant nature.
3. The defendants have contested the aforesaid claim and stated that the suit property is not held by Chullu alone as it was recorded jointly in the name of Anjori and Nanheram, who were predecessor-in-interest of the parties. It is

pleaded further that after the death of Nanheram, his widow's name was also recorded as one of the co-owner with regard to the property in question. The said widow Bhukhiya Bai has executed a deed on 14.5.1967 (Ex. D-5) and has given her entire share to said Ramlal. Therefore, the plaintiffs are not entitled to get 1/3rd share with regard to the entire suit property and in fact, they are entitled to only 1/3rd share of Anjori's half share.

4. The trial Court after considering the evidence led by the parties, particularly, by examining the alleged document dated 14.5.1967 (Ex. D-5) executed by Bhukhiya Bai, widow of Nanheram has come to the conclusion that since the document is unregistered, therefore, by virtue of it no right or interest of said Bhukhiya Bai would confer upon Ramlal, the predecessor-in-interest of defendants. As a consequence, the trial Court has decreed the suit.
5. The aforesaid findings of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendants under Section 96 of the CPC.
6. Being aggrieved, defendants have preferred this instant appeal. Mr. Ravindra Agrawal, learned counsel for the appellants submits that the Courts below while disbelieving the alleged document executed on 14.5.1967 (Ex. D-5) have committed an illegality in holding that Ramlal, the predecessor-in-interest of defendants had not acquired any right, title or interest over the suit property on the basis of the said document. He therefore submits that judgment and decree as passed by the Courts below deserves to be set aside and/or be modified accordingly.
7. I have heard learned counsel for the appellants and perused the entire record carefully.
8. The main contention of the appellants before this Court, is that, the alleged deed, which was executed on 14.5.1967 (Ex. D-5) by Bhukhiya Bai in favour of Ramlal

ought to have been taken into consideration as a deed of will. In order to ascertain the said contention, I have examined the contents made in the said document. From bare perusal of the said document would show that Bhukhiya Bai has given her entire share during her lifetime to said Ramlal by executing the said document (Ex. D-5). In view of the contents made therein, it cannot be held that the alleged document is a will deed. The contents as made therein would however show very specifically that in fact, Bhukhiya Bai had relinquished her right in favour of Ramlal. Since, the said document was unregistered in nature, therefore, based upon it no right, title or interest would confer upon said Ramlal. The Courts below have therefore, rightly disbelieved the said document executed by Bhukhiya Bai on 14.5.1967 (Ex. D-5). The findings so recorded are based upon due and proper appreciation of the evidence led by the parties. In such circumstances, I do not find any infirmity in the judgment and decree of the Courts below therefore, the same deserves to be and are hereby affirmed.

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

Sd/-
(Sanjay Agrawal)
Judge