

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 345 OF 2015**

Sushila Bai D/o Baiman & W/o Chhote Paltan, aged about 60 years, R/o Village :
Sothi, Tahsil and Police Station Champa, District- Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

1. Phoolsai S/o Mani Ram Aged About 68 Years

2. Heerasai (Dead) Through Lrs

2 .(a) Badriprasad S/o Heerasai,

2 .(b) Dwarika S/o Heerasai,

2 .(c) Gajanand S/o Heerasai,

2 .(d) Photo Bai (Deleted)

2 .(e) Uma Bai D/o Heerasai,

All 2(a) to 2(e) are R/o Village- Afrid, P.S. & Tahsil- Champa, District- Janjgir-
Champa, Chhattisgarh

3. Dhansai S/o Mani Ram Aged About 60 Years

4. Rameshwar S/o Mani Ram Aged About 55 Years

5. Parmeshwar S/o Mani Ram Aged About 50 Years

6. Badri Prasad S/o Agar Das Aged About 40 Years

Respondents No.1 to 6 are R/o Village : Afrid, Tahsil And Police Station
Champa, District- Janjgir-Champa, Chhattisgarh

7. (A) Deleted (Ratan Bai)

7 .(B) Sukha Sagar (Dead) Through Lrs

7 .(b) (i) Rajkumari W/o Sukhsagar

7 .(C) Hari Charan Aged about 36 Years S/o Babulal,

7 .(D) Shakuntla Aged about 38 Years D/o Babulal & Wd/o Late Firtu Ram, R/o
Near Nahriya Mandir Naila, Tehsil Janjgir, District Janjgir-Champa, Chhattisgarh

7.(E) Amit Aged about 32 Years S/o Babulal,

Respondent No.7(A) to 7(D) and 7(E) are R/o Village Afrid, Tahsil And Police
Station Champa, District Janjgir-Champa, Chhattisgarh

8. Swarup (Dead) Through Lrs

8.(a) Kuldeep S/o Swarup

8.(b) Ramji S/o Swarup

8.(c) Gajendra S/o Swarup, Minor Through Legal Guardian Narmada Wife Of
Swarup

8.(d) Narmada W/o Swarup

8.(e) Minakshi D/o Swarup

9. Thakur S/o Shyam Lal Aged About 64 Years

10. Kushal S/o Ramlal Aged About 45 Years

Respondent No.8 to 10 are by caste Suryavanshi and are R/o Village : Afrid, Tahsil And Police Station Champa, District- Janjgir-Champa, Chhattisgarh

11. Bhurwa S/o Dadua Aged About 60 Years caste Suryavanshi R/o Village : Sukhari, Tehsil Kartala, District- Korba, Chhattisgarh

12. Melan Ram S/o Manglu Ram Aged About 45 Years

13. Tahar S/o Manglu Ram Aged About 40 Years

14. Son Ram S/o Manglu Ram Aged About 32 Years

15. Shanti Wd/o Manglu Ram Aged About 65 Years

Respondent No.12 to 15 are by caste Suryavanshi and are R/o Village : Afrid, Tahsil And Police Station Champa, District- Janjgir-Champa, Chhattisgarh

16. Puraen Wd/o Chhotu Aged About 80 Years caste Suryavanshi R/o Ghatoli, Tehsil Champa, District- Janjgir-Champa, Chhattisgarh

17. State Of Chhattisgarh, Through : The Collector, Janjgir Champa, District- Janjgir-Champa, Chhattisgarh.

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For Appellant	:	Mr. C.P. Lahrey, Advocate
For Respondent No. 1	:	Mr. Ritesh Verma, Advocate
For Respondent No. 17/State	:	Mr. V.B. Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal

Judgment on Board

27/06/2017

Heard on admission.

1. This is defendant's appeal against the judgment and decree dated 26/03/2015 passed by the Additional District Judge, Janjgir, District Janjgir Champa (C.G.) in Civil Appeal No. 27-A/2013, by which, the lower Appellate Court while affirming the judgment and decree dated 30/06/2012 passed by the Civil Judge Class-1, Champa, District Janjgir-Champa, (C.G.) in Civil Suit No.191-A/2008, has dismissed the appeal.

2. Undisputed facts of the case, are that, the plaintiff- Phoolsai filed a suit for declaration of title by submitting *inter alia* that by virtue of a registered deed of relinquishment dated 12/07/1978 purported to have been executed by his uncle Baiman in his favour, has acquired his interest over the suit property bearing Kh. No. 2076/1 area 2.95 acres and part of Kh. No. 1144/1 area 0.20 acres, total admeasuring 3.15 acres situated at village Afrid, Tahsil Janjgir. It is pleaded further that during the pendency of suit, the defendant No.1 has forcefully cultivated the land in question on 13/06/2004, therefore, a further claim with regard to possession and mesne profit has also been made by the plaintiff. It is pleaded further that on 15/01/2001, defendant No. 1 Sushila Bai, the daughter of said Baiman has applied for partition before the Tahsildar Champa, therefore, he has been constrained to institute a suit in the instant nature, instituted on 24/04/2001.
3. The defendant No. 1 Sushila Bai, the daughter of the executor Baiman has contested the aforesaid claim by submitting *inter alia* that no such document was ever executed by her father in favour of the plaintiff. It is contested further on the ground that no partition was ever taken place amongst her predecessor-in-interest, therefore, the property being a coparcenary property cannot be transferred by way of the said document. The suit as instituted is, therefore, liable to be dismissed.
4. After considering the evidence led by the parties, the trial Court by its judgment and decree dated 30/06/2012 has come to the conclusion that a partition had taken place amongst her predecessor-in-interest of the parties, namely, Dayaram, Peelaram, Baiman and Maniram, in which, the suit property had fallen in share of said Baiman. It held further that by virtue of the registered deed of relinquishment dated 12/07/1978 (Exhibit P-1), the suit property was relinquished by said Baiman in favour of his nephew-Phoolsai, the plaintiff, who

has acquired his right, title and interest on the basis of the said document. In consequence, the trial Court has decreed the suit.

5. The aforesaid finding of the trial Court has affirmed further by the lower Appellate Court in an appeal preferred by defendant No.1-Sushila Bai.
6. Being aggrieved, defendant No. 1- Sushila Bai has preferred this instant appeal. Mr. C.P. Lahrey, learned counsel for the appellant submits that the judgment and decree as passed by the trial Court as well as by the lower Appellate Court are not sustainable in the eyes of law. He further submits that the property cannot be relinquished by her father because the property in question was the coparcenary property and no partition as alleged was ever taken place. He, therefore, submits that the judgment and decree as passed by both the Courts below deserves to be set aside.
7. I have heard learned counsel for the appellant and perused the entire record carefully.
8. Undisputedly, the plaintiff has instituted a suit for declaration of title on the premises that the deed of relinquishment dated 12/07/1978 (Exhibit P-1) was executed in his favour by his uncle Baiman and, claimed further for possession and mesne profit also when during the pendency of suit the defendant No. 1 has forcefully cultivated the suit land on 13/06/2004. Upon perusal of the evidence and that by considering the evidence of defendant No. 1 Sushila Bai, it is clear that the suit property came in share of Baiman in partition, which was taken place amongst predecessor-in-interest of defendant No. 1 Sushila Bai. It is also clear from the record that Baiman, who executed the alleged deed of relinquishment dated 12/07/1978 had never questioned the same. The said document was executed in the year 1978 and after passing of so many years, the defendant No. 1-Sushila Bai had applied for partition on 15/01/2001 before the Tahsildar, Champa. Since the document was a registered one, therefore, as

per the provisions prescribed under Section 17 of the Indian Registration Act, 1908, the right, title and interest of said Baiman was conferred upon Phoolsai immediately after the execution of the alleged deed of relinquishment dated 12/07/1978. The said finding with regard to the partition as well as the execution of deed of relinquishment are pure finding of fact, which is 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 as passed by the trial Court as well as by the lower appellate Court, 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