

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.348 of 1993**

(1) (i) Jagotin Bai W/o. Amol, aged about 82 years,

(ii) Gulabchand S/o Amol, aged about 52 years,

(iii) Shiv Prasad, S/o Amol, aged about 42 years,

(iv) Bhagmat Bai W/o Puniram, aged about 37 years,

(v) Munni Bai W/o Resham, aged about 34 years,

All are resident of Village Jhalka, Tahsil Kawardha, Distt. Kabirdham (CG)

(vi) Durga Bai W/o. Lahar, aged about 32 years, R/o Village Garra, Tahsil Bemetara, Distt.Durg (CG)

(2) Phagu, aged about 45 years, S/o Bhondu, agriculturist, resident of vill.Jhalka, Tah. Kawardha, Distt. Rajnandgaon (Now Kabirdham)

---- Appellants

Versus

1. Rajaram (died and deleted)

2. The State of Madhya Pradesh through Collector Rajnandgaon, District Rajnandgaon (M.P.) (Now C.G.)

---- Respondents

For Appellants	:	Mr.H.B.Agrawal, Senior Advocate with Ms Deepali Dubey, Advocate
For State	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

21/08/2018

1. The substantial question of law involved, formulated and to be answered in this second appeal states as under:-

“Whether the alienation by Dhekuna bai, one of the two co-widows on 14.6.68 was legal and valid so as to divest the appellants of their rights acquired

by sale deed dated 16.4.68”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

(2.1) Original plaintiffs-Amol and Fagu instituted a civil suit for declaration of their title and for recovery of possession stating inter-alia that the suit land was originally owned by one Dhelau, he died issueless and the suit land was succeeded by his two widows Bhagaiya Bai, defendant No.3 and Dhekuna Bai, defendant No.4. Plaintiffs-Amol and Fagu said to have purchased the suit land from two widows Bhagaiya Bai, defendant No.3 and Dhekuna Bai, defendant No.4 by registered sale deed dated 16.4.68 Ex.P/1 and obtained possession thereby. It is the case of the plaintiffs that they were dispossessed by defendants No.1 to 3 in the month of Aghan 1971 by harvesting their crops shown in their field, they lodged report at Police Station Kawardha. Thereafter, the suit land was registered in the name of defendants No.3 and 4 in consolidation proceedings leading to filing of suit for declaration of their title and for recovery of possession.

(2.2) Defendants No.1, 2 and 4 filed their joint written statement stating inter-alia that the suit land was inherited by defendants No.3

and 4 on death of their husband Dhelau and they were subjected to partition also. It is their further case that defendants No.3 and 4 never sold the suit land to the plaintiffs by registered sale deed dated 16.6.68 and thumb impression of defendant No.4 on the said sale deed is forged and fabricated, defendant No.4 has sold the suit land (her share) by registered sale deed dated 14.6.68 to Dharam Das vide Ex.D/1 and also to Rajaram by registered sale deed dated 14.6.68 Ex.D/2 and delivered vacant possession of the suit land, as such, the plaintiffs' suit deserves to be dismissed.

(2.3) Defendant No.3-Bhagaiya Bai filed her separate written statement admitting the case of the plaintiffs.

3. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 20.11.1979 held that the plaintiffs have purchased the suit land by registered sale deed dated 16.4.68 Ex.P/1 from defendants No.3 & 4 and entered into possession of the suit land and they have been dispossessed by defendants No.1 to 3 illegally, therefore, the plaintiffs are entitled for decree of declaration of title and decree for possession in their favour.

4. Questioning legality, validity and correctness of the judgment and decree passed by the trial Court, defendants No.1, 2 and 4 namely, Dharamdas, Rajaram and Dhekuna Bai preferred first appeal under Section 96 of the CPC before the First Appellate

Court. The First Appellate Court by its judgment and decree dated 22.4.1993 allowed the appeal preferred by defendant-Rajaram and dismissed the suit filed by the plaintiffs by setting aside the decree of the trial Court.

5. Assailing the said judgment and decree, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs in which substantial question of law has been framed by this Court by order dated 3.11.93 and same has been incorporated in the opening paragraph of this judgment.

6. Mr.H.B.Agrawal, learned Senior Counsel appearing for the appellants, would submit that the First Appellate Court has committed legal error while reversing the judgment and decree passed by the trial Court ignoring the fact that defendant No.4-Dhekuna Bai was not eligible to sell the suit land to defendants No.1 and 2 in view of the fact that the suit land was already sold by defendants No.3 and 4 by registered sale deed dated 16.4.68 Ex.P/1, as such, the judgment and decree passed by the First Appellate Court deserve to be set aside.

Defendant No.2-Rajaram died during pendency of this second appeal and he had no legal representative. His name was directed to be deleted in view of this Court order dated 6.3.2017.

7. Mr.Arun Sao, learned Deputy Advocate General for the State would submit that the judgment and decree passed by the First

Appellate Court is in accordance with law and as such, this appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

9. The First Appellate Court has reversed the judgment and decree of the trial Court on the ground that execution and attestation of sale deed Ex.P/1 was not proved, whereas on behalf of the plaintiffs, plaintiff No.1-Amol has been examined and he has clearly stated that sale deed was executed by defendants No.3 and 4 on 16.4.68 and document writer Brijbhushan Lal (PW-2) had signed on Ex.P/1. Brijbhushan Lal (PW-2) has clearly stated in his evidence that he has signed the document Ex.P/1 and contents of sale deed were read over to defendants No.3 and 4. In his cross-examination, nothing has been suggested to hold that sale deed was forged and it was not signed by defendants No.3 and 4 except that now, he cannot identify defendants No.3 and 4.

10. In order to impeach the said document, it ought to have been suggested by the defendants that the document Ex.P/1 was not executed by defendants No.3 and 4 and it was forged document at the instance of the plaintiffs. Defendant No.3-Bhagaiya Bai has filed separate written statement admitting the case of the plaintiffs. On behalf of the defendants, though defendant-Dhekuna Bai has been

examined, who has not supported the case of the plaintiffs, but the defendants have not taken any steps to challenge the questioned document Ex.P/1 during the course of the trial. Defendant No.4 Dhekuna Bai has also not taken any steps to prove that her signature on sale deed Ex.P/1 was forged at the instance of the plaintiffs and she has not executed registered sale deed dated 16.4.68 Ex.P/1. In written statement jointly filed by defendants No.1, 2 and 4, it has only been stated that if thumb impression is of defendant No.4 in sale deed Ex.P/1, then it is forged, but no further particulars of that forged thumb impression have been given. Defendant No.4-Dhekuna Bai has been examined as DW-3. She has even not stated in her examination-in-chief that she has not executed document Ex.P/1 and her signature on the said document is forged at the instance of the plaintiffs. Even otherwise, no counter-claim seeking declaration that sale deed dated 16.4.68 Ex.P/1 is null and void, was claimed by defendants No.1, 2 and particularly by defendant No.4.

11. In view of the above-stated discussion, I am of the considered opinion that learned First Appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court holding that sale deed executed by defendants No.3 and 4 in favour of the plaintiffs is not duly established.

12. As a fallout and consequence of above-stated discussion, it

is held that defendant No.4-Dhekuna Bai was not eligible to sell the suit land in favour of defendants No.1 and 2 by registered sale deed dated 14.6.68 Exs.D/1 and D/2 as the appellants/plaintiffs have already acquired title over the suit land by registered sale deed dated 16.4.68 Ex.P/1.

13. In view of above-stated discussion, substantial question of law is answered in favour of the appellants/plaintiffs. Consequently, the second appeal filed by the appellants/plaintiffs is allowed and the judgment and decree passed by the First Appellate Court dismissing the suit are set aside and the judgment and decree of the trial Court are hereby restored.

14. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-