

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.425 of 1995

## 1. Ashwani Kumar (Dead) Through LRs

1-A Basant Kumar Kesharwani, S/o Late Shri Ashwani Kumar, aged about 47 years, R/o Kachhar, Tahsil Kharsiya, Distt. Raigarh (C.G.)

1-B Dilip Kumar Kesharwani, S/o Late Shri Ashwani Kumar, aged about 43 years, R/o Kachhar, Tahsil Kharsiya, Distt. Raigarh (C.G.)

## 2. Dindyal, S/o Vijaydhar Bani, aged about 50 years.

## 3. Mst. Laxmin Bai, Wd/o Phulchand Bani, aged about 54 years.

All resident of Kachhar, Tahsil Kharsiya, District Raigarh.

## 4. Mst. Ambika Bai Joje W/o Kanhaiyalal Bani, aged about 47 years, R/o Village Kharodh, Tahsil Jhanjgir, District Bilaspur (M.P.) (now C.G.)

## 5. Mst. Bhanumati, W/o Kinkar Prasad Bani, aged about 44 years, R/o Bhagori (Bilaigarh), District Raipur (M.P.) (now C.G.)

(Plaintiffs)  
---- Appellants

Versus

## 1. Mst. Karamati (Died and Deleted)

## 2. Hemlal, S/o Mansharam Bani, aged about 24 years, R/o Chota Deogaon (Pass Botldha), Tahsil Kharsiya, District Raigarh.

## 3. Mst. Bund Kunwar (Died and Deleted)

## 4. Rohit Kumar, S/o Anirudh Bani, aged about 34 years.

## 5. Ram Kumar, S/o Anirudh Bani, aged about 32 years.

Sl.No.4 and 5 R/o Bargaon, Tahsil Ambikapur, District Sarguja (M.P.) (now C.G.)

## 6. State of Madhya Pradesh (now State of Chhattisgarh), Through Collector, Raigarh.

## 7. Banshi (Dead) Through LRs

(A) Devki, W/o Late Shri Banshi, Aged about 75 years.

(B) Siyaram, S/o Late Shri Banshi, aged about 60 years.

(C) Chandan Singh, S/o Late Shri Banshi, aged about 55 years.

(D) Bhagat Ram, S/o Late Shri Banshi, aged about 49 years.

(E) Bilaigadin, W/o Late Shri Ram Kumar (S/o Late Shri Banshi), aged about 35 years (Daughter-in-law of late Shri Banshi).

(F) Badkan Noni, D/o Late Shri Banshi, aged about 52 years.

(G) Putri Bai, D/o Late Shri Banshi, aged about 45 years.

(H) Bijli Bai, D/o Late Shri Banshi, aged about 43 years.

All are R/o Kachhar, Tahsil & District Raigarh (C.G.)

#### 8. Nanki Dau (Dead) Through LR's

(A) Bodram, S/o Late Shri Nanki Dau, Aged About 35 years.

(B) Bodmati, D/o Late Shri Nanki Dau, aged about 33 years.

(C) Bedmati, D/o Late Shri Nanki Dau, aged about 29 years.

All are R/o Kachhar, Tahsil & District Raigarh (C.G.)

#### 9. Nanduram (Dead) Through LR's

(a) Umarin, W/o Nandu Kewat, aged about 68 years.

(b) Makardhwaj, S/o Nandu Kewat, aged about 45 years.

(c) Chakradhar, S/o Nandu Kewat, aged about 39 years.

(d) Smt. Chiranjimati, D/o Nandu Kewat, aged about 50 years.

(e) Smt. Dollo (Widow), D/o Nandu Kewat, aged about 35 years.

All resident of Village Kachhar, Post Office Kachhar, Tehsil and District Raigarh.

(f) Bollo, D/o Nandu Kewat, aged about 28 years, C/o Husband Bairagi Kewat, Village Linjir, Post Office Kodatarai, Tahsil and District Raigarh.

10. Shiv Prasad, S/o Munu Kewat, aged about 42 years.

11. Ram Prasad, S/o Munu Kewat, aged about 32 years.

Serial number 10 and 11 by Occupation Agriculturist, R/o Kachhar, Tahsil Kharsiya, District Raigarh (M.P.) (now C.G.)

(Defendants)  
---- Respondents

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For Appellants: Mr. B.D. Guru, Advocate.

For Respondent No.6 / State: -

Mrs. Astha Shukla, Panel Lawyer.

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board27/11/2018

1. This is plaintiffs' second appeal under Section 100 of the CPC questioning the judgment & decree of the first appellate court whereby that court has reversed the decree of the trial Court granting decree for declaration of title and possession in his favour and dismissed the suit.
2. Mr. B.D. Guru, learned counsel appearing for the appellants / plaintiffs, would submit that the first appellate court is absolutely unjustified in reversing the finding recorded by the trial court that the property fell in the share of Mansharam and the plaintiffs are purchasers from his brother's son Rohit Kumar (defendant No.4) and Ram Kumar (defendant No.5) vide Ex.P-5 dated 8-5-1967 and as such, the finding recorded by the first appellate court holding the property fell in the share Aagaas Kunwar, widow of Gadarai, is perverse and contrary to record and gives rise to substantial question of law for determination.
3. I have heard learned counsel for the appellants/plaintiffs at length on the question of admission of this appeal and considered the submissions and went through the records of the two courts below.
4. The suit property was originally held by Dhansai. Dhansai had three sons Gadarai, Ghasiram and Paragu. Ghasiram has two sons Mansharam and Anirudh. The plaintiffs are purchasers of the suit property vide registered sale deed dated 8-5-1967 (Ex.P-5) from Rohit Kumar (defendant No.4) and Ram Kumar (defendant No.5), who are nephews of Mansharam. The plaintiffs after having

purchased the property filed the suit on 17-7-1974 stating inter alia that decree be granted with regard to the suit land bearing Khasra No.170/1, area 0.72 acre; Khasra No.382/1 से, area 0.30 acre; and 314/1 & 314/3, 1.42 acres. They have purchased the suit property from defendants No.4 & 5 and came in possession, but the application for certification was rejected by the Tahsildar and directed for mutation in the names of defendants No.7 to 12. Appeal was preferred before the Sub-Divisional Officer, but the appeal was dismissed as abated and the further appeal taken to the Collector and the Commissioner were also dismissed resulting into filing of suit for declaration of title and for possession from defendants No.7 to 12.

5. The trial court decreed the suit of the plaintiffs holding that the property was originally held by Dhansai and in partition, the suit property fell in the share of Ghasiram and the plaintiffs are purchasers from the grand-sons of Ghasiram i.e. defendants No.4 & 5. On appeal being preferred, the first appellate court reversed the said finding holding that in a mutation proceeding after purchase, the original plaintiff – Vijaydhar Prasad (PW-1), who died during the pendency of suit after his examination, has admitted before the Tahsildar in mutation proceeding vide Ex.D-1 that Aagaas Kunwar, widow of Gadarai, has sold the property to her daughter Nirmala and Nirmala and her sons Ram, Lakhan & Shatrughan have sold the property to Shiv Prasad vide Ex.D-4 on 13-3-1959 and as such, the original plaintiff admitted the land to have fallen in the share of Aagaas Kunwar. The first appellate court has further recorded a finding that the plaintiff himself has admitted

the suit land to be the land commonly known as Tendukhar & Bhathakhar land and plaintiff witness No.4 – Parasram (PW-4) has also admitted that the land at Tendukhar & Bhathakhar is the land which fell in share of Aagaas Kunwar and which has been purchased by Banshi and Tendukhar land was purchased by Nanduram and others. The first appellate court has also recorded a finding that there is no documentary evidence on record to hold that the suit property fell in the share of Mansharam which was sold by defendants No.4 & 5 and concluded that the suit property fell in the share of Aagaas Kunwar who has sold the land in favour of Banshi and others vide Exs.D-3 & D-4. It has also held that the plaintiffs have not questioned Exs.D-3 & D-4 – sale deeds in favour of defendants No.7 to 12, as such that alienation has become final and therefore the plaintiffs have accepted that the title of Aagaas Kunwar.

6. In the considered opinion of this court, the finding recorded by the first appellate court holding that the suit property fell in the share of Aagaas Kunwar is based on the evidence of the original plaintiff himself (PW-1) and another witness Parasram (PW-4) in which they have clearly admitted the suit land to have fallen in the share of Aagaas Kunwar and defendants No.7 to 12 are purchasers from Aagaas Kunwar, Ram and others and also the plaintiff's suit has to fail, as the plaintiff did not seek declaration that the sale deed executed by Aagaas Kunwar in favour of the purchasers is not binding on them and the same is null and void and they have mainly sought the decree for possession and declaration. The finding recorded by the first appellate court that vide Ex.P-5 dated

8-5-1967, the land was sold by defendants No.4 & 5 at a very low price, indicates that it was sold without title by defendants No.4 & 5.

7. Thus, in view of the aforesaid analysis, I am of the considered opinion that the first appellate court has rightly reversed the decree of the trial court dismissing the suit holding that defendants No.4 & 5 had no title over the suit land, as the suit property fell in the share of Aagaas Kunwar, widow of Gadarai, and Aagaas Kunwar transferred the property by Ex.D-3 and thereafter, purchasers Ram, Lakhan & Shatrughan sold it vide Ex.D-4 to Banshi on 13-3-1959. The aforesaid finding recorded by the first appellate court is based on record and finding of fact in which I do not find any illegality or perversity, as such, I do not find any substantial question of law for determination of this appeal. The second appeal deserves to be and is accordingly dismissed at the admission stage itself without notice to the other side. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge