

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 1328 of 1999**

1. Jagotibai, aged about 57 years, wife of Loknath Chandrakar, resident of village Nartori, Tahsil & Distt. Mahasamund.
2. Janakibai, aged about 52 years, wife of Vednath Chandakar, resident of village Khopali, Tahsil & Distt. Mahasamund.

---- Appellants/defendants.**Versus**

Maltibai, aged about 54 years, D/o Guharam Chandrakar, resident of village & Tahsil Bargarh, Distt. Sambalpur (Orissa).

---- Respondent/plaintiff.

For Appellants	:	Ms. Juhi Sharma, Advocate.
For Respondent	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/08/2018**

(1) The substantial questions of law involved, formulated and to be answered in this defendants' second appeal state as under:

"1. Whether the finding of the two Courts below can be accepted as proper, legal and justified when the application filed by the defendants under Section 45 read with Sections 47 and 73 of the Indian Evidence Act was rejected particularly when the plaintiff having denied putting her signature on Ex.D-1 ?

2. Whether the trial Court has committed an error of law in rejecting the application under Order 18 Rule 17 of the CPC seeking for examination of Mushi Jagatram ?

3. Whether the Courts below erred in disbelieving the registered deed of sale dated 27.03.1972 (Ex.D-1) executed by the plaintiff-Malti Bai in favour of the defendants even in absence of the specific denial raised by the plaintiff/executor ?"

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

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Guharam Chandrakar had three daughters namely Maltibai (plaintiff) and Jagotibai (defendant No. 1) & Jankibai (defendant No. 2). Plaintiff - Maltibai filed a suit for partition and possession shown in schedule "A" attached to the plaint stating *inter alia* that the suit property is ancestral property of her father & defendants and the partition has not been effected during life time of her father, therefore, decree for partition and possession be passed granting 1/3rd share to her. The said civil suit was opposed by the defendants stating *inter alia* that the plaintiff has already sold her share by registered sale deed dated 27.03.1972 vide Ex. D-1 by obtaining cash consideration of Rs.3,000/- and thereafter the defendants are in possession of the suit land as title holders.

(2.2) According to the defendants, the information regarding the execution of sale deed by the plaintiff was given to the patwari but by mistake the name of plaintiff was not removed from the revenue records and, therefore, taking advantage of her name in the revenue records, this civil suit has been filed and, therefore, the said civil suit deserves dismissal.

(3) Trial Court, after appreciating oral and documentary evidence on record, held that the plaintiff is entitled for only 1/3rd share in the suit property shown in schedule "A" attached to the plaint and rejected the plea of sale deed (Ex.D-1) raised by defendants.

(4) First appeal preferred there-against was also dismissed vide judgment and decree impugned. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellants/defendants in which the

substantial questions of law formulated for consideration have been incorporated in the opening paragraph of the judgment.

(5) Learned counsel appearing for the appellants/defendants would submit that the trial Court is absolutely unjustified in rejecting the application filed under Section 45 read with Section 47 and 73 of the Evidence Act on untenable grounds by order dated 11.09.1996; and the trial Court has also erred in rejecting the application under Order 18 Rule 17 of the CPC for examination of defendants' witness namely Jagatram to prove *Shartnama* dated 26.03.1972 and, therefore, the judgment and decree passed by trial Court as affirmed by the first appellate Court is liable to be set aside and, thereby the suit be dismissed.

(6) None present for the respondent/plaintiff, though served by paper publication.

(7) I have heard learned counsel appearing for the appellants/defendants and perused the records of both the courts below with utmost circumspection.

(8) The suit was filed on 1.4.1992; defendants filed their written statement on 15.10.1992; the plaintiff closed her evidence on 5.12.1995 and the defendants also closed their evidence on 15.07.1996 and the case was fixed for further hearing on 31.07.1996; on that day the application for examining the document (Ex.D-1) to prove signature of the plaintiff/respondent by hand writing expert was filed; that was rejected by the trial Court holding that the plaintiff has denied her signature on the document Ex.D-1; and further held that attesting witness of Ex. D-1, Shri Sunder Sai, though he was listed witness, but he was not examined and rejected the application. In the considered opinion of this Court, the application filed by the plaintiff was filed at the belated stage i.e. after closure of evidence of both the parties and particularly when the case is fixed for final hearing and listed witness Shri Sunder Sai of *Shartnama* (Ex-D-1)

was not examined; and in view of the fact that no valid and satisfactory reasons have been assigned for not filing the applications right in time, the trial Court is absolutely justified in rejecting the applications and I do not find any illegality or perversity in the same.

(9) Similarly, application filed under Order 18 Rule 17-A of the CPC was filed for examination of Jagatram, stating inter alia that Shartnama has been executed by the plaintiff on 26.03.1972, which was written by the said witness - Jagatram, that application was also rejected by the trial Court on 1.10.1996 on the ground that it has been filed after closure of the evidence of both the parties.

(10) Order 18, Rule 17A of the CPC states as under:-

“R. 17-A . Production of evidence not previously known or which could not be produced despite due diligence.-

Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.”

(11) It is pertinent to mention here that relinquishment deed dated 27.03.1962 though it has been produced before the trial Court, but it has not been exhibited by examining defendants' witnesses namely Jagatram and another witness Sunder Sai. The trial Court has recorded a finding that no reasons have been assigned and the name of Jagatram was listed in the list of witnesses filed by defendants but for the reasons best known to the defendants, he was not examined, as such, the application so filed was not covered under Order 18, Rule 17A of the CPC, which has been deleted with effect from 1-7-2002. Thus, I am satisfied with the reasons assigned by the trial Court for

dismissing the applications filed by the defendants at the belated stage.

(12) Similarly sale deed Ex.P-1 has been disbelieved by two courts below on the ground that execution of sale deed has not been proved as none of the witnesses was examined by the defendants to prove the sale deed, despite that fact that Sunder Sai, one of witness, was listed witness & alive. The defendants raised the plea of execution of sale deed by plaintiff in their written statement, as such, there was no occasion for the plaintiff to deny the averments made in the written statement , as it could have been done by amending the plaint, which was not done but the defendants failed to establish the fact of execution of sale deed (Ex.P-1) by leading reliable evidence, as such both the courts below are justified in disbelieving the story of sale deed projected by the defendants.

(13) Accordingly, the substantial questions of law are answered against the defendants and in favour of the plaintiff and consequently, the second appeal is dismissed affirming the decree passed by the first appellate court leaving the parties to bear their own cost (s).

(14) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

