

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 1146 of 2000**

1. Dayalrum S/o Sunderlal Sahu, aged about 40 years, R/o Village Chhediya, P.H. No. 30, Tahsil Gurur, District Durg C.G.)
2. Madan Lal (died) through Lrs -
 - (a) Aasin Bai W/o Late Madan Lal, aged about 50 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
 - (b) Nirmal Kumar S/o Late Madan Lal, aged about 30 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
 - (c) Parmanand S/o Late Madan Lal, aged about 24 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
3. Dayavati D/o Sunderlal, aged about 43 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
4. Maina Bai D/o Sunderlal Sahu, aged about 35 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
5. Rajbati Bai D/o Sunderlal Sahu, aged about 30 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
6. Jhotarin bai W/o Sunderlal Sahu, aged about 63 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
7. Banwali D/o Parbhuram Sahu, aged about 43 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
8. Dheluram S/o Parbhuram Sahu, aged about 38 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
9. Gendram S/o Parbhuram, aged about 28 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
10. Baasan Bai D/o Parbhuram Sahu, aged about 43 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)
11. Nirmala Bai D/o Parbhuram Sahu, aged about 25 years, R/o Village Chhediya Patwari Halka No. 30, Tahsil Gurur District Balod (C.G.)

---- Appellants / Plaintiffs**Versus**

1. Guhariram S/o Phaguaram Sahu, Caste – Teli, aged about 63 years, Present address – Puri, Tahsil Charama, District Bastar (M.P.) (Now Chhattisgarh)

2. State of Madhya Pradesh, through Collector, Durg (M.P.) (Now Chhattisgarh) ----- Respondents

For Appellants	:	Mr. Atul Pandey, Advocate.
For Respondent No.1	:	Mr. Anurag Verma, Advocate.
For Respondent No. 2/ State	:	Mr. Avinash Singh, PL.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/09/18

1. The substantial questions of law involved, formulated and to be answered by this Court in this plaintiff's second appeal are as under :-

“(1) Whether the lower appellate court was justified in reversing the finding of the trial court only on the ground that the relinquishment deed of respondent No. 1 has not been properly executed ?

(2) Whether the lower appellate court was justified in holding that respondent No.1 would be entitled for share in his maternal grand father's property in spite of the fact that his mother has died prior to the death of his maternal grand father ?”

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

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

- (2.1) The original plaintiffs filed a suit for declaration of title that though the suit property has been recorded as a joint family property in the name of

plaintiffs and defendant No. 1 at Village Chhediya but they are the exclusive owner and title holder of the suit land as defendant No. 1 is the son of Budhantin Bai, who is the daughter of Durjan and Budhantin Bai died prior to the death of Durjan and as such Budhantin Bai had no right in the property of her father therefore, defendant No. 1 is not entitled for share in the suit property and he has also relinquished the property by *Ikrar Nama* executed on 24.06.1989 vide Ex. P/3 therefore, the decree for declaration of title be granted in favour of the plaintiffs as they are the title holder of the suit land.

(2.2) The defendant No. 1 has filed his written statement stating inter-alia that the bare suit for declaration of title is not maintainable as per the order of Revenue Court dated 23.02.1996, the plaintiffs' and defendant No. 1 both are in the joint possession of the suit land and in the revenue records the land has already been partitioned and recorded in their names separately and as such, the suit deserves to be dismissed.

3. The trial Court after appreciating the oral and documentary evidence on record decreed the suit in favour of the plaintiffs holding that the plaintiffs are the title holder of the suit land and even otherwise, the defendant No. 1 has relinquished his share in the suit property by *Ikrar Nama* dated 24.06.1986 (Ex. P/3). On appeal being preferred by defendant No. 1, the First Appellate Court set aside the judgment and decree of the trial Court and held that defendant No. 1 being the son of Budhantin Bai would succeed the property as per Class – 1 heir under Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as, “Act of 1956”) and further held that the unregistered *Ikrar Nama* relinquishing his share is

inadmissible in evidence and, therefore, dismissed the suit.

4. Questioning the legality, validity and correctness of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the C.P.C. has been preferred by the defendants in which the substantial questions of law have been formulated by this Court, as set out in the opening paragraph of this judgment.

5. Mr. Atul Pandey, learned counsel appearing for the appellants / plaintiffs would submit that the First Appellate Court is absolutely unjustified in dismissing the suit by holding that relinquish deed Ex. P/3 is inadmissible in evidence and further committed illegality in holding that defendant no. 1 would succeed being Class-I heir in the suit property.

6. Mr. Anurag Verma, learned counsel appearing for the respondent / Defendant No. 1 would support the judgment and decree.

7. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.

8. It is a case of the plaintiffs that in the plaint itself (See. Paragraph-2) the suit property is jointly recorded in the name of plaintiffs and defendant No.1 in the revenue records but further pleaded that since Budhantin Bai is the daughter of Durjan and she died before the death of Durjan therefore, Budhantin Bai had no right, title over the suit land as she has not succeeded the property of her father and as such, the defendant No. 1 would not succeed the property of his mother. The First Appellate Court

has held that the said property is not the ancestral property of Durjan therefore, Section 8 of the Act of 1956 would be applicable. Since Budhantin Bai died during life time of Durjan and defendant being the son of Budhantin Bai would be Class-1 heir under the schedule enacted under Section 8 of the Act of 1956 therefore, he would succeed to the suit property of Durjan. The said finding recorded by the First Appellate Court, in the considered opinion of this Court, is in accordance with law. I do not find any illegality in the said finding.

9. Coming to the next finding recorded by the First Appellate Court that the defendant No. 1 is said to have relinquished his share in favour of the plaintiffs vide document Exhibit – P/3. Admittedly, the said document is unregistered and, therefore, it was inadmissible in evidence for want of registration under Section 49 of the Registration Act, 1908.

10. The Supreme Court in the matter of **Sita Ram Bhama v. Ramvatar Bhama**¹, has clearly held that the document of relinquishment taking away the shares of the sisters and mother is inadmissible even for the collateral purpose, relying upon the earlier decision in **Yellapu Uma Maheswari and another v. Buddha Jagadheeswararao and others**², in which it has been held in paragraph 15 & 16 as under :-

“15. It is well-settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in

1 AIR 2018 SC 3057

2 (2015) AIR SCW 6184

that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, it becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17(1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that 11 Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.”

16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High court in *Chinnappareddigari Peda Mutyala Reddy v. Chinnappareddigari Venkata Reddy*³ has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together

3 AIR 1969 AP 242

with penalty and get the document impounded and the trial Court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.

12. Following the principles of law laid down by the Supreme Court in the aforesaid cases, in the considered opinion of this Court, the document Exhibit- P/3 dated 24.06.1986 was compulsorily registerable and for want of registration it cannot be held that defendant No. 1 has relinquished his share in favour of plaintiff.

13. In view of the aforesaid discussion, the substantial questions of law are answered in favour of defendant and against the plaintiffs. As such, the second appeal deserves to be and is hereby dismissed. No cost(s). A decree be drawn up accordingly.

SD/-

(Sanjay K. Agrawal)
Judge