

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.447 of 2003

Singhai Subhash Jain, S/o late Singhai Brijlal Jain, aged about 45 years, R/o Patel Ward, Dongargarh, Distt. Rajnandgaon (C.G.)
(Plaintiff)
---- Appellant

Versus

Sheel Chand (Dead) Through LRs
(Defendant)

1a. Smt. Ashoklata Jain @ Surekha Jain, W/o late Sheel Chand Jain

1b. Manoj Kumar Jain, S/o late Sheel Chand Jain.

1c. Manish Kumar Jain, S/o Late Sheel Chand Jain

1d. Shailesh Kumar Jain, S/o Late Sheel Chand Jain.

1a to 1d are R/o Golbazar, Near Old Police Station Dongargarh, Distt. Rajnandgaon (C.G.)

1e. Smt. Mamta Jain, W/o Abhay Kumar Jain, D/o Late Sheel Chand Jain, Accountant, Bharat Bhawan, Bhopal (M.P.)
---- Respondents

For Appellant:	Mr. Ravindra Agrawal, Advocate.
For Respondents:	Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

30/11/2018

1. The substantial question of law involved, formulated and to be answered in the plaintiffs' second appeal is as under: -

“Whether the finding in relation to acquisition of property by the plaintiff namely Brijlal Jain is perverse and is based upon no positive evidence on record?”

(Parties hereinafter will be referred as per their status shown in the plaint before the trial Court.)

2. Singhai Brijlal Jain filed a suit for possession of the suit house (*pakka makan*) situated at Patel Ward, Dongargarh stating inter alia that he had purchased the suit land on 16-12-1970 for ₹ 900/- in the name of his brother Babulal, but the defendant, who is his son, has forcefully dispossessed him and therefore he is entitled for recovery of possession and damages. During the pendency of suit, Brijlal Jain died and his another son Singhai Subhash Jain was substituted as his legal representative.
3. The defendant denied the plaint allegation and stated that he is owner and title holder of the suit land and as such, the property was originally held by Babulal and after death of Babulal who died on 26-12-1988, the property came in the hands of his father Brijlal Jain and after death of his father Brijlal Jain, apart from him other three brothers have jointly inherited the property in accordance with the provisions of the Hindu Succession Act, 1956 and, therefore, the Will executed by Brijlal Jain dated 7-12-1988 would not confer any title to his brother Subhash Jain (plaintiff), who was substituted in place of his father, the original plaintiff.
4. The trial Court decreed the suit holding that though the property was self-acquired property of Late Babulal, but after his death, on the basis of Will executed by Brijlal Jain on 7-12-1988, plaintiff Subhash Jain had become the absolute owner of the suit property and decreed the suit.
5. On appeal being preferred by the defendant, the first appellate court did not agree with the finding of the trial Court and reversed the finding of the trial court and dismissed the suit necessitating the filing of second appeal under Section 100 of the CPC by the plaintiff

in which substantial question of law has been framed which has been set-out in the opening paragraph of the judgment.

6. Mr. Ravindra Agrawal, learned counsel appearing for the appellant / plaintiff, would submit that the first appellate court is absolutely unjustified in reversing the finding of fact recorded by the trial court holding the plaintiff to be title holder on the basis of Will executed by his father Brijlal on 7-12-1988, as such, the decree passed by the trial court be reversed by setting aside the judgment & decree of the first appellate court.
7. Mr. B.D. Guru, learned counsel appearing for the respondents / defendants, would submit that the trial court has clearly held the suit property to be the property of Babulal, who died issue-less on 26-12-1988, and therefore being Class-II heir, his brother Brijlal – father of the plaintiff and the defendant would succeed the property and after death of their father Brijlal on 8-10-1991, the defendant and the plaintiff and his two brothers all will succeed the suit property, as such, the plaintiff is not the exclusive title holder and is not entitled to decree which has rightly been reversed by the first appellate court.
8. I have heard learned counsel for the parties and considered the rival submissions and went through the record with utmost circumspection.
9. The trial court has returned the finding that the suit house was owned by Babulal and it was the self-acquired property of Babulal. That finding has attained finality as the same was not assailed by the plaintiff by filing cross-objection or cross-appeal, as the appeal

was preferred by the defendant dissatisfied with the decree granted by the trial court, as such, it is undisputed position on record that the property was held by Babulal being his self-acquired property. He died on 26-12-1988 intestate. Therefore, after death of Babulal having no issue, undisputedly, his only living brother Brijlal had succeeded the suit property being Class-II heir, serial No.II(3) under Section 8 of the Hindu Succession Act, 1956. Brijlal Jain had filed civil suit for possession on 3-8-1991 against his son Sheel Chand Jain. Brijlal Jain having filed the suit on 3-8-1991 died on 8-10-1991 and Subhash Jain, one of his sons, substituted as plaintiff claimed the suit property by way of Will dated 7-12-1988 executed by Shri Brijlal which the trial court has accepted and the first appellate court has reversed the same. Brijlal succeeded the suit property of Babulal being Class-II heir only upon the death of Babulal on 26-12-1988. Therefore, on the date of executing the Will i.e. 7-12-1988, Brijlal had no right, title and interest over the suit property and as such, he could not have executed the Will in favour of his one of the sons i.e. the plaintiff herein – Subhash Jain before succeeding the suit property and, therefore, the finding recorded by the trial court that the plaintiff has become the sole owner of the property by way of Will dated 7-12-1988 becomes vulnerable. As such, the trial court could not have granted decree on the basis of Will which Brijlal has no right and authority to execute in favour of his one of the sons Subhash Jain, the substituted plaintiff, before becoming the owner of the said property. Since original plaintiff Brijlal died on 8-10-1991 and he did not execute any Will with respect to the suit property after 26-12-1988 when he succeeded

the suit property, upon his death on 8-10-1991, the suit property will devolve upon all his legal heirs including the plaintiff and the defendant as Class-I heir under Section 8 of the Hindu Succession Act, 1956. Therefore, the trial court was absolutely unjustified in granting decree in favour of the plaintiff which has rightly been reversed by the first appellate court holding that after death of Brijlal, the property will devolve upon all his legal heirs as per Section 8 of the Hindu Succession Act, 1956 and the defendant being one of sons of Brijlal and other sons, if any, would also be entitled to inherit the property. As such, the judgment & decree passed by the first appellate court reversing the judgment & decree of the trial court is unexceptionable. The substantial question of law is answered in favour of the defendant and the against the plaintiff.

10. As a fallout and consequence of the aforesaid discussion, the second appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

11. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge