

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 49 of 2015**

1. Smt. Shanti Bai W/o Mansharam Mahant Aged About 36 Years
R/o Village- Ghivra, Tehsil-Jaijaipur, Distt.- Janjgir-Champa
Chhattisgarh
2. Smt. Jeetmati Bai W/o Firatram Marar Aged About 30 Years R/o
Village- Birra, Tehsil- Champa, Distt.- Janjgir-Champa,
Chhattisgarh

---- Petitioner**Versus**

1. Raxonadas S/o Mahadev Mahant Aged 44 Years R/o Village-
Ghivra, Tehsil Jaijaipur, Distt.- Janjgir-Champa Chhattisgarh
2. Fagni Bai D/o Mahadev Mahant Aged About 47 Years R/o
Village- Ghivra, Tehsil-Jaijaipur, Distt.- Janjgir-Champa
Chhattisgarh
3. State Of Chhattisgarh Through Collector, Dsitric- Janjgir-
Champa Chhattisgarh

---- Respondent

For Appellants
For Respective Respondents

Ms. Tripti Rao, Advocate
Mr. Anand Prakash Sharma, Advocate
and Mr. Anand Dadariya, Deputy
Government Advocate

DB.: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mrs. Justice Vimla Singh Kapoor****Order On Board By****Prashant Kumar Mishra, J.****1/11/2018**

1. Heard.
2. The trial Court has decreed the plaintiffs' suit for declaration of title in respect of the lands bearing Kharsa No.203/10 area 2 acres situated at Village Ghivra, Tehsil Jaijaipur, District Janjgir-Champa. The trial Court has also declared the sale-deed dated 4.7.2013 executed by appellant No.1/defendant No.1 Smt. Shanti Bai in favour of appellant No.2 Smt. Jeetmati Bai as null and void.
3. Indisputably, the suit land was obtained on lease from the State Government by Khikh Bai. The said Khikh Bai was earlier married to Mahadeva. After his death, she married with Kushwadas. Plaintiffs Raxonadas and Fagni Bai are the son and daughter of Kheek Bai born out of her wedlock with Mahadeva, whereas, appellant No.1 Shanti Bai is the daughter of Khikh Bai from her marriage with Kushwadas. After the death of Khikh Bai in the year 2003, the plaintiffs moved an application for mutation of their names.
4. The Additional Tehsildar, Hasod, District Janjgir-Chanpa, passed an order on 30.6.2011 holding that the State Government granted lease in favour of Khikh Bai after the death of Mahadeva and on the date of obtaining lease, Khikh Bai was married in *Chudi* form with Kushwa, therefore, appellant No.1 Smt. Shanti Bai alone would succeed to the property. Appellant No.1 Shanti Bai thereafter, sold the land to appellant No.2 Smt. Jeetmati Bai on 4.7.2013.

5. The plaintiffs' preferred the present suit on 23.7.2014 on the pleadings that they are the sole legal representatives of Khikh Bai, therefore, appellant No.1 Shanti Bai had no right title or authority to execute the sale-deed.
6. On the other hand, appellant No.1 Shanti Bai pleaded that she alone is the legal representative of Khikh Bai and had full authority to execute the sale-deed.
7. Despite these pleadings by the parties, the trial Court did not frame any issue to adjudicate as to whether plaintiffs Raxonadas and Fagni Bai or defendant No.1 Shanti Bai would alone succeed to the property of Khikh Bai. If this issue had been framed and it is ultimately found that the plaintiffs alone are the legal representatives of Khikh Bai, the decree passed by the trial Court would be set-aside. However, if Shanti Bai is found to be the only legal representative of Khikh Bai, the sale-deed would be maintained. At the same time, if it is found that plaintiffs Smt. Shanti Bai and Smt. Jeetmati Bai would jointly succeed to the property of Khikh Bai, the sale-deed may be cancelled and 1/3rd share of Khikh Bai would also be declared.
8. Although the parties have not raised the plea but a question would also arise as to whether the land granted to Khikh Bai on lease can be sold without permission from the Collector in terms of clause 7 of the lease deed Ex.C/1, which is available at page 93 of the paper book before us.
9. It appears, by not framing the issue in respect of the most

crucial dispute between the parties, the trial Court has misdirected itself and the parties also failed to lead evidence on this aspect of the matter and this has rendered the impugned judgment and decree vitiated.

10. For the foregoing, the first appeal is allowed in part. The impugned judgment and decree is set-aside. The matter is remitted back to the trial Court for deciding the same afresh after framing one more issue as to whether plaintiffs Raxonadas and Fagni Bai alone are the legal representatives of Khikh Bai or they being joint legal representatives, would jointly succeed to the property belonging to Khikh Bai.

11. Based on the findings on the above issue, the trial Court shall decide the entire suit, which include the validity of the sale-deed executed by appellant No.1 Smt. Shanti Bai in favour of appellant No.2 Smt. Jeetmati Bai.

12. Record of the trial Court be sent back forthwith.

Sd/-

Sd/-

Judge

Judge

(Prashant Kumar Mishra)

(Vimla Singh Kapoor)

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