

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.447 of 1999****Judgment reserved on : 07.01.2018****Judgment delivered on: 11.01.2019**

1(A) Kapil S/o late Shri Mahesh Ram, Aged about-40 years, Caste-Bargah, R/o Village-Puhputra, Police Station & Tahsil-Lakhanpur, Distt.-Surguja (CG)

1(B) Dhaniram S/o late Shri Mahesh Ram, Aged about-42 years, Caste-Bargah, R/o Village-Puhputra, Police Station & Tahsil-Lakhanpur, Distt.-Surguja (CG)

2. Shambu, S/o. Mahesh, aged about 25 years, Caste-Bargah R/o. Village-Puhputra Teh-Ambikapur District-Surguja (MP) (Now CG)

---- Appellants**Versus**

1. Jeluram (died and deleted)

2. Shiv Prasad, S/o. Chamuru age 30 years Caste Bargah.

Both R/o. Village-Puhputra Tahsil-Ambikapur District-Surguja, MP (Now CG)

3(A)(i) Ram Kumar S/o late Shri Jethu, Aged about-35 years, Caste-Bargah, R/o Village-Puhputra, Police Station & Tahsil-Lakhanpur, Distt.-Surguja (CG)

3(A)(ii) Laljeet S/o Late Shri Jethu, Aged about – 30 years, Caste-Bargah, R/o Village-Puhputra, Police Station & Tahsil-Lakhanpur, Distt.-Surguja (CG)

3(B) Gopal S/o Late Shri Ghurbin, Aged About-53 years, Caste-Bargah, R/o Village-Puhputra, Police Station & Tahsil-Lakhanpur, Distt.-Surguja (CG)

3(C) Belaru Ram S/o Late Shri Ghurbin, Aged about – 49 years, Caste-Bargah, R/o Village – Puhputra, Police Station & Tahsil – Lakhanpur, Distt.-Surguja (CG)

4. The State of M.P. through Collector, Surguja, Ambikapur

---- Respondents

For Appellants/LR's of def.No.2: Mr.Rishi Rahul Soni, Advocate
and LR's of def.No.4

For LR's of plaintiff No.1 and : Mr.Nishi Kant Sinha, Advocate
for plaintiff No.2

For LR's of def.No.3 : None present

For Respondent No.4 : Mr.Vimlesh Bajpai, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

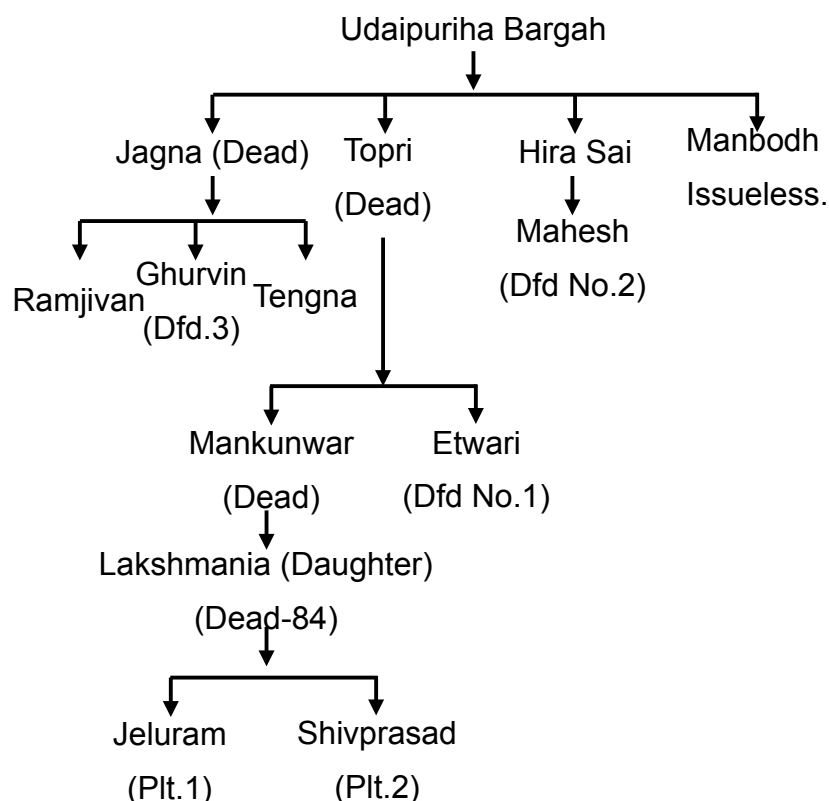
C.A.V. Judgment

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

“Whether both the courts below are justified in passing a decree of possession of entire suit land shown in Schedule “A” of the plaint after having held that the plaintiffs are entitled and are title holders of the suit land to the extent of $\frac{1}{2}$ share in the land mentioned in Schedule “A” of the plaint ?”

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

2. The following genealogical tree will demonstrate the relationship among the parties:-



Two plaintiffs namely Jelu and Shiv Prasad filed a suit for declaration that sale deed dated 24.2.86 (Ex.P/1) executed by defendant No.1-Etwaro in favour of defendants No.2 to 4 is null and void. They further sought relief of possession of the suit land described in Schedule "A" of the plaint and questioned the said sale deed on the ground of having been purchased on the basis of fraud and non-payment of consideration. The plaintiffs further pleaded that the suit land was acquired by Topri stating that Lakshmania was daughter of Topri through his first wife Mankunwar and defendant No.1-Itwaro was his second wife of Topri, who died during pendency of the suit. It was further pleaded that Lakshmania was kept as Gharjian daughter and the plaintiffs are sons of Lakshmania. They also pleaded that name of Etwaro was mutated after death of her husband Topri as owner of the land. Defendant No.1-Itwaro never executed sale deed dated 24.2.86 (Ex.P/1) in favour of defendants No.2 to 4 as said sale deed was got registered after playing fraud against her and without giving any consideration and decree of declaration declaring sale deed as null and void was sought.

3. The defendants filed their written statement opposing the averments made in the plaint and pleaded that Topri died in the year 1954 and after his death defendant No.1 came into possession of the suit land as owner and on the commencement of the Hindu Succession Act, 1956 she became absolute owner and further remained in exclusive possession till the execution of sale deed dated 24.2.86

and prayed for dismissal of suit.

- 4.** The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 28.9.92, held that the plaintiffs are entitled for $\frac{1}{2}$ of share in the suit property shown in Schedule "A" and sale deed dated 24.2.86 was got executed by defendants No.2 to 4 by playing fraud and without paying consideration and since defendant No.1 has died issueless, the plaintiffs also inherited her property and entitled for possession of the property shown in Schedule "A" of the plaint. The said finding has been upheld by the First Appellate Court. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by defendants No.2 and 4, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.
- 5.** Mr.Rishi Rahul Soni, learned counsel for legal representatives of defendants No.2 and 4, would submit that the both the Courts below are absolutely unjustified in passing the decree of possession of entire suit land described in Schedule "A" of the plaint after having held that the plaintiffs are entitled and title-holders of the suit land to the extent of $\frac{1}{2}$ share described in Schedule "A" of the plaint, as such, the plaintiffs are entitled for only $\frac{1}{2}$ of share in the suit land described in Schedule "A" of the plaint.
- 6.** On the other hand, Mr.Nishi Kant Sinha, learned counsel for legal representatives of plaintiff No.1 and for plaintiff No.2, would submit

that both the Courts below have clearly held that sale deed was obtained by playing fraud and on that finding substantial question of law has not found involved by this Court while admitting the appeal. He would further submit that defendant No.1-Etwaro died issueless, therefore, her property has reverted to the plaintiffs and consequently, both the Courts below are absolutely justified in granting the decree of entire suit property shown in Schedule "A" in favour of the plaintiffs and the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. The trial Court while deciding issue No.1A has held that the plaintiffs are only entitled for $\frac{1}{2}$ of share in the suit land shown in Schedule "A" of the plaint, but while answering issue No.1B, the trial Court has further held that since defendant No.1-Etwaro was second wife of Topri, succession would be governed under Section 15 of the Hindu Succession Act, 1956 (hereinafter called as "the Act of 1956") and she will be entitled for $\frac{1}{2}$ share of the property, but further held that since Etwaro died issueless, according to Section 15(2)(b) read with Section 8 of the Act of 1956 the plaintiffs will also be entitled for remaining $\frac{1}{2}$ of share of the property held by defendant No.1-Etwaro. The trial Court further recorded the finding that defendants No.2 to 4 got the sale deed dated 24.2.86 executed in their favour fraudulently without paying the amount of consideration to

defendant No.1-Etwaro and answered issue No.3A against defendants No.2 to 4 and held that sale deed to be void and that finding has been affirmed by the First Appellate Court and even before this Court that finding has not been seriously challenged by the defendants as subs. Question of law was proposed and formulated.

9. Since both the Courts below have held that sale deed dated 24.2.86 executed by defendant No.1-Etwaro in favour of defendants No.2 to 4/purchasers is void, the entire property would go to the plaintiffs being heirs of Etwaro under Section 15(2) (b) read with Section 8 of the Act of 1956. Both the Courts below are absolutely justified in granting decree of entire suit land in favour of the plaintiffs. It is not the case as projected by the appellants/defendants before this Court that the Courts have held the sale deed dated 24.2.86 executed by defendant No.1-Etwaro in favour of defendants No.2 to 4 to be valid and in accordance with law.
10. In view of the aforesaid finding, the First Appellate Court is absolutely justified in affirming the judgment and decree passed by the trial Court. I do not find any perversity or illegality in the said finding. The substantial question of law is answered in favour of the plaintiffs and against the defendants.
11. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
12. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge