

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 204 of 2007

1. Sidar (died) through Lrs.

1.1. Smt. Sukhmati, Wife of Shri Ram Prasad Rathia (D/o Late Sidar), Aged about 40 years, R/o Village Jamabira, Tahsil Dharamjaigarh, Distt. Raigarh, Chhattisgarh.

2. Mangalsai (died) through Lrs.

2.1. Madan Ram, Aged about 50 years, S/o Late MangalSai.

2.2. Anant Ram, Aged about 45 years, S/o Late Mangalsai.

2.3. Sadh Ram, Aged about 35 years, S/o Late Mangalsai.

2.4. Smt. Chamrin Bai, Aged about 50 years, Wd/o Late Ram Sai (S/o Late Mangalsai).

All R/o Village Sajwari, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh.

3. Nanhiram, Son of Bhagatram, Aged about 30 years.

4. Ghassiram (died) through Lrs.

4.1. Smt. Hiramoti, Wd/o Late Ghasiram, Aged about 65 years.

4.2. Jagmohan S/o Late Ghasiram, Aged about 45 years.

4.3. Madan Mohan S/o Late Ghasiram, Aged about 40 years.

All R/o Village Sajwari, Tahsil Dharamjaigarh, Distt. Raigarh, Chhattisgarh.

5. Tijram, Son of Prem Sai, Aged about 35 years.

6. Tijobai, Daughter of Prem Sai, Aged about 40 years.

7. Belar Singh, Son of Bhagatram, Aged about 60 years.

All R/o Village Sajvari, Tahsil Dharmajaigarh, District Raigarh, Chhattisgarh.

----- Appellants/Plaintiffs

Versus

1. Mohitram, Son of Fir Singh, Aged about 40 years, R/o Village Sajwari, Tahsil Dharamjaigarh, District Raigarh, Chhattisgarh.

2. State of Chhattisgarh, Through the Collector, Raigarh, Chhattisgarh.

----- Respondents/Defendants

For Appellants	:	Mr. A.N. Bhakta and Mr. Vivek Bhakta, Advocates
For Respondent	:	Ms. Sharmila Singhai, Advocate
For State	:	Ms. Anjali Singh Chouhan, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

18/11/2019

1. This second appeal preferred by the plaintiffs was admitted for hearing on the following substantial questions of law:-

"1. Whether in the facts and circumstances of the case the plaintiffs have been able to prove that the sale-deed dated 23-5-1981 (Ex.P-1) was not executed by them ?

2. Whether the lower appellate Court is justified in disbelieving the death

certificate Ex.P-3 (wrongly exhibited as Ex. P-6) ?

3. Whether in the absence of the attesting witnesses to the sale-deed having been examined by the defendants to prove the execution of the sale-deed, the first appellate Court is justified in dismissing the suit ?"

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

2. The suit property bearing khasra No. 42/13 admeasuring 0.324 hectare and khasra No. 42/14 admeasuring 0.405 hectare situated at Village Sajwari, Patwari Halka No. 16, Tahsil Dharamjaigarh, District Raigarh was originally held by father of plaintiffs No. 4 to 6 namely Prem Sai. The sale deed (Ex. P/1) in question was said to have been executed by plaintiffs No. 1 to 3 and Prem Sai – father of plaintiffs No. 4 to 6 in favour of defendant No. 1 – Mohitram on 23/05/1981 for a sale consideration of ₹ 1,018/- thereby transferring the suit property in Mohitram's favour.

3. On 11/03/2002, plaintiffs No. 1 to 3 along with the sons of Prem Sai i.e. plaintiffs No. 4 to 6 and one

Belar Singh, plaintiff No. 7 filed a civil suit seeking cancellation of sale deed dated 23/05/1981 (Ex. P/1) stating that it is a forged document as they have never executed the said sale deed in favour of defendant No. 1 and they have also not obtained any consideration amount for the sale.

4. Defendant No. 1 denied the plaint allegations by filing written statement stating *inter alia* that the suit property was sold by plaintiffs No. 1 to 3 and father of plaintiffs No. 4 to 6 namely Prem Sai in his favour. He has also stated that the suit filed by the plaintiffs is barred by limitation.

5. Learned trial Court, after framing five issues and after appreciating the oral and documentary evidence on record, decreed the suit of the plaintiffs vide its judgment and decree dated 23/02/2006 holding that the sale deed dated 23/05/1981 (Ex. P/1) was obtained by defendant No. 1 – Mohitram by playing fraud and without payment of consideration amount and the suit is within limitation, as such, plaintiffs are entitled for decree for cancellation of said sale deed dated 23/05/1981 (Ex. P/1).

6. On appeal being preferred by defendant No. 1 under Section 96 of the CPC, learned first appellate Court set aside the judgment and decree of the trial Court and dismissed the suit of the

plaintiffs vide its judgment and decree dated 19/02/2007 holding that plaintiffs have failed to prove their case against which this second appeal under Section 100 of the CPC has been preferred by the plaintiffs in which three substantial questions of law have been framed and are set out in the opening paragraph of this judgment.

7. Mr. A.N. Bhakta and Mr. Vivek Bhakta, learned counsel appearing for the appellants/plaintiffs would submit that the first appellate Court has gravely erred in holding that Ex. P/3, in which date of death of Prem Sai is recorded as 10/03/1981, is not proved by the plaintiffs in accordance with law. It is a document issued by the competent authority under the Registration of Births and Deaths Madhya Pradesh Rules, 1973, as such, it is a document issued in performance of public duty in accordance with Section 35 of the Indian Evidence Act, 1872, therefore, the document (Ex. P/3) is admissible in evidence, having evidencing value. They would further submit that the sale deed dated 23/05/1981 (Ex. P/1) was never executed by the plaintiffs and no consideration amount was paid to them and defendant No. 1 has not even examined the attesting witnesses of the sale deed, therefore, the first appellate Court ought not to have interfered with the judgment and decree of the

trial Court and the second appeal deserves to be allowed.

8. Ms. Sharmila Singhai, learned counsel appearing for respondent/defendant No. 1 would submit that learned first appellate Court is absolutely justified in dismissing the suit filed by the plaintiffs as the death certificate of Prem Sai (Ex. P/3) was obtained after the institution of the suit i.e. on 17/11/2003 and the said document (Ex. P/3) was issued at the instance of the son of plaintiff No. 4 namely Madan Mohan (impleaded as legal heir of plaintiff No. 4 in this second appeal) and though it was issued by the order of the Sub-divisional Magistrate, Dharamjaigarh, but the documents (Ex. D/6 to D/8) would clearly show that merely on the basis of the affidavit of Madan Mohan i.e. son of plaintiff No. 4, order was passed by the Sub-divisional Magistrate, Dharamjaigarh without due verification, on the basis of which endorsement was made by the concerned police station on 6/11/2003 and the death certificate of Prem Sai (Ex. P/3) was issued on 17/11/2003, therefore, such a document (Ex. P/3) is not reliable in evidence though it is admissible in evidence. She would further submit that the sale deed is proved in their favour is a legal document which has not been controverted by leading an appropriate

evidence, therefore, the first appellate Court has rightly set aside the judgment and decree of the trial Court. Accordingly, the second appeal deserves to be dismissed.

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

10. Plaintiffs instituted civil suit No. 11-A/2002 for cancellation of sale deed dated 23/05/1981 (Ex. P/1) allegedly executed by plaintiffs No. 1 to 3 and Prem Sai – father of plaintiffs No. 4 to 6 in favour of Mohitram and thereby transferred the suit property in his favour for a sale consideration amount of ₹ 1,018/-. The instant suit was filed as late as on 11/03/2002 for cancellation of sale deed in question (Ex. P/1) stating that no sale deed was ever executed in favour of Mohitram by plaintiffs No. 1 to 3 and father of plaintiffs No. 4 to 6, as such, they are in possession of the suit property and the sale deed (Ex. P/1) is a forged document which deserves to be cancelled wherein defendant No. 1 has controverted by stating that it is a registered sale deed which raises the presumption of being a valid document and consideration amount was paid to the plaintiffs, as such, the suit deserves to be dismissed.

11. The main dispute is with regard to the document (Ex. P/3) that is the death certificate of Prem Sai alleging that he died on 10/03/1981 and the sale deed was executed on 23/05/1981, as such, the sale deed in question is a forged document for which substantial question of law No. 2 has been framed therefore, for the sake of convenience, 2nd substantial question of law is taken up for consideration first.

Answer to 2nd Substantial question of law :-

12. It would be appropriate to mention here that when the suit was filed on 11/03/2002, the plea was only that sale deed dated 23/05/1981 (Ex. P/1) be cancelled as it was never executed by plaintiffs No. 1 to 3 or by Prem Sai – father of plaintiffs No. 4 to 6. It appears thereafter on 6/11/2003, Madan Mohan – son of plaintiff No. 4 moved an application before the Sub-divisional Magistrate, Dharamjaigarh that his grandfather Prem Sai died on 10/03/1981 which could not be recorded in the death register and since more than one year has lapsed, therefore, direction be issued to the station house officer, Dharamjaigarh to record the date of death of Prem Sai as 10/03/1981 which was considered by the Sub-divisional Magistrate, Dharamjaigarh vide Ex. D/7 and the application of Madan Mohan i.e. Ex. D/8 and his affidavit is Ex. D/9 on the basis of

which the Sub-divisional Magistrate passed order dated 06/11/2003 directing the concerned station house officer to record the date of death of Prem Sai as 10/03/1981 and accordingly, it was recorded vide Ex. D/6 and thereafter, the death certificate was issued in favour of plaintiffs as Ex. P/3 on 17/11/2003. Then, plaintiffs filed an application for amendment on 22/12/2005 and filed a copy of the said document (Ex. P/3) on that day only. The said application filed by the plaintiffs for amendment was allowed on 26/12/2005 and the plea that Prem Sai died on 10/03/1981 and therefore, the sale deed could not have been executed by Prem Sai on 23/05/1981. This plea was inserted in the plaint due to which learned trial Court framed an additional issue 6 (a) and (b) and thereafter, recorded a finding that Prem Sai died on 10/03/1981 and in view of that, the sale deed dated 23/05/1981 is void and illegal.

13. In civil appeal No. 12-A/2006 preferred by defendant No. 1, the aforesaid finding recorded by the trial Court was reversed by the first appellate Court and learned first appellate Court did not rely upon Ex. P/3 i.e. death certificate of Prem Sai and held that plaintiffs have failed to prove the fact that Prem Sai died on 10/03/1981.

14. It is pertinent to mention here that under Rule 10 (3) of the Registration of Births and Deaths Madhya Pradesh Rules, 1973, any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of the first class and on payment of a late fees of rupees five. The Rules of 1969 have been substituted by the Rules of 1999, which provides that after one year, it shall be registered by the order of the Executive Magistrate. The Karnataka High Court, in the matter of ***H. Subba Rao v. The Life Insurance Corporation of India and Ors.***¹, while considering Section 13 (3) of the Registration of Births and Deaths Act, 1969, held that entry of date of birth made pursuant to the direction of Magistrate is not conclusive evidence of disputed date of birth and held as under :-

“The policy of the law embodied in the Section, as it appears to me, is to avoid manipulation in the entries relating to the date of births and deaths. Such entry shall be made immediately after the occurrence. Precaution should be taken while making delayed entries. The law says that an entry which has not been made within one year of its occurrence cannot be made without an order of the Magistrate. Section 13(3) of the Act is just a constraint on the

¹ ILR 1976 KAR 800

Registrar. It is not a provision whereby an aggrieved party could get an adjudication on his disputed date of birth. The order of the Magistrate binds only the Registrar and not others. The entry made by the Registrar, pursuant to an order of the Magistrate, cannot carry higher probative value and its proof must necessarily depend upon the facts and circumstances of each case."

15. In this case, Madan Mohan – son of plaintiff No. 4 filed an application (Ex. D/8) before the Sub-divisional Magistrate, Dharamjaigarh on 06/11/2003 stating that his grandfather Prem Sai died on 10/03/1981 and that application was supported by his affidavit (Ex. D/9) and that was taken cognizance of by the Sub-divisional Magistrate on that day i.e. on 06/11/2003 (Ex. D/7) and on the basis of that order, Ex. D/6 was passed directing the station house officer to register the date of death of Prem Sai as 10/03/1981 without verifying the contents of application qua the date of death of Prem Sai.
16. The question is whether the first appellate court is justified in disbelieving the death certificate of Prem Sai (Ex. P/3) ?
17. The entry in the register of birth and death recorded by the Registrar under the Registration of Births and Deaths Madhya Pradesh Rules, 1973 may be admissible in evidence under Section 35 of the

Evidence Act, but by no means it is conclusive as entries in the birth and death register are public documents.

18. In the matter of ***Bujhawan Singh and Ors. v. Mt. Shyama Devi and Ors.***², Division Bench of Patna High Court has held that entries in birth and death register are public documents and are admissible under Section 35 of the Evidence Act. The ground of reception of such evidence is that it is the public duty of a person who keeps the register to make such entries after satisfying himself of the truth. When it is the duty of the public servant to make such entries in any public or official register, it becomes admissible to prove the truth of facts entered as well as the fact that the entries were made by the officer. It was further held that entries in a register of birth, death or marriage are at least prima facie, though they may not be always conclusive evidence. It is not necessary to prove who made the entries and what was the source of information.

19. In the instant case, though the entry was made as per Rule 10 (3) of the Registration of Births and Deaths Madhya Pradesh Rules, 1973 by the order of the Sub-divisional Magistrate, Dharamjaigarh, but the fact that requires to be noticed is that after the filing of the suit and during the pendency of

2 AIR 1964 Patna 301 (v. 51 c. 85)

the suit, Madan Mohan – son of plaintiff No. 4 filed an application before the Sub-divisional Magistrate for entering the date of death of Prem Sai as 10/03/1981 vide Ex. D/8 and D/9 and simply on that basis, the Sub-divisional Magistrate, by its order dated 6/11/2003, directed the station house officer to register the date of death of Prem Sai as 10/03/1981. It nowhere records the satisfaction of the Sub-divisional Magistrate as to whether he had verified the date of death of Prem Sai from any source or by any means and even no notice was issued to the affected parties as it was issued during the pendency of the instant suit, and he had blindly accepted Madan Mohan's affidavit which is full of over-writing and correction and directed the station house officer to register the date of death of Prem Sai as 10/03/1981 and thereafter, Prem Sai's death certificate (Ex. P/3) was issued mentioning his date of death as 10/03/1981 which led the plaintiffs to file application for amendment and thereafter, an entire new case was made out by the plaintiffs before the trial Court.

20. It is well-settled legal position that if a document comes into existence during the pendency of the suit even in the public record(s), the Court has to scrutinize and assess the evidentiary value

of that document with great care and caution. As in the present case, the document (Ex. P/3) was brought into existence at the instance of Madan Mohan – son of plaintiff No. 4 who got the date of death of Prem Sai registered as 10/03/1981 by the order of the Sub-divisional Magistrate, but surprisingly, Madan Mohan – son of plaintiff No. 4 at whose insistence, the date of death of Prem Sai was registered as 10/03/1981 did not enter into witness box and failed to make himself available for cross-examination to the other side as to what was the basis of his information with regard to the date of death of his grandfather Prem Sai as 10/03/1981 though his father was plaintiff No. 4 before the trial Court. As such, learned first appellate Court rightly disbelieved the document (Ex. P/3) holding that plaintiffs have failed to prove the date of death of Prem Sai as 10/03/1981. Thus, the 2nd substantial question of law is answered against the plaintiffs and in favour of defendant No. 1.

Answer to 1st and 3rd substantial questions of law collectively :-

21. The sale deed in question (Ex. P/1) was said to have been executed by plaintiffs No. 1 to 3 and father of plaintiffs No. 4 to 6 namely Prem Sai in favour of defendant No. 1 – Mohitram on 23/05/1981

that is a registered document issued under Section 60 of the Registration Act, 1908 after complying with the provisions contained under Sections 34, 35, 58 and 59 of the Act with endorsement of the registering officer.

22. Recently, the Supreme Court in the matter of ***Jamila Begum (dead) through legal representatives v. Shami Mohd. (dead) through legal representatives and Anr.***³ has held that registration of the sale deed reinforces valid execution of the sale deed. It was observed as under :-

“16. Sale deed dated 21.12.1970 in favour of Jamila Begum is a registered document and the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. In Prem Singh v. Birbail⁴, it was held as under:-

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant

3 (2019) 2 SCC 727

4 (2006) 5 SCC 353

case, Respondent 1 has not been able to rebut the said presumption."

The above judgment in Prem Singh's case has been referred to in Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale and Others⁵"

23. So far as the examination of attesting witnesses of the sale deed is concerned, it has already been held by the Supreme Court in the matter of **Bayanabai Kaware v. Rajendra S/o Baburao Dhote**⁶ that Section 68 of the Evidence Act which deals with examination of attesting witnesses to prove execution of document does not apply to sale deed.

24. In the instant case, defendant No. 1 has entered into witness box and proved the execution of the sale deed and plaintiffs themselves have filed the sale deed and exhibited it in evidence (Ex. P/1) without any protest or demur, as such, in my considered opinion, learned first appellate Court has rightly held that plaintiffs have not been able to prove that sale deed was not executed by plaintiffs No. 1 to 3 and father of plaintiffs No. 4 to 6 in favour of defendant No. 1. Thus, the 1st and 3rd substantial questions of law are also answered against the plaintiffs and in favour of defendant No. 1.

5 (2009) 12 SCC 101

6 (2018) 1 SCC 585

25. As a fallout and consequence of the aforesaid discussion, the judgment and decree of the first appellate Court is reaffirmed and the second appeal deserves to be and is accordingly dismissed. No cost(s).

26. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet