

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 1075 of 1999**

1. Ongi Ram Died Through LR's Occupation Cultivation, R/o Village Kudkanar, Tahsil Jagdalpur, District Bastar, Madhya Pradesh (Now Chhattisgarh)

1.1 - Mansa Devi W/o Ongiram, Aged About 85 Years R/o Village Ghat Lohanga, Tahsil Jagdalpur, Civil And Revenue District Bastar Jagdalpur, Chhattisgarh

1.2 - Baldhar S/o Ongiram, Aged About 65 Years R/o Village Ghat Lohanga, Tahsil Jagdalpur, Civil And Revenue District Bastar Jagdalpur, Chhattisgarh

1.3 - Lakhdher W/o Ongiram, Aged About 53 Years R/o Village Ghat Lohanga, Tahsil Jagdalpur, Civil And Revenue District Bastar Jagdalpur, Chhattisgarh

2. Lakhadher, S/o Ongi Ram Bhatra, Aged About 32 Years Occupation Cultivation, R/o Village Kudkanar, Tahsil Jagdalpur, District Bastar, Madhya Pradesh (Now Chhattisgarh)

---- Appellants

Versus

1. Bharat Died Through LR's Vijay Aged About 45 Years S/o Bharat, R/o Village Ghat Lohanga, Tahsil Jagdalpur, Civil And Revenue District Bastar, Chhattisgarh, District : Bastar (Jagdalpur), Chhattisgarh

2. Lachhindhar Died Through LR's

2.1 - Deleted Smt. Raimati

2.2 - Baldeo S/o Late Shri Lachhindhar

2.3 - Aldeo S/o Late Shri Lachhindhar

2.4 - Ramdeo S/o Late Shri Lachhindhar

2.5 - Sahadeo S/o Late Shri Lachhindhar

2.6 - Deleted Baamdeo

3. State of Madhya Pradesh (Now Chhattisgarh) through Collector, Bastar

---- Respondents

For Appellants	:	Shri Rakesh Thakur, Advocate
For Respondents (Except State)	:	Shri R.N.Jha, Advocate
For State	:	Shri Anmol Sharma, Panel Lawyer

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****16/10/2019**

This second appeal is directed against impugned judgment and decree dated 27/08/1999 passed by the 3rd Additional District Judge, Bastar in Civil Appeal No.8-A/1999 whereby the learned lower Appellate Court reversed the judgment and decree dated 27/01/1990 passed by the Trial Court in Civil Suit No.56-A/ 98 and decreed the suit of the plaintiffs.

2. The respondent / plaintiffs filed a suit against the appellants / defendants seeking a decree of declaration of title in respect of the disputed property shown in schedule - A as also seeking declaration that Will Deed dated 11/08/1982 be declared illegal and inoperative and for recovery of possession of the disputed property on the pleadings *inter alia* that the property in dispute admeasuring 4.10 acres situated in khasra no.49/2 originally formed part of a large chunk of land admeasuring 8.50 acres situated in khasra No.49 of village – Ghat Lohanga, P.H.No.30, Tahsil – Jagdalpur. The entire land admeasuring 5.08 acres was self acquired property of plaintiffs' father namely Paklu. In *missal bandobast* (settlement records) of the year 1931-32, the land in dispute, forming part of larger chunk of land admeasuring 8.5 acres, was recorded in the name of Paklu. It was further pleaded that this land was self acquired property of Paklu, in which Paklu's brothers namely Ramdhar and Ongi Ram had no interest. Later on, however, on pressure exerted by villagers and other persons, though the property exclusively belonged to Paklu and that his brothers - Ongi Ram and Ramdhar had no share, a partition was got effected through revenue proceedings which was not accepted by the plaintiffs and it was challenged in appeal. In course of time, the plaintiff's came to know that after death of Ramdhar, though defendant No.2- Lachhindhar is claiming title over a part of the property in dispute on the basis of a Will Deed dated 11/01/1982 (Ex.D/1), it was never executed by Ramdhar and a fictitious

document has been prepared. On such pleadings, reliefs as stated above, were sought. According to the plaintiffs, by way of affection towards their family members / defendants, a small part of the property, which otherwise belonged to Paklu, was given to the defendants so that they can earn their livelihood without giving up the claim of title over the disputed property.

3. On the other hand, the defendants in their written statement came out with a case that the entire land admeasuring 8.50 acres was jointly cultivated and earned by three brothers namely Paklu, Ongi Ram and Ramdhar and it was from their joint income that the property was purchased and cultivated. According to the then State's rule, in the revenue records, name of eldest brother i.e. Paklu was recorded but all the brothers were jointly cultivating the land and later on, name of other brothers were jointly recorded. The defendants further stated that in course of time, the parties agreed and on the basis of agreement, partition of holding had also taken place under the proceedings drawn by the revenue officers and the plaintiffs having agreed for partition and having partitioned their respective shares, were estopped from seeking declaration of title on the ground that the property belonged exclusively to Paklu and it was not a joint family property. Further pleading was that Ramdhar, who was residing with Ongi Ram and Lachhindhar, had, later on, executed a Will Deed (Ex.D/1) in favour of Lachhindhar and after his death, his share devolved upon Lachhindhar by way of testate succession.

4. Learned Trial Court framed as many as six issues including as to whether the property in dispute was self acquired property of Paklu; Whether the possession of defendants was only permissible by way of license and also whether the so called Will Deed dated 11/01/1982 (Ex.D/1) said to be executed by Ramdhar is fictitious document.

5. Learned Trial Court held that the plaintiffs failed to prove that the property was self acquired property of late Paklu. Learned Trial Court further held the Will proved. On account of such finding on these two important issues, learned Trial Court found it without merit and the suit was accordingly dismissed. Aggrieved by the judgment and decree of the Trial Court, the plaintiff filed an appeal. Learned First Appellate Court reversed the finding with regard to the nature of property holding that it was the self acquired property of Paklu. It was also held that the Will was suspicious. On such finding, the judgment and decree of the Trial Court was reversed and the plaintiff's suit was decreed.

6. This appeal was admitted on following substantial questions of law -

1. Whether the lower Appellate Court was justified in reversing the findings of the Trial Court by holding that the property in question was the self acquired property of predecessor in interest of plaintiffs namely Paklu ?

2. Whether the lower Appellate Court was justified in reversing the findings of the Trial Court by holding that the Will-Deed dated 11/01/1982 (Ex.D-1) executed by one Ramadhar in favour of the plaintiff No.2 Lachhindhar was not executed in accordance with law ?

3. Whether the plaintiffs are bound by the order dated 26/07/1979 (Ex.D-5) passed by the Sub-Divisional Officer, Jagdalpur in appeal case No.12/A-27/1978-79 ?

7. Learned counsel for the appellant argued that the learned lower Appellate Court committed gross illegality and perversity in reversing the Trial Court's finding and holding that the property is a self acquired property of Paklu without taking into consideration other clinching evidence on record, particularly that a partition had taken place way back in the year 1978 and the plaintiffs had agreed for that partition and on the basis of agreed terms and conditions amongst the parties, the property comprised

in K.No.49 admeasuring 8.50 acres as well as another land comprised in K.No.31/10/2 admeasuring 0.90 acres and a total of 9.40 acres was partitioned. He would argue that while recording a finding that the property in dispute was self acquired property of Paklu, learned lower Appellate Court has completely omitted to consider the clinching evidence which estopped the plaintiff from seeking a declaration that the property was self acquired property of Paklu. He would further argue that not only evidence of partition on agreed terms, the defendants also led documentary evidence of revenue records of the year 1953-54 (Ex.D/6) which records names of all the brothers namely Paklu, Ongi Ram and Ramdhar jointly in respect of land situated in khasra no.31/10/2 admeasuring 0.90 acres situated in two khasra numbers and admeasuring 9.40 acres of land. He would argue that the plaintiffs having never disputed the revenue proceedings, accepted partition and having withdrawn their appeal, are estopped from taking a stand different to that which was taken in revenue proceedings and the order passed in revenue proceedings are binding on them. The next submission of learned counsel for the appellant is that as far as Will Deed is concerned, it was a duly registered document and defendants proved it by leading evidence of one of the attesting witnesses Trilochan (DW4) who has clearly deposed before the Court below that the Will was duly attested by him and in these proceedings, testator of the Will namely Ramdhar affixed his thumb impression and later on, he told him that he executed Will to the effect that during his life time, he will cultivate the land and after his death, his nephew Lakhidhar will succeed to his share. Despite such clinching evidence, which was accepted by learned Trial Court, learned lower Appellate Court has adopted a completely erroneous and illegal approach by holding the Will to be suspicious because other attesting witness or ascriber of the Will has not been examined. He would argue that the legal requirement of proof of execution of Will is satisfied even if one of the attesting witness proves execution of Will. Neither Section 63 (C) of the Indian Succession Act, 1925 (for short 'the Act of 1925') nor Section 68 of the Evidence Act, 1872 (for short 'the Act of 1872') requires that for proof of execution

of Will, all the attesting witnesses or scribe of the Will are required to prove execution of Will. Once the evidence of one of the attesting witness is found reliable and trustworthy, the Will can be held proved without insisting on examination of other attesting witnesses much less scribe of the Will. In support of submission made by him, he placed reliance on the decision of the Supreme Court in the case of **Dattatraya v. Rangnath Gopalrao Kawathekar** (dead) by his legal representatives and ors., AIR 1971 SC 2548.

8. Per contra, learned counsel for the respondent / plaintiffs (except State) would argue that the learned lower Appellate Court has recorded a finding of fact on the issue as to whether the property in dispute was self acquired property or joint family property. On this issue, learned lower Appellate Court has relied upon clinching documentary evidence i.e. *missal bandobast* of the year 1931-32 (Ex.P/1) which records the name of Paklu alone and there is no mention of his two brothers - Ongi Ram and Ramdhar. In addition, learned lower Appellate Court has also re-appreciated the oral evidence. The finding of the learned lower Appellate Court which is essentially a finding of fact, is based on appreciation of oral and documentary evidence both and it cannot be said to be either perverse or patently illegal so as to warrant interference in the Second Appeal. He would further argue that the plaintiffs' assertion that out of affection, some part of their property was given to the defendants to cultivate and earn their livelihood, does not amount to relinquishment of their title in favour of defendants. He would further argue that the orders passed in the revenue proceedings are not binding on the plaintiffs because the plaintiffs had filed an appeal against the order of partition of holding passed by the Tahsildar and in the memo of appeal, it was clearly stated that there was no agreement arrived at between the parties and it has been completely erroneously recorded in the proceedings by the Tahsildar that the parties have agreed for any partition. In this background, the so called agreement of the plaintiffs, does not amount to admission of property being joint

in nature. Further, as the plaintiffs have clearly explained the circumstances in which they were coerced to accept the partition, though they were not willing for the same, such admission having been properly explained, it could not be used against them. He would also argue that the estoppel may not come in the way of the plaintiffs in seeking relief because the plaintiffs never accepted in any proceedings that the property was jointly acquired by Paklu, Ongi Ram and Ramdhar nor they acted upon any such partition. Therefore, the order passed by the Revenue Court is not binding on them.

Learned counsel for the respondent further argued that as far as proof of Will is concerned, learned lower Appellate Court found the Will to be suspicious not because other attesting witnesses or scribe were not examined but having found that the sole attesting witness led in evidence is not reliable. Trilochan (DW4), who claims to be attesting witness, has claimed ignorance regarding blindness of Ramdhar. From the uncontroverted evidence of plaintiffs witnesses - Bharat (PW1), Mithuram (PW2) and Devnath (PW3), it is proved that Ramdhar was blind and even Will document relied upon by the defendants also proves to that effect. Therefore, the entire document becomes suspicious and as other attesting witnesses or scribe has not been examined, learned lower Appellate Court has not committed any illegality in recording finding that the Will is suspicious.

9. I have heard learned counsel for the parties and perused the records.

10. As the pleadings and evidence required to be considered to decide the two questions of law are overlapping, the two questions of law are being answered together.

The plaintiffs came out with a case that the property was a self acquired property of Paklu and only the documentary evidence led in proof of this claim is the settlement record entries of the year 1931-32 recording name of Paklu alone.

However, the plaintiffs, in their plaint itself have admitted that a part of their property was given to defendants. Though the capacity in which the defendants were in possession of that part of the property and cultivating the same has been explained by way of license, the admitted fact on record is that the disputed property was in possession of the defendants and they were cultivating it. The plaintiffs' claim that the disputed property was given to the defendants by way of affection to earn their livelihood is based only on oral evidence and there is no documentary evidence to substantiate such a claim. However, the defendants have come out with a clinching documentary evidence of partition of holding. The existence of these documents have not been disputed by the plaintiffs. Ex.D/2 is an order dated 23/12/1978 passed by the Court of Tahsildar- Jagdalpur effecting partition of 9.40 acres of land including disputed land amongst Bharat, Lachhindhar, Sukhdai, Ongi Ram and Ramdhar. This order records that the application was moved by all of them for effecting partition of holding and correction of revenue proceedings on the basis of partition already effected amongst them. In this order, the plaintiffs namely Bharat, Lachhindhar along with their mother Sukhdai were allotted 4.85 acres whereas Ramdhar along with Ongi Ram were allotted 4.55 acres of land. The text and tenor of this order is that the order is based on agreement between the parties. No doubt, later on, the plaintiff filed an appeal before the Sub-Divisional Officer disputing the same and stating that they had never given any such consent for holding nor any agreement to arrive at between the parties. Later on, an application for withdrawing the appeal on the basis of agreement amongst the parties was filed in Ex.D/7 before the appellate authority. The contents of the said document / application based on Rajinama is that the parties have settled their disputes, therefore, they do not want to take their dispute any further and do not press their appeal. This was signed by both the parties and on this application, the Sub-Divisional Officer passed an order on 26/07/1979 dismissing the appeal. This order was never challenged by the plaintiffs. It is trite law that the orders passed in revenue proceedings are not binding on the parties and a party, who finds that the

orders and proceedings in Revenue Courts cast shadow on his title and may file suit seeking declaratory relief based on title in civil proceedings, but where the order passed in revenue proceedings are not based on contest between the parties but based on agreement between the parties and the proceedings are withdrawn stating that the parties have settled their disputes, in such a case, the principle of estoppel would be attracted. The plaintiffs, having agreed for partition of the property admeasuring 9.40 acres which included disputed property, which was allotted to the share of defendants, later on, turned around after almost 20 years to file a suit seeking decree of title. It is not a case that the plaintiffs' relief is confined to their share alone. The plaintiffs having agreed for partition of holding and withdrawn all the cases were, later on, estopped by application of principle of estoppel, from seeking declaration as self acquired property of Paklu.

The argument of learned counsel for the respondent / plaintiffs that though this partition is only for name sake and the disputed property was given to the defendants only out of love and affection so that they may earn livelihood without accepting their share, cannot be accepted. None of the revenue proceedings and orders or even in the conclusion / Rajinama filed by the plaintiffs themselves, it has ever been stated that the plaintiffs, keeping their claim of title alone are permitting the defendants to cultivate the land to earn their livelihood only as licensee. The document of partition and particularly the conclusion, clearly shows that the plaintiffs stated that the parties having settled their disputes, did not want to continue with the dispute and withdrew the appeal. No document has been filed before this Court to show that either in those proceedings or outside the Court, the parties had entered into such settlement that the defendants would cultivate the land to earn their livelihood only as a licensee. Clinching evidence led by the defendants was completely omitted from consideration by the learned lower Appellate Court in coming to the conclusion that the disputed property was self acquired property of Paklu. Whether or not, the property was self acquired property of Paklu, was required to be decided by taking into consideration

the entire evidence on record, both oral and documentary. While plaintiffs came out with revenue settlement entries of 1931-32, the documentary evidence with regard to partition can also not be ignored. The subsequent conduct of the plaintiff in accepting the partition clearly estopped them from raising a claim and seeking declaration of title that the property was not a joint family property but was an exclusive self acquired property of their father – Paklu. Therefore, the finding of the learned lower Appellate Court in that regard cannot be sustained.

11. As far as proof of Will Deed dated 11/01/1982 (Ex.D/1) is concerned, according to the plaintiff, the Will was a fictitious document. Plaintiffs have pleaded that Ramdhar was a blind person. Defendants, however, denied. Will was executed by Ramdhar. A Will is required to be proved in accordance with the provisions contained in Section 63 (c) of the 'the Act of 1925 read with Section 68 of the Act of 1872. It is also well settled legal position that in order to prove the Will, it is not necessary that the Will should be proved from the evidence of all the attesting witness nor is it the law that scribe of the Will is also required to prove execution of Will. The legal requirement is that one of the attesting witnesses duly proves execution of the Will in the manner and in accordance with the provisions of Section 63 (c) of the Indian Succession Act.

12. The plaintiffs have come out with a case that Ramdhar was blind by birth. In this regard, Bharat (PW1) has clearly deposed in his evidence that Ramdhar (his uncle) was blind by birth. Though a suggestion has been given in cross-examination that Ramdhar was not blind, the other two plaintiff witnesses – Mithhuram (PW2) and Devnath (PW3) have also stated that Ramdhar was a blind person. They are independent witnesses. In their cross-examination also, nothing could be elicited that such settlement made in the examination-in-chief was controverted. Apart from this, the Will Deed which is said to be relied upon by the defendants themselves contains a

clear endorsement that Ramdhar is a blind person. From this clinching evidence, it is clear that Ramdhar was a blind person. While scrutinizing the evidence of the sole attesting witness, this evidence has to be kept in mind. In order to prove execution of Will by late Ramdhar, defendants have examined Trilochan (DW4) as attesting witness. According to Trilochan, the Will Deed was got prepared by Ramdhar and he was present at that time and Ramdhar had put his thumb impression and at that time, another person Jhitkuram also signed the document. This witness states that Ramdhar had prepared a Will to the effect that during his life time, he will cultivate the land and after his death, this land would devolve upon Lakhihar. However, in his cross-examination, this witness claims ignorance as to whether Ramdhar was blind by birth. He happened to be *pate* of village-Ghat Lohanga. Once it is held that Ramdhar was blind, the evidence of the attesting witness who does not know that Ramdhar was blind or not is extremely relevant. In the entire document, there is no recital that Ramdhar, being blind person, was read over the contents of the Will in the presence of this witness and after having understood the contents of the Will, Ramdhar, in presence of the attesting witness, affixed his thumb impression. This attesting witness has not stated that in his presence, the contents of the Will was read over and Ramdhar affixed the thumb impression. A doubt is certainly cast on the evidence of this witness as it is a case of preparation of Will of a person who is blind by birth. The evidence of Trilochan (DW4) being doubtful, the Will becomes suspicious and failure on the part of the defendant to lead any other evidence of either scribe or other attesting witness so as to clear the clouds of suspicion, leaves this Court to uphold the finding of the learned lower Appellate Court that the Will itself is suspicious.

13. Accordingly, the question of law is answered in the manner that the learned lower Appellate Court was not justified in reversing the finding of the Trial Court that the property in question was not self acquired property and it has to be held that the plaintiffs were estopped from seeking a declaration that the property was self acquired

property of Late Paklu.

On the third question of law, it has to be held that the plaintiffs having agreed for holding and having withdrawn the appeal without contesting on merits were bound by the order passed on 26/07/1979 (Ex.D/5) by the Sub-Divisional Officer, Jagdalpur in Appeal Case No.12/A-27/1978-79.

On the second question of law, this Court holds that the finding of the learned lower Appellate Court that the Will was not executed in accordance with law and is suspicious, does not warrant any interference.

14. In view of the above conclusion, though it has to be held that the plaintiffs are not entitled to any declaration of title on the basis that the property in dispute is a self acquired property of Paklu, having held that the Will itself is suspicious, therefore, suit is liable to be partly decreed by declaring that the Will being suspicious, is illegal and inoperative in law.

15. Resultantly, the plaintiffs are entitled to a declaration that after death of Ramdhar, who admittedly died issueless, his share in the property would devolve by intestate succession amongst other heirs as per the provisions of Section 8 of the Hindu Succession Act. This would mean that out of two acres which fell to the share of Ramdhar, the plaintiffs together will be entitled to half of the share in the said property and remaining half will go to the defendants (except State).

16. To that extent, the plaintiffs' suit is partly decreed. The appeal is accordingly partly allowed. Let appellate decree be accordingly drawn. Parties to bear their respective costs.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge