

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No.140 of 2007****Reserved on 19.08.2019****Pronounced on 04.09.2019**

Dhaniram Verma (Deceased) through legal representatives:-

1. Dr. Om Prakash Verma, aged 56 years, S/o Late Shri Dhaniram Verma, Rector in Ravi Shankar University, Raipur (CG)
2. Smt. Tara Verma, aged 60 years, Wd/o Late Narendra Verma, Baijnathpara, Raipur, Tahsil-Raipur, District-Raipur (CG),
3. Smt. Shammi Dhurandhar, about 58 years, W/o Shri Yugal Kishore Dhurandhar, Katulbod, Katulbod, Tahsil-Durg, District-Durg (CG),

---- Appellants/Plaintiffs**Versus**

1. Shri Manohar Rao Dongre, S/o Shri Rambhau Dongre,
2. Indu Bai Dongre D/o Shri Rambhau Dongre, Sadar Bazar, Raipur, Tahsil-Raipur, District-Raipur (CG),
3. Usha Behra D/o Rambhau Dongre,
4. Shri Bhaskar Rao S/o Shri Rambhau Dongre,
5. Sandhya Bai D/o Rambhau Dongre, Resp-1 And 3 To 5, R/o Satti Bazar, Raipur, Tahsil-Raipur, District-Raipur (CG),

----Respondents/Defendants

For Appellants:

Dr N.K Shukla, Senior Advocate along with Shri Harshwardhan Parganiha, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
C A V Judgment

1. This Appeal has been preferred by the Plaintiffs under Section 100 of the Code of Civil Procedure, 1908 (for short 'the Code of 1908') questioning the legality and propriety of the judgment and decree dated 24.02.2007 passed by the 1st Additional District Judge, Raipur in Civil Appeal No.5-A/2002 whereby, the lower appellate Court, while affirming the judgment and decree dated 03.05.2001 passed by the 1st Civil Judge, Class-II Raipur in Civil Suit No.2-A/1992, has dismissed the Plaintiffs'

claim. The parties to this Appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated, the facts of the case are that Plaintiff-Dhaniram (since deceased during the pendency of First Appeal, represented through his legal representatives) instituted a suit claiming ejectment and damages of Defendant Smt Chandra Bhaga Bai (since deceased during the pendency of the suit, represented through her son and daughters as legal representatives) by alleging *inter alia* that he purchased the house in question bearing Khasra No10/193(New No.10/125) situated at Sati Bazar, Raipur (CG) from one Uma Bai, widow of Late Paikuji Maratha under the registered deed of sale dated 11.07.1972 for a consideration of Rs.18,000/-. It is pleaded in the Plaint that after purchasing the suit house as such, he was in possession of its ground floor and was running a book shop therein, while first floor was in possession of Smt Chandra Bhaga Bai with his permission, who assured to vacate the premises within a month or two, but failed to vacate the same leading to service of registered notice dated 28.10.1972 demanding vacant possession from her.

3. According to further averments made in the Plaint, the suit house was owned by one Paikuji and after his death in the year 1946, it was inherited by his widow- Uma Bai (Plaintiff's vendor) and son Keshoji and pleaded further that his vendor Uma Bai has become absolute owner on the enforcement of the Hindu Succession Act, 1956 (hereinafter referred to as the 'Act of 1956) and was entitled to alienate the suit house in his favour.

4. While contesting the aforesaid claim, it is pleaded by Defendant that said Uma Bai had only a limited right over the suit house and was not

competent enough to execute the alleged registered deed of sale as such. According to the Defendant, said Paikujji, the erstwhile owner of the suit house, had executed a deed of Will dated 29.05.1944 bequeathing the same to his son Keshoji while providing a limited interest to his widow Uma Bai and upon death of Keshoji in 1950, it was inherited by her (Smt Chandra Bhaga Bai) being preferential heir to said Uma Bai. It is contested further on the ground while referring to the decisions of the earlier instituted suit that on the basis the registered Will, said Uma Bai had acquired only a limited interest over the suit house and therefore, on the basis of the alleged sale, no right, title or interest was conferred upon the Plaintiff and the suit is therefore, liable to be dismissed.

5. After considering the evidence led by the parties, the suit was dismissed by the trial Court vide judgment and decree dated 03.05.2001 on findings *inter alia*:-

“(I) That Uma Bai (plaintiff's vendor) had only the life/limited interest over the suit house by virtue of the Will executed by Late Shri Paikhuji (Ex.D/5 dated 29.05.1944) and therefore Uma Bai had no transferable interest over the suit house;

(II) That Uma Bai (plaintiff's vendor) was not in possession of the suit house on the date of coming into force of the Act of 1956 i.e. 17th June, 1956 and therefore Section 14(1) of the said Act, 1956 is not attracted and Uma Bai's limited interest into the suit property has not ripened into the absolute right;

(III) That since Uma Bai (plaintiff's vendor) has only life interest in the suit property therefore she had no right to transfer the suit house by Ex.P/6 dated 11.07.1972;

(IV) That the issue decided in Civil Suit No.3-A/55 and issue decided in Civil Suit No.38-A/63 operates itself res-judicate between the parties.”

6. The aforesaid finding of the trial Court has been affirmed further by

the lower appellate in an Appeal preferred by the Plaintiffs where, it has been held as under :-

“(1) That the Will Ex.D/5 dated 29.05.1944 was executed by Late Shri Paikhuji by which Uma Bai (plaintiff vendor) had only the limited interest on the suit property and therefore by virtue of Section 14(2) of the Act of 1956, the suit house will be governed by Ex D/5 (Will dated 29.05.1944).

(2) That Late Shri Paikhuji has conferred only limited ownership to his wife Uma Bai by way of his Will Ex.D/5 and therefore Uma Bai would remain as a limited owner of the suit house.

(3) That the original defendant Smt Chandra Bhaga Bai was in possession of the suit house on coming into force of the Act of 1956 and the defendant Smt Chandra Bhaga Bai has succeeded the suit house on the death of Keshoji, as legal heir.

7. Being aggrieved, the Plaintiff has preferred this Appeal. Dr. N. K Shukla, learned Senior Advocate appearing along with Shri Harshwardhan Parganiha, Advocate submits that the judgment and decree as passed by the Courts below holding that said Uma Bai has acquired a limited right on the basis of alleged deed of Will dated 29.05.1944 (Ex.D-5) under sub section (2) of Section 14 of the Act of 1956 is apparently contrary to law. He submits further that while passing the impugned judgment, the Courts below have failed to take note of the fact that said Uma Bai was not only the widow of said Paikhuji, but by virtue of Section 3 of the Hindu Womens' Right to Property Act, 1937 (for short 'the Act of 1937') entitled to a limited interest during the lifetime of Keshoji and after his (Keshoji) death, she (Uma Bai), being the sole survivor, the **female kinsman** was entitled to inherit the entire property in her absolute right. Having failed to consider the same, the Courts below have committed an illegality in dismissing the

Plaintiff's claim.

8. I have heard learned Counsel for the Appellants and perused the entire record carefully.

9. A suit for ejectment and damages was filed by the Plaintiff-Dhaniram on the strength of the registered deed of sale dated 11.07.1972 (Ex.P-6) purported to have been executed by erstwhile owner Paikui's wife Uma Bai, who inherited the suit house upon the death of her husband in the year 1946 along with her step son Keshoji. From perusal of Plaintiff's averments, it has been pleaded that said Paikui had not executed a deed of Will while providing a limited interest to her. However, this fact was denied by Defendant in her written statement by alleging therein that a Will dated 29.05.1944 (Ex.D-5) was executed by said Paikui in favour of his wife Uma Bai and son Keshoji while providing limited ownership to his wife Uma Bai. After considering the evidence led by the parties, it was found by the Courts below that the alleged Will was executed by said Paikui in which, limited right was provided to his wife Uma Bai, the Plaintiff's vendor. It was found further that after the death of Keshoji in 1950, the suit house held by him under the said Will (Ex D-5) was inherited by Defendant Smt Chandra Bhaga Bai being a preferential heir to said Keshoji, the legatee.

10. It appears further from the findings recorded in an earlier instituted suit being Civil Suit No.3-A/1955 by Smt Chandra Bhaga Bai against Plaintiff's vendor Uma Bai wherein the registered deed of sale dated 22.02.1952 executed by said Uma Bai in favour of one Madhukar Rao was questioned on the ground of her limited ownership. In the said suit, the validity of the alleged Will (Ex.D-5) was examined and it was observed therein that the estate of Paikui was given jointly by him to his wife Uma

Bai and son Keshoji with the stipulation that son Keshoji alone shall be the full owner and wife Uma Bai had enjoyed to live with Keshoji and look after him with further stipulation that in case wife Uma Bai could not pull on with Keshoji, she would then get a maintenance at a fixed rate of Rs.15/- per month and a right to reside separately. It was therefore held vide judgment and decree dated 17.10.1955 (Ex.D-6) that after the death of Keshoji in the year 1950, the wife Uma Bai remained in possession of the estate as sole legatee under the said Will (Ex.D-5) but, has not acquired an absolute interest thereon. The said finding was affirmed by the High Court vide judgment and decree dated 30.07.1959 (Ex.D-7) in F.A No.39 of 1956 preferred by said Uma Bai by holding that a limited interest was created to the wife of said Paikujji under the alleged deed of Will dated 29.05.1944 (Ex.D-5) and this finding has attained his finality by efflux of time.

11. Based upon the findings recorded in an earlier instituted suit, it is evident that the construction of the alleged registered Will (Ex.D-5) was considered and it was held that Plaintiff's vendor Uma Bai has acquired a limited interest only over the suit house and the finding in relation to the interpretation of the registered Will has attained its finality. In such circumstances, a contrary view cannot be recorded in relation to the interpretation of the Will (Ex.D-5) by holding that said Uma Bai has acquired an absolute interest over the suit house and was competent to execute the alleged sale (Ex.P-6) in favour of the Plaintiff, as contended by Shri Shukla, learned Senior Counsel for the Appellants.

12. The aforesaid observation of mine is fortified by the principles laid down by the Supreme Court in the matter of Virupakshayya Shankarayya vs. Neelakanta Shivacharya Pattadadevaru reported in **1995 Supp (2)**

Supreme Court Cases 531 wherein, it has been held at paragraphs 8 & 9

as under:-

“8. The above apart, what is more material is that the Privy Council of Jamkhandi State having held in an earlier proceeding that Shivalingayya was duly nominated and installed as Padadayya inasmuch as he had been so nominated by Shankarayya before his marriage, which is the only ground on which Shivalingayya's nomination has been held to be vitiated in the present proceedings by the High Court, we are of the firm view that the contrary conclusion arrived at in the present proceedings in favour of plaintiff does not deserve to be confirmed. It may be that principle of res judicata has no application, despite what has been stated in Explanation VI of Section 11 CPC, inasmuch as in the earlier proceeding the present plaintiff was not a party and Andanayya (the plaintiff therein) had not claimed possession of the property as Padadayya but as Charanti contending that as the office of Padadayya was lying vacant because of invalidity in the nomination and the installation of Shivalingayya, he had stepped into the shoes of Padadayya. There is, however, no denial that the foundation of the case of Andanayya was the infirmity in the nomination and the installation of Shivalingayya as Padadayya; and it is precisely this which the Privy Council had not accepted.”

“9. In the aforesaid premises, the judgment of the Privy Council, even though the same did not bind the plaintiff on the principle of res judicata, was definitely a relevant circumstance to be taken note of, because of what has been stated in Section 42 of the Evidence Act. What we, however, find is that the High Court had only referred to the earlier decision without examining the question as to whether law permitted a contrary view to be taken on the selfsame issue. According to us, the issue having been finally determined at the highest level, the same could not have been re-examined, which exercise, to start with, was undertaken even by a Civil Judge.”

13. Consequently, I do not find any infirmity in the findings recorded by the Courts below holding that the Plaintiff's vendor Uma Bai has acquired

only a limited interest under the alleged deed of Will (Ex.D-5) by virtue of sub-section (2) of Section 14 of the Act of 1956.

14. Now, the further contention of learned Counsel for the Appellants that said Uma Bai, the widow of erstwhile owner Paikuji was entitled to inherit a limited interest by virtue of Section 3 of the Act of 1937 during the lifetime of Keshoji and upon his death in 1950, being a sole survivor, entitled to inherit the entire property in her absolute capacity and competent to execute the alleged sale (Ex.P-6) is however, noted to be rejected. Admittedly, said Paikuji was the erstwhile owner of the suit house, who expired in 1946 and was survived by his daughter Chandra Bhaga Bai, born from the wedlock of his wife Rangai Bai, son Keshoji, the legatee born out of another wife Jana Bai and a widow Uma Bai, the eighth wife.

15. Paikuji had executed a deed of Will dated 29.05.1944 (Ex.D-5) bequeathing his interest over the suit house to his son Keshoji while providing the limited interest as found hereinabove to his wife Uma Bai, Plaintiff's vendor. By virtue of the alleged Will, Keshoji alone had acquired the entire suit property being a legatee of the said Will. The suit house is, thus, his separate property, the last male owner, who expired in his minority at an age of 8 years in 1950 prior to enforcement of the Act of 1956 leaving behind him the step mother Uma Bai and step sister Smt Chandra Bhaga Bai and the suit property as acquired by him under the alleged Will (Ex.D-5) cannot be held to be a coparcenary property. The suit property held by him (Keshoji) which is his separate property is therefore, liable to be devolved in accordance with the provisions prevailing prior to the enforcement of the Act of 1956.

16. Part-1 of Mulla's Hindu Law (21st Edition) deals with the law of Succession prior to the Act of 1956 and Chapter IV of it provides principle of inheritance of males according to *Mitakshari* law. Paragraph-34 of this Chapter which provides devolution of property of male Hindu is relevant for the purpose, which reads as under:-

“§ 34. Devolution of property according to *Mitakshara* law.- In determining the mode in which the property of a Hindu male, governed by *Mitakshara* law, devolves on his death, the following propositions are to be noted:

(1) where the deceased was, at the time of his death, a member of joint and undivided family, technically called coparcenary, his undivided interest in the coparcenary property devolves on his coparceners by survivorship (see Act XVIII of 1937 and § 35);

(2)(i) even if the deceased was joint at the time of his death, he might have left self-acquired or separate property. Such property goes to his heirs by succession according to the order given in § 43, and not to his coparceners;

(ii) if the deceased was at the time of his death, the sole surviving member of a coparcenary property, the whole of his property, including the coparcenary property, will pass to his heirs by succession according to the order given in § 43;

(iii) if the deceased was separate at the time of his death from his coparceners, the whole of his property, however acquired, will pass to his heirs by succession according to the order given in § 43;

(3) if the deceased was re-united at the time of his death, his property will pass to his heirs by succession according to the rule laid down in § 60.

17. The suit property held by Keshoji was his separate property as acquired by him under a Will (Ex.D-5). Therefore, by virtue of aforesaid

provision, particularly according to sub-paragraph-(2)(i), it would be devolved upon his heirs by succession according to order of succession as provided in paragraph-43, and not by survivorship, as contended by learned Counsel for the Appellants herein.

18. Keshoji, the legatee under the alleged Will (Ex.D-5) who owned the suit property as his separate property expired in the year 1950 leaving behind him step mother (Uma Bai) and step sister (Smt Chandra Bhaga Bai). According to aforesaid paragraph, the “mother” is ranked as Item No.7 which includes “step-mother” while “sister” at No.13C, which includes “half sister (step sister)”

19. In so far as for the purpose of inheritance is concerned, the question as to whether “step mother” would inherit the property of her step son or not was considered by the Division Bench of the Allahabad High Court in the matter of Mt. Pitra Kueri, plaintiff, Appellant v. Ujagir Rai and others, Defendants, Respondents reported in **AIR 1958 Allahabad 101** wherein, it has been held while referring to the matter of Chattar Singh Vs. Roshan Singh **A.I.R, 1946 Nagpur 277**, that the step mother cannot be equated with that of a real mother. Paragraphs-10, 11 and 14 of it are relevant for the said purpose, which read as under:-

“(10) It is true that it is now the settled view of all the High Courts that under Mitakshara Law in a partition a step-mother is entitled to a share. On that ground, however, it cannot be said that a step-mother is an heir of her step-son also. The reason why she has been held to be entitled to a share at the time of partition appears to be this.

Partition, according to Mitakshara can take place either in the life-time of the father or between his sons after his death. If it is held by the father in his own life-time, the mother is entitled to a share not as a mother but as wife of the father. If the partition is held after the father's death between sons and grandsons, the

mother is entitled to a share as a mother of her sons. If she has no son she has been held to be entitled to a share because she would have got a share as a wife if the partition had taken place in the life-time of the father, she being entitled to be provided for in any event.

These considerations do not appear to be applicable when the question of a step-mother being an heir is considered in connection with inheritance. Whether a person is an heir to a deceased Hindu or not is decided under the Hindu Law mainly on two principles. One is the principle of propinquity or nearness in blood and the other is the efficacy of oblations. Under both these principles a step-mother will have to be excluded. Strictly speaking there is no blood relationship between the step-mother and her step-son.

They are connected with each other only because the former has been married by the latter's father. It is also by no means certain that from the orthodox point of view the step-mother is in a position to confer any spiritual benefit on the deceased step-son by offering obsequial oblations. It is thus not possible to accept the contention that because a step-mother is entitled to a share at the time of partition she is entitled to inherit her step-son too."

"(11) So far as the principle of exclusion of females from inheritance is concerned, whatever may have been the position at the time when the Mitakshara was written it is now a universally accepted view that under Hindu Law as applicable to Banaras, only those females are heirs which find specific mention in the texts; they are, the widow, the daughter, the mother, the father's mother and the father's father's mother.

A step-mother does not find a specific mention and on that ground stands excluded. The females who are entitled to inherit are heirs to all properties left by a deceased and the other females who are not entitled to inherit and excluded from inheritance in respect of all properties. The distinction between the two different kinds of properties which may have existed at one time has not been followed. Relying on that distinction, therefore, it cannot be said that a step-mother should be held to be an heir.

(14) In our opinion, therefore, the learned single Judge was perfectly correct in his view that under Hindu Law a step-mother is not an heir of a deceased Hindu. Smt. Balli Kuar was, therefore, not entitled to inherit the estate of Amrit Rai and cannot be considered to have been in possession of his estate as a limited owner.

20. In view of the principles laid down in the aforesaid decision, it is evident that for the purposes of inheritance, a step mother cannot be equated with that of a real mother and this issue has now become no more *res integra*. As a consequence, said Uma Bai, the Plaintiff's vendor, being the step mother of Keshoji, cannot be held to be entitled to inherit the suit property left by her step-son Keshoji and his property would be devolved upon Defendant Smt Chandra Bhaga Bai, being a sister, who finds place by enforcement of the Hindu law of inheritance (Amendment) Act 2 of 1929. It is true that said Chandrabhaga Bai is half sister of said Keshoji being his father's (Paikuiji) daughter by his another wife Rangai Bai but the word "sister" has been interpreted in the matter of Mt. Sahodra – Appellant v. Ram Babu-Respondent reported in **A.I.R. (30) 1943 Privy Council 10** whereby, it has been held that the term "sister" includes "half sister" although a full sister and the half sister will not take together and the half sister will inherit only in default of the full sister. At Page-14, left column bottom of the said judgment, it has been observed as under:-

xxxxxxx. In their Lordships' opinion, the term "sister" in the Act would include a half-sister, i.e., a sister by the same father even though the mother be different; but cannot be extended beyond that to include one who has not the same father. It is stated as an objection that the full-sister and the half-sister must take together, if the word "sister" in the Act includes a half-sister; but this is too rigid a view. On ordinary principles, the difficulty will not arise; for, although as recognised under the Mitakshara, a sister will include a half-sister the latter will take the inheritance only when there is no

full-sister to claim it.”

21. What is therefore reflected from the aforesaid observations is that the property in question belonged to said Keshoji, the last male owner who acquired the same under the registered deed of Will (Ex.D-5) executed by his father. It was his separate property. Succession opened on 03.05.1950 when he (Keshoji) expired and at that particular time, the Plaintiff's vendor Uma Bai and original Defendant Smt Chandra Bagha Bai alone were the two claimants to the estate of said Keshoji. As observed hereinabove, said Uma Bai, being step mother of said Keshoji, cannot be held to be the heir for the purpose of inheritance while Chandra Bagha Bai although is the half sister of said Keshoji, being his father's daughter by his another wife, but would come within the purview of “sister” as interpreted by the Privy Council in the above mentioned judgment and would thus be entitled to inherit the suit property left by said Keshoji.

22. In consequence, the alleged registered deed of sale dated 11.07.1972 (Ex.P-6) executed by said Uma Bai in favour of Plaintiff Dhaniram would not confer any right, title or interest upon him. The claim of him has, therefore, been rightly dismissed by the Courts below and I do not find any infirmity in the same.

23. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. The Appeal being devoid of merits is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE