

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 421 of 2005**

1. Sukwaro Bai (died) through Lrs.

(a) Budhram S/o Shobhit Ram, Aged about 58 years, R/o Village Kaluwa, Post Krishnapur, Tahsil Ramanujnagar, District Surajpur, Chhattisgarh.

(b) Mohar Sai S/o Shobhit Ram, Aged about 59 years.

(c) Shyamlal S/o shobhit Ram, Aged about 48 years.

(d) Ujiyaro D/o Late Shobhit Ram, W/o Jagarsay, Caste Rajwar, Aged about 55 years.

1(b) to 1(d) are R/o Village Madneshwarpur, Post Krishnapur, Tahsil Ramanujnagar, District Surajpur, Chhattisgarh.

(e) Ram Bai D/o Late Shobhit Ram W/o Rajaram, Aged about 52 years, R/o Village Dumariya, P.S. & Tahsil Surajpur, District Surajpur, Chhattisgarh.

---- Appellants/Plaintiffs

Versus

1. Sukhmen W/o Kashiram, Aged about 44 years, Occupation Housewife, R/o Village Amtritpur, Tahsil Baikunthpur, District Koriya, Chhattisgarh.

2. Jagmohani (died) through Lrs.

(a) Amrawati Wd/o Mohelal, Aged about 30 years, R/o village Katgodi, P.S. and Tahsil Sonhat, District Koriya, Chhattisgarh.

3. State of Chhattisgarh, Through the Collector, Ambikapur, Distt. Surguja, Chhattisgarh.

---- Respondents/Defendants

For Appellants	:	Mr. Ashok Kumar Shukla, Advocate
For Respondents	:	None
For State	:	Ms. Anjali Singh Chouhan, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

19/11/2019

1. This second appeal preferred by the plaintiff (now, her Lrs.) was admitted for hearing on the following substantial questions of law:-

“1. Whether the first appellate Court has committed an error of law in reaching to the conclusion that the plaintiff has not been able to establish the fact that Pusau was the title-holder of the suit property ?

2. Whether the finding of the first appellate Court while reversing the judgment of the trial Court is perverse or not particularly when the first appellate Court also holds that the Settlement Deed in favour of Sukhmen has not been established ?”

(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. 261/2 admeasuring 0.445 hectare situated at village Krishnapur, P.S. and Tahsil Surajpur, Distt. Sarguja was originally held by Pusau Ram. He had three daughters – plaintiff Sukwaro Bai, defendant No. 1 Jagmohani and defendant No. 2 Sukhmen.
3. Plaintiff filed a civil suit for declaration of title and partition stating *inter alia* that the suit property was her father's property, therefore, she is entitled for 1/3rd share in the suit property and also injunction. In the said suit, only defendant No. 2 appeared before the trial Court and set up a plea that her father Pusau Ram had executed a *Vyavastha Patra* (Exhibit P/2) on 23/05/1985 through which he had relinquished the entire suit property in her favour.
4. Learned trial Court, after appreciating the oral and documentary evidence on record, did not accept the plea of defendant No. 2 that she is the sole owner of the suit property by way of *Vyavastha Patra* (Exhibit P/2) executed by Pusau Ram in her favour and vide judgment and decree dated 26/08/2003 decreed the suit of the plaintiff holding that all the three daughters of Pusau Ram i.e. plaintiff as well as defendants No. 1 and 2, each one of them is entitled for 1/3rd share in the suit property.

5. Against the judgment and decree passed by the trial Court, defendant No. 2 – Sukhmen preferred first appeal under Section 96 of the CPC wherein learned first appellate court, though answered the issue No. 5 as framed by the trial Court that *Vyavashta Patra* (Exhibit P/2) dated 23/05/1985 allegedly executed by Pusau Ram in favour of defendant No. 2 is null and void, but also held that since plaintiff has failed to prove that the suit property was held by her father Pusau Ram and vide its impugned judgment and decree dated 24/04/2004 set aside the judgment and decree of the trial Court against which this second appeal under Section 100 of the CPC has been preferred by the plaintiff in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

6. Mr. Ashok Kumar Shukla, learned counsel for the appellant/plaintiff would submit that the first appellate Court has absolutely misdirected himself by holding that the suit property was not held by Pusau Ram. It is an admitted case of the parties that the suit property originally belonged to their father Pusau Ram, as such, the first appellate Court had no reason to hold that the suit property was not held by their father and plaintiff has failed to prove that the suit property belonged to

their father. Therefore, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court be restored.

7. None appears for respondents/defendants No. 1 and 2 though served.

8. I have heard learned counsel for the appellants, considered his submissions and went through the records with utmost circumspection.

9. Admittedly, Pusau Ram had three daughters, plaintiff and defendants No. 1 and 2. Plaintiff claimed that the suit property is her father's property which defendant No. 2 has also admitted in paragraph 1 of her written statement that the suit property belonged to their father Pusau Ram but she also set up a plea that by *Vyavastha Patra* (Exhibit P/2) dated 23/05/1985 her father Pusau Ram relinquished the entire suit property in her favour, but that was not accepted by the trial Court.

10. Learned trial Court framed issue No. 5 with regard to the *Vyavstha Patra* executed by Pusau Ram in favour of defendant No. 2 to be null and void and answered it in affirmative and accordingly held that plaintiff and defendants No. 1 and 2, each one of them will be entitled for $1/3^{\text{rd}}$ share in the suit property against which defendant No. 2 preferred first appeal stating that she is the sole

owner of the suit property by way of *Vyavastha Patra* (Exhibit P/2) and plaintiff and defendant No. 1 will not be entitled for any share in the suit property.

11. Learned first appellate Court, after elaborate discussion, in paragraphs No. 10 and 11 of its impugned judgment, has clearly upheld the finding recorded by the trial Court in issue No. 5 that the *Vyavastha Patra* (Exhibit P/2) allegedly executed by Pusau Ram in favour of defendant No. 2 is null and void, but thereafter, the first appellate Court proceeded to hold that plaintiff has failed to prove that the suit property was held by Pusau Ram, therefore, she is not entitled for decree as claimed.

12. It is an admitted case of the parties which plaintiff and defendant No. 2 both have accepted and stated that the suit property was held by their father Pusau Ram and it was his self-acquired property. As such, there is no dispute with regard to the fact that the suit property belonged to plaintiff's as well as defendants No. 1 and 2's father Pusau Ram and plaintiff claims it through her father by way of succession whereas defendant No. 2 claims the suit property by way of *Vyavastha Patra* (Exhibit P/2).

13. The Supreme Court, in the matter of ***Executive Officer, Arulmigu Chokkanatha Swamy Koi Trust, virudhunagar v. Chandran and Ors.***¹, has clearly held that the facts admitted need not be proved. In the instant case, plaintiff as well as defendant No. 2 both have admitted that the suit property belonged to their father Pusau Ram and plaintiff claims the suit property by way of succession and defendant No. 2 claims it by way of *Vyavastha Patra* (Exhibit P/2). As such, the finding recorded by the first appellate Court that the suit property was not owned and held by Pusau Ram is totally perverse.
14. In that view of the matter, the judgment and decree passed by the first appellate Court to the extent of holding that the suit property was not held by Pusau Ram is set aside and that of the trial Court is upheld.
15. The second appeal is allowed to the extent indicated herein-above. No cost(s).
16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet