

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 410 of 2005****Judgment reserved on 10.07.2019**  
**Judgment delivered on 26.07.2019**

Sewak Ram Thakur (since deceased) through LRs:-

(i) Smt. Rukmani Singh Thakur, aged about 72 years, wife of late Sewak Ram Thakur,

(ii) Sanjay Singh Thakur, aged about 44 years, son of late Sewak Ram Thakur,

Both are resident of Mitthumuda, Raigarh, Police Station – Raigarh, District Raigarh (C.G.), through power of attorney- Gyaneshwar Singh Thakur, son of late Jageshwar Singh Thakur, resident of Mitthumunda, Raigarh, Police Station – Raigarh, District Raigarh (C.G.)

**---Appellant/defendant No. 3****Versus**1. Rajesh Agrawal, S/o Govind Ram Agrawal, Aged about 30 years, Occupation – Business, R/o Jute Mill Road, Raigarh, Tahsil & Dist : Raigarh (C.G.)  
.....Plaintiff2. Madhu Mangal, S/o Yudhister Kolta, Aged about 65 years, R/o Bhatanpali, Tahsil & Dist : Raigarh (C.G.)  
Defendant No. 13. Smt. Janki Bai, Widow of Prahlad Kolta, Aged about 70 years, R/o Bhatanpali, Tahsil & Dist: Raigarh – (C.G.)  
Defendant No. 2

4. State of Chhatisgarh, Through – Collector, Raigarh, District Raigarh (C.G.)

**---Respondents**


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For Appellants : Mr. Gautam Khetrapal, Advocate.  
 For Respondent No.1 : Mr. Rajesh Ranjan Sinha, Advocate.  
 For Respondent No. 4 : Mr. Ravi Kumar Bhagat,

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**JUDGMENT (C.A.V.)**

(1) The substantial questions of law involved, formulated and to be answered in this defendant's No. 3 second appeal state as under:

“Whether both the Courts below were justified in holding that the execution of the registered sale deed dated 08-04-1950 by Prahlad Singh in favour of Yudhisthir Kolta was legally established ?

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

(2) The suit property was originally held by one Prahlad Singh, father of defendant No. 3 herein. Prahlad Singh is said to have executed a registered sale deed dated 08.04.1950 (Ex.P-1) in favour of Yudhisthir Kolta, who is father of defendant No. 1 & father-in-law of defendant No. 2. They came in possession over the suit land on the strength of registered sale deed dated 08.04.1950 (Ex.P-1). Thereafter, Prahlad Singh [son of Yudhisthir Kolta] is said to have executed a registered Will dated 26.5.1994 (Ex.P-2) in favour of plaintiff as he was issue-less and he died on 5.6.1994. The plaintiff has filed a suit for declaration of title stating *inter alia* that he is owner and title holder of the suit land and also for restraining the defendant No. 3 from interfering with his peaceful possession over the suit land.

(3) Defendant No. 3 herein filed his separate written statement stating *inter alia* that his father Prahlad Singh had never executed any sale deed dated 08.04.1950 (Ex.P-1) in favour of Yudhisthir Kolta and, therefore, the suit filed by the plaintiffs is liable to be dismissed.

(4) The trial Court, by its impugned judgment & decree dated 30.09.2004, decreed the suit holding that Prahlad Singh had executed a registered sale deed in favour of Yudhisthir Kolta on 08.04.1950 (Ex.P-1) and the said Yudhisthir Kolta had acquired a title on the strength of aforesaid sale -deed; and after the death of said Yudhisthir Kolta, defendants No. 1 & 2 succeeded the suit land and Prahlad Singh had executed a Will in favour of plaintiff on 26.05.1994 regarding suit land, by which, he become the owner and title holder of the suit land and entitled for decree of declaration of title.

(5) On appeal being preferred, the first appellate Court agreed with the findings recorded by the trial Court and dismissed the suit, against which this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No. 3, in which, substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment.

(6) Shri Goutam Khetrapal, learned counsel appearing for appellant/defendant No. 3 would submit that both the courts below are absolutely unjustified in holding that the sale deed dated 08.04.1950 (Ex.P-1) executed by Prahlad Singh in favour of Yudhisthir Koshta is duly established and it ought to have held that it is not established that Ex.P-1 is certified copy of the said sale deed dated 8.4.1950 and it has not been established in accordance with law, therefore, by Will, the plaintiff will not get any title over the suit land and the suit is liable to be dismissed by granting appeal and by answering substantial questions of law in favour of defendant No. 3.

(7) Shri Rajesh Ranjan Sinha, learned counsel appearing for respondent No. 1/plaintiff would submit that the plaintiff did file application under Section 65 of

the Evidence Act for leading secondary evidence, as Ex. P-1 is certified copy of the sale deed but by dated 8.7.2002, application was rejected holding that Ex.P-1 is the public document and it is admissible in evidence, as such, no fault can be found in the decree granted by both the courts below in favour of plaintiff.

(8) I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) The suit property was originally held by Prahlad Singh. He is said to have executed a sale deed dated 8.4.1950 (Ex.P-1) in favour of Yudhisthir Kolta and after death of Yudhisthir Kolta, his son Prahlad Singh has admittedly executed a Will in favour of plaintiff vide Ex.P-2 on 26.5.1994 and, thereafter, the suit has been filed on 11.9.2000 for declaration of title by plaintiff Rajesh Agrawal seeking declaration that he is title and possession holder of the suit land, in which, defendant No. 3 has taken defence of denial stating that no sale deed was executed by his father in favour of Yudhisthir Kolta. The plaintiff also filed an application for permitting the secondary evidence to be recorded but by order dated 8.7.2000, that was rejected by the trial Court holding that certified copy of the sale deed dated 8.4.1950 (Ex.P-1) is a public document and is admissible in evidence.

(10) The trial Court in its judgment & decree has held that since the sale deed dated 08.04.1950 is the certified copy of Ex. P-1 has been proved by the record keeper of the office of Sub Registrar S.R. Pathari in accordance with law and, therefore, the sale deed (Ex.P-1) is admissible in evidence and further held that seller and purchaser of the sale deed dated 8.4.1950 both have died and their

witnesses to the sale deed are also no more and neither defendant No. 3 nor his father during his life time questioned the sale deed (Ex.P-1), therefore, by virtue of Section 90 of the Evidence Act, it will be presumed that sale deed dated 8.4.1950 (Ex.P-1) was executed by Prahlad Singh in favour of Yudhisthir Kolta.

**(11)** It is not in dispute that both the witnesses of the sale deed are no more alive and not available to adduce evidence. However, witness from the office of Sub Registrar has been summoned and he has been examined to prove the fact of registration of sale deed dated 8.4.1950 (Ex.P-1). It is also not in dispute that neither defendant No. 3 nor his father during his life time have questioned the legality and validity of sale deed sale deed dated 8.4.1950 (Ex.P-1) executed in favour of Yudhisthir Kolta, as such, fact of transfer of property by Prahlad Singh in favour of Yudhisthir Kolta has become final, it now cannot be re-opened on a collateral challenge made by defendant No. 3 herein on a suit filed by the plaintiff in whose favour, the son of Yudhisthir Kotla i.e. Prahlad Singh has executed a Will on 16.5.1994 (Ex.P-2), as such, both the courts below are justified in holding that sale deed dated 8.4.1950 (Ex.P-1) has been proved in accordance with law and it is duly established.

**(12)** The plaintiff has filed certified copy of the sale deed (Ex.P-1) and sought to adduce secondary evidence by filing an application under Section 65 of the Indian Evidence Act, which was rejected by the trial Court on 8.7.2002 whereas it ought to have been granted by the trial Court as there is no presumption of genuineness of certified copy under Section 90 of the Indian Evidence Act.

(13) In view of foregoing discussion, I am of the view that both the courts below have concurrently held that execution of registered sale deed dated 08-04-1950 by Prahlad Singh in favour of Yudhisthir Kolta is duly established, which is a finding of fact based on evidence available on record and I do not find it either perverse or contrary to the record. The substantial question of law is answered accordingly in favour of plaintiff and against the defendant No. 3.

(14) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed.

**Sd/-**

**(Sanjay K. Agrawal)**  
Judge

D/-