

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.165 of 2002**

1. Sagar S/o Mani Ram Lodhi Aged About 33 Years Agriculturist R/o Village Sajan, Tahsil Saja, District- Durg, Chhattisgarh
2. Bandhu S/o Mani Ram Lodhi Aged About 35 Years Agriculturist R/o Village Sajan, Tahsil Saja, District- Durg, Chhattisgarh
3. Arjun S/o Mani Ram Lodhi Aged About 31 Years Agriculturist R/o Village Sajan, Tahsil Saja, District- Durg, Chhattisgarh
4. Pawan S/o Mani Ram Lodhi Aged About 28 Years Agriculturist R/o Village Sajan, Tahsil Saja, District- Durg, Chhattisgarh
5. Gajju, S/o Mani Ram Lodhi, Aged About 26 Years Agriculturist R/o Village Sajan, Tahsil Saja, District- Durg, Chhattisgarh
6. Rohit Kumar, S/o Sukh Ram Lodhi, Aged About 27 Years, R/o Village Sajan, Tahsil And Police Station Saja, District- Durg, Chhattisgarh
7. Dwarika Prasad S/o Gariba Lodhi Aged About 21 Years R/o Village Uslapur, Tahsil Nad Police Station- Saja, R/o Village Uslapur, Tahsil Saja, District- Durg, Chhattisgarh
8. Baldau S/o Gariba Lodhi Aged About 18 Years Through The Natural Guardian Father Gareeba, S/o Kulaki Lodhi, R/o Village Uslapur, Tahsil Saja, District- Durg, Chhattisgarh
9. Neelkanth S/o Takht Singh Lodhi Aged About 46 Years R/o Village Taran Tahsil- Saja,
10. Smt. Sonabai (Died) Through Legal Heirs
 - 10(A) Bharat Lal Patel S/o Late Churaman Patel Aged About 56 Years R/o Village Toran, P.S.- Than- Khamhariya, Tahsil- Saja, District- Bemetara, Chhattisgarh
 - 10(B) Bindu Bai, W/o Shri Dhal Singh, Aged About 45 Years, R/o Village Semaria, Post- Deverbeega, P.S. And Tahsil- District- Bemetara, Chhattisgarh
 - 10(C) Dulari Bai, W/o Shri Tulsi Ram Patel, Aged About 52 Years R/o Village Tendua, Naya-Para, Saja Tahsil And District- Bemetara, Chhattisgarh.

--- Appellants/Plaintiffs**Versus**

1. Hombai W/o Kuleshwar Lodhi Aged About 41 Years Occupation- Agriculturist, R/o Village Thekapur, Tahsil Saja, District- Durg, Chhattisgarh
2. Ramlal (Died) Through Legal Heirs
 - 2(a) Dharambai (Deleted)
 - 2(b) Dukhnibai W/o Rampal Aged About 45 Years, R/o Village Banranka, Near Chikhi, Tahsil Saja
 - 2(c) Rukhminbai (Deleted) Through Legal Heirs

2(c)(1) Paretu Verma, Aged about 70 years, S/o Late Dhanesh, R/o Village Post Bargda, P.S. Saja, District Bemetara (CG)

2(c)(2) Gajadhar Verma, aged about 45 years, S/o Paretu Verma, R/o Village Post Bargda, P.S. Saja, District Bemetara (CG)

2(c)(3) Uttam Verma, aged about 38 years, S/o Paretu Verma, R/o Village Post Bargda, P.S. Saja, District Bemetara (CG)

2(d) Jeewan S/o Ramlal Aged About 37 Years, R/o Village Hatranka, Near Toran, Tahsil Saja

2(e) Gangoribai W/o Jagmohan Aged About 35 Years, R/o Village Paneli, Near Hatruka, Tahsil Saja, District Durg (CG)

2(f) Gautam S/o Ramlal Aged About 33 Years, Village Hatranka, Near Toran, Tahsil Saja

2(g) Lalita Bai, W/o Balram, Aged About 30 Years, Village Parasbod, Tahsil Saja, District Durg

2(h) Poshan S/o Ramlal Aged About 27 Years, Agriculturist, R/o Village hatranka, Near Toran, Tahsil Saja, District Durg

3. Smt. Teejanbai Wd/o Takhat Ram Aged About 36 Years Occupation- Agriculturist Village- Tendua Mayapara, Tahsil Saja, District- Durg, Chhattisgarh

4. The State Of Chhattisgarh, Through The Collector Durg, Chhattisgarh.,
.....**Respondents/Defendants**

For Appellants/Plaintiffs	:	Mr.Rakesh Thakur and Mr.Yogesh Pandey, Advocates
For State/Respondent No.4	:	Mr.Sanjay Kumar Agrawal, G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17.07.2019

This case was heard in part on 11.07.2019.

However, today no one appeared for respondents No.1 to 3.

1. This appeal is directed against impugned judgment and decree dated 25.02.2002 passed in Civil Appeal No.8A/97 arising from judgment and decree dated 01.01.1997 passed by the Second Civil Judge Class-II in Civil Suit No.28A/94.

2. The following substantial question of law has been framed in this appeal:

“Whether the judgment and decree passed by the First Appellate Court is perverse ?”

3. The appellants/plaintiffs filed a suit for declaration and permanent injunction on the pleadings *inter alia* that the property in dispute, admeasuring

26.73 acres originally belonged to one Takhat Ram. After his death, his mother, Basan Bai filed a Civil Suit against Teejan Bai and Ramlal for declaration of title and partition, which was dismissed on 27.03.1981. Upon appeal being preferred, learned First Appellate Court, vide judgment and decree dated 22.01.1982, passed decree in favour of Basan Bai holding her entitled to equal share in the property and granting decree, against which, an appeal was preferred by Teejan Bai/defendant No.3 before the High Court, which was dismissed.

4. Further case of the plaintiffs has been that the plaintiffs purchased the land in dispute, shown in Schedule-A of the plaint, from defendant No.3/Teejan Bai, as described in Schedule-B. Though, an application for partition was filed by Basan Bai during her lifetime, during the pendency of the application before the Revenue Authority, she died and on the basis of a Will, name of Hombai and Ramlal were recorded. Application for partition was rejected by Tahsildar, against which, an appeal was preferred and the Sub-Divisional Officer passed an order directing partition between Hombai and Ramlal on one side and Teejan Bai/defendant No.3 on the other, to the extent of their equal share. According to plaintiffs, they were not made parties by Basan Bai in any of the proceedings, even though, they had purchased the property by registered sale deed from Teejan Bai, the defendants have no right to dispute plaintiffs' title as they were stopped from doing so. It was also pleaded that as there were no other issues of Man Singh and Basan Bai, therefore, after death of Basan Bai, her entire property would devolve upon Teejan Bai. The so called will deed dated 09.03.1983 is a forged document prepared by defendants and Basan Bai did not voluntarily execute any will deed and therefore, on the basis of will deed, Hombai and Ramlal cannot claim any valid title over the property.

5. The defendants, in their written statement, denied plaintiffs pleadings and stated that Hombai is the daughter of Basan Bai. Basan Bai had executed will deed on 22.05.1983. On the basis of will deed as also because Hombai is the daughter of Basan Bai, after death of Basan Bai, Hombai and Ramlal succeeded to the share of Basan Bai and therefore, the plaintiffs who had purchased the property without partition, are not entitled to any title over the disputed property.

6. Learned Trial Court, after having framed issues and allowing the parties to lead oral and documentary evidence, decreed plaintiffs' suit. It was held that the will deed dated 22.05.1983 was doubtful. Learned Trial Court held that the

evidence of the plaintiffs, itself, shows that Hombai was daughter of Basan Bai. It was, however, held that as the property was not possessed by Basan Bai because partition proceedings were pending, after death of Basan Bai, the property would revert back to surviving successor of Takhatram, namely, his wife Teejanbai/defendant No.3. On this basis, it was held that the entire property devolved upon Teejanbai and therefore, sale deed executed by Teejanbai in favour of plaintiffs conferred valid title on the plaintiffs. On this basis, the plaintiffs' suit was decreed.

7. On appeal being preferred, learned Lower Appellate Court reversed judgment and decree and dismissed the suit. It was held by learned Lower Appellate Court that the defendants proved due and proper execution of Will executed by Basan Bai. It was also held that Basan Bai had a living daughter Hombai who otherwise succeeded to her property. Holding that after death of Basan Bai, by virtue of Will, both Hombai and Ramlal succeeded to her share as per Will, Teejanbai had no authority to execute sale deed and therefore, the plaintiffs were not entitled to get any relief.

8. The substantial question of law as framed being as to whether the judgment and decree of learned Lower Appellate Court suffers from perversity, learned counsel for the appellants argued that the perversity alleged in the impugned judgment and decree is firstly that the finding of the learned trial Court that Will was duly proved is perverse. Secondly, that the finding of the learned Lower Appellate Court that after death of Basan Bai, the property would devolve upon her daughter Hombai is also perverse and thirdly, that the finding of learned trial Court that Hombai was daughter of Basan Bai is also perverse.

9. On the aforesaid three aspects, elaborating his submission, learned counsel for the appellants would argue that as far as Will is concerned, learned Trial Court clearly recorded finding that the evidence of scribe of the Will (DW1), that of Hombai and also that of attesting witness-Arjun Das (DW3) was doubtful, learned Lower Appellate Court reversed this finding completely ignoring the discrepancies in the evidence of the aforesaid witnesses which render execution of Will doubtful as it was shrouded in suspicious circumstances. According to him, the attesting witness-Arjun Das (DW3) has stated in his evidence that when he reached the place, the formality of writing were completed, preparation of documents and reading were over. He has also stated in his cross-examination that he was informed that the Will is being

executed in favour of Hombai. Therefore, it is clear that even before he reached, entire formalities with regard to so-called execution of Will were already completed and therefore, it is highly doubtful whether the testator Basan Bai had at all signed the Will deed in his presence. The statement of this witness is that he was informed that preparation of Will deed of property is only in favour of Hombai is highly doubtful because the Will is not only in favour of Hombai but also in favour of Ramlal. Therefore, learned Lower Appellate Court, despite such apparent contradictions and having recorded finding that presence of Hombai is doubtful, acted perversely in reversing well reasoned finding by the learned Trial Court. As the legal requirement of Section 63(c) of the Indian Succession Act, 1925 (for short "the Act of 1925") read with Section 68 of the Indian Evidence Act, 1872 (for short "the Act of 1872") having not been fulfilled, finding regarding proof of Will is patently illegal. In order to buttress submission, learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bharpur Singh v. Shamsheer Singh, 2009(3) SCC 687** and **Janki Narayan Bhoir V. Narayan Namdeo Kadam, 2003 (2) SCC 91**.

10. On the other aspect regarding finding that Hombai was the daughter of Basanbai, learned counsel for the appellants would argue that, even though, the finding of learned Trial Court to the aforesaid effect was not assailed in cross-examination during trial, even then, as the finding of the trial Court in this regard is perverse, based on misreading of evidence it is liable to be interfered with. The plaintiffs, in their pleadings, clearly stated that Hombai was not the daughter of Basan Bai. There is no clinching proof of any reliable witness that Hombai was born out of wedlock between Basanbai and Ramadhin. Therefore, there is complete lack of any reliable evidence in this regard. Thirdly, it is submitted that even if it is assumed that Hombai was born out of the wedlock between Basanbai and Ramadhin, after death of Basanbai, the property which was inherited by Basanbai, after death of her son Takhatram, would not devolve upon Hombai because Hombai was the daughter of Basanbai, born out of her second marriage and not the first marriage. Therefore, in that case, under all circumstances, there being no successor left, the property would devolve upon Teejanbai, widow of Takhatram and daughter-in-law of Basanbai.

11. Learned counsel for the appellants also argued that the finding of the learned Lower Appellate Court that Hombai would succeed to the property being successor of Basanbai is also patently illegal because there is admitted factual position that Basanbai was not actually and physically possessed of the

property and unless she is possessed of the property as required under Section 14 of the Hindu Succession Act, 1956 (for short "the Act of 1956"), she would not acquire the status of full owner nor can the property be said to be her absolute property. This categorical finding recorded by learned Trial Court has also been reversed ignoring aforesaid clear legal position.

12. It is plaintiffs' own pleadings that the disputed property admeasuring 26.73 acres initially belonged to Takhat Ram, son of Mansingh. It is not disputed that Takhat Ram was son of Basan Bai. According to the plaint allegation, after death of Takhat Ram on 22.02.1977, Basanbai filed a suit seeking declaration of her share in the property of Takhat Ram. Further, pleading is that though suit was dismissed, on appeal being preferred, a decree to the extent of half share of the property of Takhat Ram was passed in favour of Basanbai against which, Teejan Bai (Defendant No.3) preferred appeal, which was also dismissed. Therefore, even according to the plaintiffs, a decree was passed in favour of Basanbai to the extent of declaring that she was entitled to half share in the property of deceased Takhat Ram. According to the plaintiffs, total extent of the property is 26.73 acres which is the disputed property in the present case.

13. It is also borne out from the pleadings of both the parties and the evidence that Basan Bai was first married to Mansingh and Takhat Ram was born out of this wedlock. Teejan Bai is the wife of Takhat Ram.

14. Though, the plaintiffs stated that Hombai falsely claimed to be the daughter of Basan Bai, defendant No.3 Basanbai has come out with the assertion that she is the daughter of Basanbai. Learned Trial Court in para 17 of its judgment has recorded a finding of fact that the plaintiff's witness Maniram has admitted in his evidence that Hombai is the daughter of Basan Bai and Ramadhin. The plaintiffs/appellants, upon appeal being filed by respondents/defendants did not file any cross-objection before the Learned Lower Appellate Court on this finding of fact. This Court has gone through the evidence of Mani Ram (PW-1) in para 22 of his evidence. This witness has stated that when Takhatram died, his mother Basan Bai was not residing with him and she was living along with one Ramadhin and Hombai is the daughter of Ramadhin. He has further deposed that Geetabai and Hombai are sisters and their mother is Basanbai and father is Ramadhin. Thus, it is plaintiffs' own evidence that Hombai was born out of relationship of Ramadhin with Basanbai. Therefore, the finding of the learned Trial Court in this regard cannot be said to

be perverse.

15. As far as proof of Will is concerned, the pleadings in the plaint, as contained in paras 5 and 12 are that Basanbai never executed any Will in favour of any person during her lifetime and the so-called Will executed in favour of Ramlal and Hombai is false, fictitious document and Basanbai never signed or affixed her thumb impression so as to say that it was voluntarily executed by her. Therefore, the Will is doubtful.

16. In the written statement of Hombai and Ramlal, it was denied that the Will dated 09.03.1983 was in any manner fictitious or false. A specific issue with regard to proof of Will was framed by learned Trial Court. Learned Trial Court recorded finding in para 18 of that judgment to the effect that the Will was doubtful. It was held in para 18 to 21 that the testimony of Daulatram(DW1) the scribe of Will deed is doubtful because his statement was also recorded before the Revenue Court and in that statement, he stated that he does not personally know Basanbai, whereas, in his Court deposition, he stated that he had known Basanbai since long. It has also been recorded that there is contradiction in the statement of Daulatram and Hombai with regard to presence of the lawyer and preparation of document. Learned Trial Court has also recorded a finding that the evidence of Arjun Das, the witness of Will deed, DW-3 shows that he is talking about some other Will because according to him, he was informed regarding Will in favour of Hombai, whereas, in the Will deed Ex.D-1 has been executed in favour of Hombai and Ramlal both.

17. Learned Lower Appellate Court reversed this finding holding that the discrepancy in the evidence of petition writer Daulatram (DW1) could not be doubted by contradicting his Court statement with the former statement said to be recorded before the Revenue Court because the witness was not confronted with this statement to elicit this contradiction and even this document was also not admitted in the evidence. This approach of learned Lower Appellate Court cannot be said to be perverse by any stretch of imagination. It appears that the statement of document writer was doubted because of the contradictions that in the Court statement, he claimed to have known Basanbai since long but in the statement made before the Revenue Court, he did not say so. Certainly, if this contradiction was to be elicited, provisions contained in 145 of the Act of 1872 required that the witness ought to be confronted with his former statement. The so called statement recorded

before the Revenue Court was not even admitted in evidence. There was no proof of the said former statement by any independent evidence. Therefore, the finding of the learned Lower Appellate Court in this regard does not suffer from any perversity.

18. As far as evidence of attesting witness Defendant No.3 is concerned, learned Lower Appellate Court has held that the witness deposed before the Court, after about 14 years of the execution of the document and he is a person of old age of 70 years. The discrepancy that in the cross-examination this witness stated that he was informed that Will was being prepared in the name of Hombai and he does not know who were other person in whose favour, Will was executed, in the absence of any other evidence on record, would have been of much more relevance. However, once the evidence of document writer (DW-1) is found to be reliable in which he says that he had prepared the Will deed as per the instructions of Basanbai, the evidence of Arjun Das (DW-3) that Will was read over to him and at that time, Basanbai was also present and that in his presence, Basanbai affixed her thumb impression and DW-3 also signed and attested the Will, clear doubt, if any, because of the discrepancy as has been noted above. As far as the legal requirement of proof of Will is concerned, the requirement of Section 63(C) of the Act of 1925 read with Section 68 of the Act of 1872 is that the Will is required to be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will. Section 68 of the Act of 1872 deals generally with proof of execution of document required by law to be attested by providing that it shall not be used as evidence until at least one attesting witness has been called for the purposes of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. The relevant provisions as contained in Sections 63(C) of the Act of 1925 and Section 68 of the Evidence Act are reproduced herein below:

Indian Succession Act, 1925

“S.63(C) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be

present at the same time, and no particular form of attestation shall be necessary.”

Indian Evidence Act, 1872

S.68. **Proof of execution of document required by law to be attested.**—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]

19. The legal requirement that the Will should be attested by two or more witnesses is fulfilled in view of the evidence of DW-3 and the Will deed, itself, which shows that there were two witnesses namely: Arjun Das and Bahal, who were the attesting witnesses. However, the requirement of law is that the witness must have seen the testator sign or affix his mark to the Will. This legal requirement has also been fulfilled in view of evidence of the Will, Arjun Das (DW-3) because, he deposed that in his presence, Basanbai had affixed her thumb impression on the Will. Not only this, he states that the Will was read over and then he put his signature in the Will. Thus, it is clear that in the presence of this witness and Basanbai, Will was read over, Basanbai affixed her thumb impression and this witness also signed the Will as one of the witnesses. Therefore, in view of the provisions contained in Section 68 of the Act of 1872, execution of Will has been proved from the evidence of one attesting witness, the finding of learned Lower Appellate Court with regard to proof of Will does not appear to be suffering from perversity more so when legal requirement of law are fulfilled. There is no evidence led by the plaintiffs that at the time of execution of Will, Basanbai was not in a fit state of mind or that the execution of Will otherwise was not voluntary or that practising fraud on her signatures were obtained at the instance of Hombai and Ramlal. As the evidence of document writer (DW-1) and attesting witness (DW-3) goes to show Will was prepared on the instruction of Basanbai by document writer, the same was read over in the presence of Basanbai and attesting witness Arjun Das and thereafter, both of them signed the document. Even though, this Court has come to the conclusion that the finding of the learned Lower Appellate

Court that Will is duly proved is in accordance with law, the other submission that if Will is not proved, whether defendant Hombai would succeed to the property of Basanbai, is also being examined.

20. Once, it is held that Hombai was daughter of Basanbai, admitted facts as stated in the plaint, itself are that after the death of Takhat Ram, a dispute had arisen between Basanbai, his mother and Teejan Bai his wife, the defendant No.3, which led to filing of a suit. In that case, the First Appellate Court granted a decree in favour of Basanbai on 22.01.1982, by which, share of Basanbai to the extent of half, was declared in favour of Basanbai. That means, Basanbai inherited this property from son, after his death. This being not in dispute, what is required to be seen is whether in order to acquire status of an absolute owner property was required to be actual possessed by Basanbai. In this regard, the legal position is very well settled by the Supreme Court in the case of **Mangal Singh & Ors. vs. Smt. Rattno (dead) by her legal representatives and another**, AIR 1967 SC 1786 and **Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva and others**, AIR 1959 SC 577.

21. In the case of **Mangal Singh (supra)**, the expression "Possessed by a female Hindu" as used in Section 14(1) of the Act of 1956 was interpreted as below :

6. [Section 14\(1\)](#) of the Act is as follows :-

"14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.-In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

The dispute in the case has arisen, because this section confers the right of full ownership on a Hindu female only in respect of property possessed by her, whether acquired before or after the commencement of the Act; and, in the present case, admittedly, the plaintiff had been dispossessed in the year 1954 and was not able to recover possession from the defendants-appellants until her death in the year 1958. It was urged on behalf of the appellants that, in order to attract the provisions of S.14(1) of the Act, it must be shown that the female Hindu was either in actual physical possession, or constructive possession of the disputed property. On the other side, it was urged that, even if a female Hindu be, in fact, out of actual possession, the property must be held to be possessed by her, if her ownership rights in that property still exist and, in exercise of those

ownership rights, she is capable of obtaining actual possession of it. It appears to us that, on the language used in S.14(1) of the Act, the latter interpretation must be accepted.

7. It is significant that the Legislature begins S.14(1) with the words "any property possessed by a female Hindu" and not "any property in possession of a female Hindu". If the expression used had been "in possession of" instead of "possessed by", the proper interpretation would probably have been to hold that, in order to apply this provision, the property must be such as is either in actual possession of the female Hindu or in her constructive possession. The constructive possession may be through a lessee, mortgagee, licensee, etc. The use of the expression "possessed by" instead of the expression "in possession of", in our opinion, was intended to enlarge the meaning of this expression. It is commonly known in English language that a property is said to be possessed by a person, if he is its owner, even though he may, for the time being, be out of actual possession or even constructive possession. The expression "possessed by" is quite frequently used in testamentary documents, where the method of expressing the property, which is to pass to the legatee, often adopted is to say that "all property I disposed of (Sic) shall pass to....."

In such documents, wills, etc., where this language is used, it is clear that whatever rights the testator had in the property would pass to the legatee, even though, at the time when the will is executed or when the will becomes effective, the testator might not be in actual, physical or constructive possession of it. The legatee will, in such a case, succeed to the right to recover possession of that property in the same manner in which the testator could have done. Stroud in his *Judicial Dictionary of Words and Phrases*, Vol. 3, at p. 2238, has brought out this aspect when defining the scope of the words "possess" and "Possessed". When dealing with the meaning of the word "possession", Stroud defines "possession" as being in two ways, either actual possession or possession in law. He goes on to say that "actual possession is when a man enters in deed into lands or tenements to him descended, or otherwise. Possession in law is when lands or tenements are descended to a man, and he has not as yet really, actually, and in deed, entered into them." In Wharton's *Law Lexicon*, 14th Edn., at p. 777, the word "possession" is defined as being equivalent to 'the state of owning or having a thing in one's own hands or power.' Thus, three different meanings are given; one is the state of owning, the second is having a thing in one's own hands, and the third is having a thing in one's own power. In case where property is in actual physical possession, obviously it would be in one's own hands. If it is in constructive possession, it would be in one's own power. Then, there is the third case where there may not be actual, physical or constructive possession and, yet, the person still possesses the right to recover actual physical possession or constructive possession; that would be a case covered by the expression "the state of owning". In fact, elaborating further the meaning of the word "possession", Wharton goes on to say that

"it is either actual, where a person enters into lands or tenements descended or conveyed to him; apparent, which is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seised; in law, when lands, etc., have descended to a man, and he has not actually entered into them; or naked, that is, more possession, without colour of right." It appears to us that the expression used in S.14(1) of the Act was intended to cover cases of possession in law also, where lands may have descended to a female Hindu and she has not actually entered into them. It would, of course, cover the other cases of actual or

constructive possession. On the language of S.14(1), therefore, we hold that this provision will become applicable to any property which is owned by a female Hindu, even though she is not in actual, physical or constructive possession of that property.

22. The expression "Possessed by a female Hindu" was the attributed wide meaning and import that it is intended to cover not only actual or constructive possession but also possession in law, i.e., property owned by Hindu Female even though, she is not in actual physical or constructive possession. Their Lordships referred with approval, view earlier taken in the case of G.T.M. Kotturuswami (supra) as below :

"9. So far as this Court is concerned, the earliest case is that of G.T.M. Kotturuswami v. S. Veeravva, (1959) Supp (1) SCR 968= (AIR 1959 SC 577). Dealing with the scope of [S. 14\(1\)](#) of the Act in that case, this Court cited from a decision of Viswanatha Sastri, J. in G. Venkavamma v. G. Veerayya, AIR1957 Andh Pra 280 and noticed the fact that in that case it was held that the word "possessed" is used in [s. 14](#) in a broad sense and, in the context, possession means the state of owning or having in one's hands or power. It was also noticed that the learned Judges of the Andhra Pradesh High Court in that case had expressed the view that even if a trespasser were in possession of the land belonging to a female owner, it might conceivably be regarded as being in possession of the female owner, provided the trespasser had not perfected his, title. Since in that case this Court was not concerned with a situation where a trespasser had actually dispossessed the female owner, the Court went on to hold: "We do not think that it is necessary in the present case to go to the extent to which the learned Judges went. It is sufficient to say that "possessed" in [s. 14](#) is used in a broad sense and, in the context, means the state of owning or having in one's hand or power." Thus, in that case decided by this Court, the broad meaning of the word "possessed" was accepted as even including cases where the state of owning the property exists. Learned counsel for the appellants, when bringing to our notice the views expressed by this Court in that case, also drew our attention to another part of the judgment, where this Court remarked: "Reference to property acquired before the commencement of the Act certainly makes the provisions of the section retrospective, but even in such a case, the property must be possessed by a, female Hindu at the time the Act came into force in order to make the provisions of the section applicable. There is no question in the present case that Veerayya acquired the property of her deceased husband before the commencement of the Act. In order that the provisions of [s. 14](#) may apply to the present case, it will have to be further established that the property was possessed by her at the time the Act came into force." Learned counsel, from these words, tried to draw an inference that this Court had laid down that [s. 14\(1\)](#) will only apply to cases where the property was possessed by the Hindu female at the commencement of the Act. We do not think that any such interpretation can be placed on the words used by this Court. [Section 14\(1\)](#) covers any property possessed by a female Hindu, whether acquired before or after the commencement of the Act. On the face of it, property acquired after the commencement of the Act by a female Hindu could not possibly be possessed by her at the commencement of the Act. This Court, when it made the comments relied upon by learned counsel, was, in fact, concerned with a case of a female Hindu, who had acquired the right to the property before the commencement of the Act, but was alleged to be no longer possessed

of it because of having adopted a son before the commencement of the Act. It was in these circumstances that the Court in that particular case was concerned with the question whether the female Hindu was possessed of the property in dispute or not at the time the Act came into force. The Court was not laying down any general principle that S.14(1) will not be attracted at all to cases where the female Hindu was not possessed of the property at the date of the commencement of the Act. In fact, there are no words used in [s. 14\(1\)](#) which would lead to the interpretation that the property must be possessed by the female Hindu at the date of the commencement of the Act. It appears to us that the relevant date, on which the female Hindu should be possessed of the property in dispute, must be, the date on which the question of applying the provisions of [S.14\(1\)](#) arises. If, on that date, when the provisions of this section are sought to be applied, the property is possessed by a female Hindu, it would be held that she is full owner of it and not merely a limited owner. Such a question may arise in her own lifetime or may arise subsequently when succession to her property opens on her death. The case before us falls in the second category, because Smt. Harnam Kaur was a limited owner of the property before the commencement of the Act, and the question that has arisen is whether Smt. Rattno was entitled to succeed to her rights in this disputed property on her death which took place in the year 1958 after the commencement of the Act.

23. It is important to note that in the aforesaid decision, it has been clearly laid down that the relevant date, on which, a female Hindu should be possessed of the property in dispute, must be the date on which the question of applying the provision of Section 14(1) of the Act of 1956 arises. If, on that date, when the provisions of this Section are sought to be applied, the property is possessed by a female Hindu in the broad sense as has been interpreted in the aforesaid two decisions, the property is said to be possessed by a female Hindu and consequently, it has to be held that she is full owner of it and not merely limited owner. It was this title and ownership of Basanbai which was declared in her favour in Civil Suit filed by her, by the First Appellate Court, which granted a decree in her favour on 22.01.1982. It is plaintiffs' own case that the appeal against this judgment and decree was also dismissed.

24. As a consequence of aforesaid discussion, it is clear that irrespective of whether or not Will is proved, it will have no effect or impact insofar as succession of Basanbai's proprietary interest to her daughter Hombai is concerned.

25. From plaintiffs' own case, sale deeds led in evidence and relied upon by the plaintiffs, all the sale deeds filed as Ex.P/1, Ex.P/2, Ex.P/3 & Ex.P/4 claim to be executed in favour of plaintiffs by Teejanbai, after grant of decree by the Appellate Court in favour of Basanbai on 22.01.1982. The first sale deed was executed by Teejanbai on 24.06.1982 vide Ex.P/2 in favour of Rohit Kumar, by which, 2 acres of land were sold. The second sale deed was executed by

Teejanbai in favour of Sagar, Bandhu, Arjun, Pawan, Gajju, all sons of Mani Ram Lodhi vide Ex.P/4 on 30.06.1982, by which, she sold 2.26 acres of land. The third sale deed was executed by Teejanbai on 04.10.1982 vide Ex.P/1 in favour of Sonabai, by which, Teejanbai sold 8.35 acres of land. Thus, under the aforesaid three sale deeds, Teejanbai sold 12.61 acres of land. As Teejanbai was entitled to only half share in the property of late Takhat Ram/her husband, according to the plaintiffs, Takhatram was holding 26.73 acres of land. Thus, Teejanbai was entitled to 13.36 acres of land as her share and it is only to that extent that she could sell or dispose off the property as she liked.

26. Teejanbai, however sold large chunk of land admeasuring 8.21 acres to Neelkanth vide Ex.P/3 on 05.10.1982 which was clearly in excess of her share. Having sold 12.61 acres of land only 0.75 acres was left in her hand. All these sale deeds, were executed by Teejanbai during lifetime of Basanbai because, as per admitted pleadings and documents on record, Basanbai died on 01.03.1984. It is not a case where Teejanbai sold the property in favour of plaintiffs after death of Basanbai. Thus, sale deeds were executed during lifetime of Basanbai when Basanbai was having half share in the property along with Teejanbai. Therefore, three sale deeds dated 24.06.1982 Ex.P/2, 30.06.1982 Ex.P/4 and 04.10.1982 Ex.P/1 would confer valid title on Rohit Kumar, Sagar, Bandhu, Arjun, Pawan, Gajju, and Sonabai. However, sale deed executed in favour of Neelkanth on 05.10.1982 vide Ex.P/3 would be valid only to the extent of 0.75 acres. The said sale deed in excess of 7.46 acres would therefore be null and inoperative in law as Teejanbai had no authority to sell undivided share of Basanbai.

27. It is neither in the pleading nor in the evidence led by the plaintiffs as to how the plaintiffs Dwarika Prasad and Baldau, sons of Gariba Lodhi are entitled to a decree. These plaintiffs have not even entered the witness box (check up) nor any sale deed executed by Teejanbai or Basanbai in their favour has been led in the evidence. Therefore, there is no basis for claim of plaintiffs Dwarika Prasad and Baldau.

28. Once, it is proved that Hombai was the daughter of Basanbai and that Basanbai was possessed of and entitled to half share in the property of her deceased's son Takhat Ram by virtue of appellate decree dated 22.01.1982 and which she was possessed of on the date of her death i.e. on 01.03.1984, her interest would devolve, in case of female Hindu dying intestate, in accordance with the Rule and order of succession as provided in Section 15 of

the Act of 1956 which reads as below :

“S.15. General rules of succession in the case of female Hindus.— (1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—
 (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
 (b) secondly, upon the heirs of the husband;
 (c) thirdly, upon the mother and father;
 (d) fourthly, upon the heirs of the father; and
 (e) lastly, upon the heirs of the mother.
 (2) Notwithstanding anything contained in sub-section (1),—
 (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and
 (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

29. According to Section 15(1)(a) of the Act of 1956, the property would firstly devolve upon sons and daughters which includes children of any pre-deceased son or daughter and the husband. That means the sons, daughters and husband will take in equal share. As Basanbai was survived only by one daughter Hombai, her interest in the property inherited from her son, but for Will, would have devolved upon Hombai as she happens to be the sole successor in terms of Section 15(1)(a) of the Act of 1956. However, in the present case, this Court has held that the Will is also duly proved therefore, interest of Basanbai in the property would be taken by both Hombai and Ramlal in the manner described in the Will executed by Basanbai.

30. In the result, substantial question of law as framed is answered in the manner that the learned Lower Appellate Court did not commit any perversity in recording finding that the Will executed by Basanbai in favour of Hombai and Ramlal was duly proved. Further there is no perversity in the finding recorded by the Courts below that Hombai was the daughter of Basanbai. Thirdly, the finding of learned Courts below that after death of Basanbai, her property would devolve upon her daughter Hombai suffers from patent illegality because once Will is proved, Hombai will take her share in the property according to the Will along with Ramlal and not alone by way of succession under Section 15 of the Act of 1956. Therefore, to that extent, it is held that after death of Basanbai, Hombai and Ramlal both succeeded to the property of Basanbai as per the stipulation of the Will Ex.D/1 executed by Basanbai.

31. However, in view of the above finding of this Court, as far as claim of appellants/plaintiffs Sagar, Bandhu, Arjun, Pawan, Gajju, Rohit Kumar and Sonabai are concerned, deserves to be decreed because while executing three sale deeds on 24.06.1982, 30.06.1982 & 04.10.1982, Teejanbai had full right to sell her share to the extent of 13.36 acres. However, claim of Neelkanth is decreed only to the extent of 0.75 acres and not in respect of entire 8.21 acres which he claims to have purchased from Teejanbai under sale deed dated 05.10.1982 vide Ex.P/3. Therefore, to that extent, Neelkanth's claims is dismissed and decree is granted only in respect of 0.75 acres of land by virtue of sale deed dated 05.10.1982 vide Ex.P/3.

32. Claim of plaintiffs Dwarika Prasad and Baldau are dismissed as they have failed to establish valid acquisition of title in disputed property. Their suit is therefore dismissed.

33. In the result, the appeal is partly allowed and impugned judgment and decree to that extent of dismissing claim of plaintiffs is set aside. While suit of Dwarika Prasad and Baldau is dismissed, claim of all other plaintiffs is partly decreed as below :

A.(i) The Plaintiffs-Sagar, Bandhu, Arjun, Pawan, Gajju are declared owner and title holder of 2.26 acres of land comprised in Khasra No.146 & 147/1 by virtue of sale deed dated 30.06.1982 vide Ex.P/4.

(ii) The Plaintiff-Rohit Kumar is declared as owner and title holder of 2 acres of land comprised in Khasra No.195 & 198 by virtue of sale deed dated 24.06.1982 vide Ex.P/2.

(iii) The Plaintiff-Neelkanth is declared as owner and title owner of only 0.75 acres of land comprised in Khasra Nos. 195, 207/1 & 215 by virtue of sale deed dated 05.10.1982 Ex.P/3. In respect of remaining land i.e. 7.46 acres, the sale deed is null and inoperative in law and does not confer any valid title on Neelkanth.

(iv) The Plaintiff-Sonabai is declared owner and title holder in respect of 8.35 acres of land comprised in Khasra Nos.44, 45, 50, 55, 99, 207/2 & 224 by virtue of sale deed dated 04.10.1982 vide Ex.P/1.

(B) A permanent Injunction is also granted in favour of aforesaid plaintiffs and against the defendants that they shall not in any manner themselves or through any other person interfere with peaceful enjoyment of possession of

the land in respect of which plaintiffs' title has been declared.

(C) The Plaintiffs' claim and relief sought in the suit that order dated 04.08.1992 of the Sub-Divisional Officer and order dated 30.01.1993 of the Additional Commissioner, Raipur be declared illegal, is dismissed.

(D) The plaintiffs' claim and relief that Will deed dated 09.03.1983 executed by Basanbai in favour of Hombai and Ramlal be declared illegal, is also dismissed.

(E) The parties shall bear their respective costs.

34. Let Appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge