

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.182 of 2004

Mayaso (Dead) Through LRs

(Plaintiff)

(a) Dashnath, S/o late Manglu, aged about 66 years,

(b) Devsharan, S/o late Manglu, aged about 63 years,

(c) Fulsai, S/o Late Manglu, aged about 55 years,

All are R/o Village Pathakpur, Post Kalyanpur, P.S. Pratappur, Tahsil
and District Surajpur (C.G.)

---- Appellants

Versus

1. Baijnath @ Khedu (Dead) Through LR

(A) Parano, D/o Late Baijnath @ Khedu, aged about 65 years, R/o
Village Pathakpur, P.S. Pratappur, Tahsil & District Surajpur (C.G.)2. Dalsai, S/o Mansai, Caste Gond, aged about 50 years, Occupation
Agriculture, R/o Village Pathakpur, P.S. Jai Nagar, Tah. Surajpur,
Distt. Surguja (C.G.)3. Rudni, W/o Jagir, D/o Mansai, Caste Gond, aged about 60 years,
Occupation House Wife, R/o Chhattarpur, P.S. Ambikapur, Tahsil
Surajpur, Distt. Surguja (C.G.)4. State of Chhattisgarh, through Collector, Surguja, Ambikapur (C.G.)
(Defendants)

---- Respondents

For Appellant/Plaintiff: Mr. Ashok Kumar Shukla, Advocate.

For Respondents No.1 and 2 / Defendants No.1 and 2: -

Mr. Sunil Tripathi, Advocate.

For Respondent No.3 / Defendant No.3: -

None present, though served.

For Respondent No.4 / State: -

Miss Shivali Dubey, Panel Lawyer.
-----Hon'ble Shri Justice Sanjay K. AgrawalJudgment On Board

03/09/2019

1. This second appeal under Section 100 of the CPC preferred by the sole plaintiff / appellant herein was admitted by formulating the following substantial questions of law: -

“1. Whether the two Courts below were justified in holding that the Gift Deed was not properly executed so as to reject the claim of the plaintiff?

2. Whether the finding of the two Courts below is contrary to the evidence which have come on record and also on not proper appreciation of the admitted facts from the defendants themselves regarding the execution of the Gift Deed?”

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

2. The suit property which is mainly agricultural land total ad-measuring 39.02 acres was settled in favour of Jitanram Gond, S/o Shivcharan Gond in Surguja Settlement as per the Final Report of the Settlement Officer on the Original Survey and Settlement Operations in the Surguja State for the year 1937-46 vide Ex.P-15. He had two daughters namely, Kayaso and Mayaso and one son Mansai. On 1-2-1955, he executed two registered gift deeds one in favour of Kayaso, who was plaintiff in the connected civil suit which is the subject matter of S.A.No.186/2004 [being decided along with this second appeal, but by a separate judgment] gifting 4.86 acres + 9.65 acres of land in her favour and another in favour of the plaintiff herein – Mayaso gifting 7.40 acres of land in her favour. Thereafter, Jitanram Gond – original holder passed away on 12-12-1963. Mansai had two sons Dalsai and Baijnath who were defendants before the trial Court and defendant No.3 is daughter of Mansai.

After the death of Mansai, dispute arose between the plaintiff and sons of Mansai – defendants No. 1 & 2 herein with respect to the property which was gifted by Jitanram Gond in favour of plaintiff herein Mayaso and Kayaso – plaintiff in the connected suit which is the subject matter of S.A.No.186/2004, which necessitated the institution of an action by plaintiff Mayaso only for permanent injunction against the defendants seeking decree for permanent injunction restraining from interfering with their peaceful possession stating inter alia that they are in possession since 1-2-1955 and they are cultivating the suit land, but the defendants are trying to dispossess her, as they entered into the field owned by the plaintiff on 31-10-1982 and attempted to harvest the crop sown by her. During the pendency of suit, the plaintiff amended the plaint by order dated 25-10-1985 and also sought declaration of title over the suit land and amended that the suit property has been gifted by her father, as it was the self-acquired property of her father Jitanram Gond and therefore she is also entitled for declaration of title and permanent injunction as well, as already claimed and parties are aboriginal tribe being governed by the old Hindu law. The plaintiff also asserted that she is the gharjihin daughter of Jitanram Gond, therefore, even otherwise, she is entitled for share in the property of her father.

3. The defendants filed their written statement and in para 3(a) of the written statement, they have specifically admitted that the suit property was originally owned by Jitanram Gond who died on 12-12-1963 and after his death, father of defendants No.1 & 2 –

Mansai succeeded the suit property being the exclusive title holder and the only successor of Jitanram Gond and also setup the plea of adverse possession, as they are in possession for last 35 years.

4. In consequence of the plaintiff having amended the plaint and setup her title seeking declaration of title on the basis of gift deed, the defendants also amended their written statement and inserted para 6(a) in the written statement stating inter alia that the suit property was the ancestral property of Jitanram Gond and part of coparcenary property and therefore Jitanram Gond being one of the coparceners under the Mitakshara Law had no power to gift his undivided share, as he was not the sole surviving coparcener and gift by said Jitanram Gond being one of the coparceners is void ab initio and as such, by the said gift deed, the plaintiff had acquired no title in her favour and therefore she is not entitled for declaration of title and permanent injunction.
5. Upon consideration of oral and documentary evidence, the trial Court by its judgment & decree dated 27-9-1999, dismissed the suit, but it was set aside in appeal preferred by the defendants, by the first appellate Court on 19-4-2001 and the matter was remanded back to the trial Court for disposal afresh in accordance with law. This time, again, the trial Court by its judgment & decree dated 14-5-2003 dismissed the suit holding and finding inter alia that parties are aboriginal tribe by caste and the suit property was ancestral property of Jitanram Gond and that was part of coparcenary property, therefore, Jitanram Gond being one of the coparceners had no right and authority to make a gift of his

undivided share in favour of the plaintiff, therefore, the gift made in favour of the plaintiff is invalid and void and further held that even otherwise, gift (Ex.P-1) in favour of the plaintiff by her father has not been proved in accordance with law.

6. Feeling aggrieved and dissatisfied with the judgment & decree of the trial Court dismissing the suit, the plaintiff preferred first appeal under Section 96 of the CPC in which the plaintiff remained unsuccessful necessitating the preferring of this second appeal under Section 100 of the CPC in which the substantial questions of law have already been formulated, which have been set-out in the opening paragraph of this judgment for ready reference.

7. Mr. Ashok Kumar Shukla, learned counsel appearing on behalf of the appellant / plaintiff, would submit as under: -

1. The suit property was settled in favour of Jitanram Gond – father of the plaintiff vide Ex.P-15 pursuant to the Final Report on the Original Survey and Settlement Operations in the Surguja State and therefore that would be his separate property and as such, it is a separate property which can be the subject matter of a valid gift under Section 122 of the Transfer of Property Act, 1882, as it was duly proved by examining one of the attesting witnesses Aasanram (PW-1) and the gift was accepted, as admittedly, the plaintiff is in possession of the land which was gifted which is implied acceptance of gift, as she came in possession during the lifetime of Jitanram Gond after making the gift.

2. Since the suit property was admittedly and undisputedly, the

self-acquired property or separate property of Jitanram Gond, therefore, it cannot be the coparcenary property, as coparcenary was never constituted as the suit property was the self-acquired property of Jitanram Gond by way of Government grant. Therefore, the finding recorded by both the Courts below in this regard being perverse and contrary to record is liable to be set-aside and the suit be decreed in favour of the plaintiff.

8. Mr. Sunil Tripathi, learned counsel appearing for respondents No.1 & 2 / defendants No.1 & 2, would submit that both the Courts below are absolutely justified in dismissing the suit instituted by the plaintiff by recording a finding which is supportable in law, as though the suit land was settled in favour of Jitanram Gond vide Ex.P-15, but it was granted for the benefit of entire family as at that time, Jitanram Gond, son of Jitanram Gond – Mansai and his two grand-sons Dalsai & Baijnath constituted the coparcenary and admittedly, in a coparcenary property, one of the coparceners had no right to make gift of his undivided share and such a gift made by such coparcener is void ab initio. He placed reliance upon the judgment of the Supreme Court in the matter of Thamma Venkata Subbamma (dead) by LR v. Thamma Rattamma and others¹. In alternative, he would further submit that execution and attestation of gift Ex.P-1 has not been proved in accordance with Section 68 of the Indian Evidence Act, 1872, as Aasanram (PW-1) who is attesting witness of the gift has admitted serious discrepancy in the

¹ (1987) 3 SCC 294

gift allegedly made by Jitanram Gond in favour of the plaintiff and even the acceptance of gift that too during the lifetime of Jitanram Gond as mandated under Section 122 of the Transfer of Property Act, 1882 has not been proved. Therefore, the appeal deserves to be dismissed by answering the substantial questions of law in favour of the defendants and against the plaintiff.

9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records of both the Courts below with utmost circumspection.
10. In order to answer the substantial questions of law, it would be appropriate to consider the nature of property which Jitanram Gond had in his hands by way of Government grant i.e. by Surguja State Settlement vide Ex.P-15 and some part of which he gifted by way of Ex.P-1 to the plaintiff herein.
11. The suit land is at Village Pathakpur, District Surguja, now District Surajpur. Pursuant to the Final Report prepared on the Original Survey and Settlement Operations in the Surguja State (1937-1946) by the Settlement Officer, the persons who were holding the lands as raiyati were granted patta in the shape of record of rights finally prepared and published under the authority of the State on 11-12-1941 by the order of the Settlement Officer, Surguja State vide Ex.P-15 and Jitanram Gond was granted patta of 39.02 acres of land. Certified copy of the said grant in favour of Jitanram Gond is at Ex.P-15 and in favour of his brother Bhaiyaram Gond is at Ex.P-16. Ramsai Gond – another brother of Jitanram Gond was also granted patta vide Ex.P-17. All three are sons of Shivcharan

Gond as such, all three brothers were granted land separately by the Settlement Officer in the Surguja State Settlement. In fact, Ex.P-14 is the record of rights finally prepared and granted after settlement in favour of the plaintiff's father which was also recorded in his name vide Ex.P-14 in which her father's name Jitanram Gond was recorded as per the jamabandi 1954-55 as bhumidhari, as the M.P. Land Revenue Code, 1954 came into force with effect from 12-2-1955 and after death of Jitanram Gond on 12-12-1963, his son's name Mansai was recorded in Ex.P-14, on 20-1-1964 in place of Jitanram Gond, which is the copy of adhikar abhilekh prepared in accordance with Section 115 of the M.P. Land Revenue Code, 1954 (for short, 'the Code of 1954'). At this stage, it would be appropriate to notice the provisions contained in Sections 103, 105(6) and 115 of the Code of 1954.

12. Section 103 of the Code of 1954 provides for record of rights which reads as under: -

“103. Record-of-rights—A record-of-rights shall be prepared and maintained for every village and such record shall include the following particulars :—

a) the names of all persons, other than tenants, who are holders of land ;

b) the names of all occupancy tenants and protected lessees ;

c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto ;

d) the rent or land revenue, if any, payable by such persons ; and

e) such other particulars as may be prescribed.

13. Sub-section (6) of Section 105 of the Code of 1954 states that an

entry in the records of rights shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor.

14. Section 115 of the Code 1954 provides record of rights at commencement of the Code which reads as under: -

“115. Records-of-rights at commencement of Code.—

(1) Until a record-of-rights for the Central Provinces and merged territories is prepared in accordance with the provisions of section 103 the jamabandi for the agricultural year immediately preceding the year in which this Code comes into force, shall, so far as it contains the particulars specified in section 103, be deemed to be the record-of-rights.

(2) The jamabandi referred to in sub-section (1) shall be published in the village in such manner as may be directed by the Collector.

(3) Objections may be filed to any entry in the jamabandi and the provisions of section 105 shall apply to the objections as they apply to an entry in the mutation register and the entries shall be corrected after certification as provided for in that section.”

15. As such, record of rights prepared under the Code of 1954 shall be presumed to be true until the contrary is proved or new entry is lawfully substituted therefor.

16. Thus, it appears that Ex.P-14 has been prepared on the basis of jamabandi 1954-55, which was prepared in accordance with Section 103 read with Section 115 of the Code of 1954 and it has presumptive value and presumed to be correct under Section 105(6) of the said Code.

17. The Supreme Court in the matter of Chhote Khan and others v. Malkhan and others² while dealing with entry in record of rights prepared under Section 31 of the Punjab Land Revenue Act has held that the same has presumptive value under Section 44 of the said Act.

18. Similar proposition has been laid down by the Constitution Bench of

² AIR 1954 SC 575

the Supreme Court in the matter of Raja Rajinder Chand v. Mst.

Sukhi and others³ in which it was held as under: -

“19. It is not disputed that under S. 31 of the Punjab Land Revenue Act, 1887, Wajib-ul-arz is a part of the record-of-rights, and entries made therein in accordance with law and the provision, of Ch. IV of the Act and the rules thereunder, shall be presumed to be true (vide S. 44). The Wajib-ul-arz or village administration paper is a record of existing customs regarding rights and liabilities in the estate; it is not to be used for the creation of new rights or liabilities. (see para 295 of the Punjab Settlement Manual, pp.146-147, 1930 ed.) ...”

19. Thus, it is quite vivid that Ex.P-14 is an entry prepared on the basis of jamabandi 1954-55, which was prepared in accordance with Section 103 read with Section 115 of the Code of 1954 and it will be presumed to be true unless contrary is established. Apart from this, Jitanram Gond was bhumidhari of the said lands under of Code of 1954.

20. Now, the question is, whether the aforesaid lands which were held by Jitanram Gond firstly as Government grant and thereafter he became bhumidhari under the Code of 1954, can be termed as self-acquired property or the nature of property will be the ancestral property in his hands?

21. In order to decide the said question, paragraph 228 of Mulla Hindu Law (23rd Edition) can be referred pertinently herein which states as under: -

“§ 228. **Separate property.**—Property acquired in any of the following ways is the separate property of the acquirer, it is called 'self-acquired' property, and is subject to the incidents mentioned in § 222:

(1) xxx xxx xxx

(2) xxx xxx xxx

3 AIR 1957 SC 286

(3) *Government grant*.—Property granted by government to a member of a joint family is the separate property of the donee, unless it appears from the grant that it was intended for the benefit of the family.”

22. The learned author (Mulla) in the next page 342 (23rd Edition) has also remarked that self-acquired property, in its technical sense, means property obtained by a Hindu without any detriment to ancestral property as to the property described in clauses (1)-(3) and (5) of paragraph 228.

23. As such, the property acquired by Government grant even to a member of joint family would be separate property of the donee. (See Katama Natchiar v. Rajah of Shivagunga⁴ and Sri Mahant Govind v. Sitaram⁵.)

24. Mayne's Hindu Law & Usage (16th Edition) revised by Justice Ranganath Misra in para 308 while dealing with the grants made by the Government observed: Estate conferred by Government in the exercise of their sovereign power becomes the self-acquired property of the donee, whether such gifts are absolutely new grants, or only the restoration to one member of the family of property previously held by another but confiscated, unless some contrary intention appears from the grant, or the conduct of the donee and the other members of his family shows that they treated it as joint family property.

25. Now, let us consider what is the meaning of coparcenary. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment)

4 (1863) 9 MIA 539, pp 543, 610

5 (1899) 21 All 53 : 20 IA 195

Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and it enlarges by deaths and diminishes by births in the family. It is not static. **Coparcenary Property** — Means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor, (See **Rohit Chauhan v. Surinder Singh**⁶.)

26. Coparcenary is a narrower body than a joint family and consists of only those persons who have taken, by birth, an interest in the property of the holder for the time being and who can enforce a partition whenever they like. It commences with a common ancestor and includes a holder of joint property and only those males in his male line who are not removed from him by more than three degrees. The primary meaning of the word “survive” is to live beyond the life or extent of or to outlive; but it also has a secondary meaning namely, to live after, and as used in the phrase, “If either of my said sons should die without leaving a child which shall survive him”. The word “survivor” usually applies to the longest lives of two or more partners or trustees, and has been applied in some cases to the longest liver or joint tenants and legatees, and to others having a joint interest in any property. (See **Sathyaprema Manjunatha Gowda v. CED**⁷.)

27. Reverting to the facts of the present case in light of the aforesaid

⁶ (2013) 9 SCC 419

⁷ (1997) 10 SCC 684

legal position qua the nature of property, it is quite vivid that the suit property was granted in favour of Jitanram Gond – father of the plaintiff vide Ex.P-15 by the Settlement Officer pursuant to the Surguja Settlement which he was holding on the date of making gift in favour of his daughter – the plaintiff herein and thus, it would be his (Jitanram Gond's) separate property / self-acquired property, as the property was received on Government grant to the plaintiff's father – Jitanram Gond.

28. There is one more reason for holding that the suit property is the self-acquired / separate property of Jitanram Gond. The defendants in their written statement in para 3(a) have clearly admitted the fact that the suit property was owned by Jitanram Gond who died on 12-12-1963 and thereafter, Mansai succeeded as exclusive owner of the suit property. Both the Courts below have taken the said fact as undisputed fact. Thus, the defendants having already judicially admitted the fact of suit property being the separate or self-acquired property of Jitanram Gond in the written statement filed before the trial Court cannot turn around and take an inconsistent plea that the suit property was the coparcenary property / ancestral property finding their stand taken in the written statement unpalatable and that cannot be made subject matter of gift by Jitanram Gond.

29. In this regard, Section 58 of the Indian Evidence Act, 1872 may be noticed herein which provides as under: -

“58. Facts admitted need not be proved.—No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or

which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

30. Section 58 of the Evidence Act postulates that things admitted need not be proved. The Supreme Court in the matter of Nagindas Ramdas v. Dalpatram Iccharam alias Brijram and others⁸ has clearly held that admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

31. Thus, the fact remains that the property was the self-acquired / separate property of Jitanram Gond as held and as per the admission made by the defendants. Both the Courts below have erroneously concluded that the suit property was the coparcenary property of Jitanram Gond, as such, the findings recorded by both the Courts below are perverse and liable to be set-aside qua the nature of property held by Jitanram Gond, father of the plaintiff.

32. Now, the question would be, whether he (Jitanram Gond) could

⁸ AIR 1974 SC 471

have competently made a gift of the said property in favour of his daughter, the plaintiff herein?

33. Chapter XVIII of Mulla Hindu Law (23rd Edition) further defines 'Gift' in paragraph 355 stating that gift consists in the relinquishment (without consideration) of one's own right (in property) and the creation of the right of another; and the creation of another man's right is completed on that other's acceptance of the gift, but not otherwise. The learned author further in paragraph 356 states what property may be disposed of by gift. Sub-paragraph (1) of paragraph 356 states as under: -

“§ 356. What property may be disposed of by gift.—
(1) A Hindu, whether governed by *Mitakshara* or *Dayabhaga* School, may dispose of by gift his separate or self-acquired property, subject in certain cases to the claims for maintenance of those whom he is legally bound to maintain (§ 220). Reference may be made to sections 18-22 of the Hindu Adoptions and Maintenance Act, 1956.”

34. Section 122 of the Transfer of Property Act, 1882 defines gift as under: -

“122. “Gift” defined.—“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.”

35. Section 123 of the Transfer of Property Act, 1882 provides how the gift is to be made. It states as under: -

“123. Transfer how effected.—For the purpose of making a gift of immoveable property, the transfer must

be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.”

36. Section 123 of the Transfer of Property Act, 1882 has been applied to gifts by Hindus by Section 129 of that Act. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

37. At this stage, the decision in Thamma Venkata Subbamma (supra), relied upon by Mr. Tripathi, learned counsel for defendants No.1 & 2, may be noticed herein in which the Supreme Court has held that a coparcener under the Mitakshara law has no power to gift his undivided share unless he is the sole surviving coparcener and gift by such coparcener is void ab initio. In the instant case, it has already been held that the suit property was not the coparcenary property, but it was the self-acquired / separate property of Jitanram Gond. Therefore, the said principle of law laid down in that case would not apply to the facts of the present case and is clearly distinguishable to the facts of the present case.

38. The plaintiff / appellant herein has pleaded that her father has executed gift deed in her favour on 1-2-1955 (Ex.P-1) gifting 7.40 acres of land in presence of two attesting witnesses namely Aasanram (PW-1) and Piluram. Aasanram (PW-1) has been examined to prove the attestation of gift and he has been consistent

in his statement and has proved the execution and attestation of gift except certain discrepancies pointed out by the defendants which are not very material by which it cannot be held that that the gift in favour of the plaintiff by Jitanram Gond is not proved in accordance with law. The only submission that has been seriously pressed into service by Mr. Tripathi, learned counsel for defendants No.1 & 2, is that there is no acceptance of gift during the lifetime of Jitanram Gond by the plaintiff, therefore, it does not satisfy the requirement of Section 122 of the Transfer of Property Act, 1882, to make the alleged gift valid.

39. One of the essential conditions for a valid gift as enumerated in Section 122 of the Transfer of Property Act, 1882 is gift must be accepted by or on behalf of the donee. In the present case, registered gift of immovable property ad-measuring 7.40 acres of land was made in favour of the plaintiff. In sum and substance, acceptance of gift may be proved and may be inferred by the donee's possession of the property, actual or formal; or the donee's possession of the deed of gift. (See Anandi Devi v. Mohan Lal⁹, Balamukund v. Bhagwan Das¹⁰ and Man Bhari v. Naunidh¹¹.)

40. Likewise, in the matter of Kalyanasundaram v. Karuppa¹², it has been held that if the deed of gifts is delivered by the donor to the donee, on delivery of the deed, there is an acceptance of the transfer within the meaning of this section and the gift becomes effectual, subject to being stamped and registered as required by

9 AIR 1932 All 444

10 1894 ILR 16 All 185

11 ILR (1882) 4 All 40

12 AIR 1927 PC 42

law.

41. Reverting to the facts of the present case, in light of the aforesaid proposition of law, it is quite vivid that the original gift deed (Ex.P-1) has been produced by the plaintiff before the trial Court and para 1 of the gift deed recites that from the date of gift, the plaintiff is complete owner of the suit property and also possession has been stated to be handed-over to her (plaintiff). Likewise, defendant No.1 Baijnath, who is son of Mansai, in his statement as DW-1 (paragraph 20) clearly admitted that the plaintiff is in possession of the suit land gifted to her by late Jitanram Gond. He has further admitted that the land was owned by the plaintiff's father and the plaintiff's name has also been recorded in the revenue records which is apparent from Exs.P-2 & P-3, as acceptance is also shown by the mutation of the donee's name in the relevant records (see **Tara Sohuani v. Raghunath Sahu**¹³.)

42. The aforesaid facts of the plaintiff's name having been recorded in the revenue records and the original gift deed having been produced and marked as Ex.P-1 reciting delivery of possession in her favour and admission of the defendants that the plaintiff is in possession of the suit land, only and only demonstrate and indicate that the plaintiff is in exclusive possession of the suit land. This goes to show that the gift made by her father was accepted by her and the gift deed has already been acted upon immediately thereafter and the plaintiff is in possession and her name is recorded in the revenue records.

13 AIR 1963 Orissa 50

43. In view of the aforesaid analysis, I am of the considered opinion that both the Courts below have concurrently and legally erred in holding that the suit property was the coparcenary property being the ancestral property which Jitanram Gond was not competent and empowered to make a gift in favour of his daughter, the plaintiff herein; rather it is held that the suit property was the separate / self-acquired property of the plaintiff's father Jitanram Gond by Government grant (Ex.P-15) which he was competent and validly executed gift deed Ex.P-1 in favour of the plaintiff – her daughter and execution and attestation of gift is duly proved in accordance with law. Therefore, both the Courts below have concurrently erred in non-suiting the plaintiff. Accordingly, the judgment & decree passed by the Courts below are hereby set-aside and the suit of the plaintiff / appellant is hereby decreed.

44. The substantial questions of law are answered accordingly.

45. It is ordered and declared that the plaintiff is the title holder of the suit lands mentioned in Schedule A of the plaint and private defendants / his LRs are restrained from interfering with her peaceful possession in any manner. Schedule A of the plaint be made part of the decree. The defendants will bear their cost(s) as well as the cost(s) of the plaintiff.

46. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge