

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 154 of 2007**

1. Somari Bai, D/o Manrakhan Cheek, aged 60 years, R/o Village- Bangurkela, Tahsil- Kunkuri, District- Jashpur (C.G.)
2. Sumati Bai, D/o Manrakhan Cheek, aged 58 years, Caste- Cheek, R/o Village- Ranpur, Tahsil- Bagicha, District- Jashpur (C.G.)

---- Appellants**Versus**

1. Tene, S/o Jageshwar, aged 45 years, Caste- Cheek, R/o Village- Nonpani, Tahsil- Bagicha, District- Jashpur (C.G.)
2. Hiramani Bai, D/o Khirodhar, aged 29 years, Caste- Cheek, R/o Village- Kaliba, Tahsil- Kunkuri, District- Jashpur (C.G.)
3. Benjamin Tirkey, S/o Jhadi, aged 65 years, Caste- Oraon, R/o Village- Kaliba, Tahsil- Kunkuri, District- Jashpur (C.G.)
4. The State of Chhattisgarh, through Collector, Jashpur, District- Jashpur (C.G.)

---- Respondents

For Appellants : Mr. S.S. Paikra, Advocat appears on behalf of Mr. A.K. Prasad, Advocate.

For State/ Respondent No. 4 : Mrs. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****28/06/2019**

1. The case is heard on admission.
2. This second appeal is preferred against judgment/decreed dated 29.04.2006 passed in Civil Appeal No. 7A/2005 by District Judge, Jashpur, District- Jashpur (C.G.) arising out of judgment/decreed dated 12.12.2002 passed in Civil Suit No. 13A/1993 by the Court of Civil Judge Class-II, Jashpur, District- Jashpur (C.G.) wherein both the courts below have dismissed the suit filed by the appellants for declaration of title,

possession and cancellation of sale-deed executed by one Hulasi Bai in favour of respondent No. 3- Benjamin Tirkey.

3. The suit property was owned by Manrakhan who was husband of Hulasi Bai. Name of Hulasi Bai was recorded in the property in question after death of Manrakhan. The appellants being daughters of Manrakhan claimed over the property on the basis of document Ex. P/5 dated 07.05.1948. As per version of the appellants, the document Ex. P/5 is a document of partition and in alternate, it is a document of gift, therefore, appellants are entitled to get share in the property in question.
4. As per version of the appellants, the document Ex. P/5 was executed on 07.05.1948 and in the said document, it is not mentioned as to how many share holders of the property and how much is the total property. This document is not clear about property and share holders, therefore, both the court below recorded finding that it is not a document of partition.
5. The document is not gift deed because as per Section 123 of the Transfer of Property Act, 1882, a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of donor, and attested by at least two witnesses. Looking to the document, both the courts below have decided that it is not a gift deed because the same is unregistered document written in a plane paper. Such document is also not a will because there is no such pleading and it is not proved as per Section 63 (c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.
6. On 07.05.1948, the daughters had no right over the property of father during lifetime of father. The appellants did not claim right over the

property after death of Manrakhan and it was recorded in the name of their mother Hulasi Bai. Hulasi Bai was sole owner of the property as per record of right till she executed the sale-deed in favour of respondent No. 3- Benjamin Tirkey in the year 1992.

7. The suit was filed on 05.03.1993 and on that date, it was found that Hulasi Bai was sole owner of the property and she had all the right to alienate the property in question. The said document Ex. P/5 was not in possession of the appellants and as per version of Trilochan (PW-2) (Para 5), the document was in his possession and he gave the same to the appellants after dispute arose between the parties, therefore, it is recorded by the court below that execution of this document itself is doubtful because no one examined in support of the document whose name is mentioned as witnesses namely Baya Cheek & Gabe Uraon. The document was in possession of Trilochan who is not a party of the document, therefore, the document was not presented from proper custody.
8. Looking to the entire record, both the courts below were right in holding that Hulasi Bai being the sole owner of the property had all the right to execute sale-deed and document dated 07.05.1948 (Ex.P/5) is not passing title on the appellants, therefore, there is no substance in the present appeal.
9. In view of the above, the instant second appeal is liable to be and is hereby dismissed as motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge