

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.410 of 1999**

1. Ram Sajiwan (Died) Through Lrs. Nil
 - 1.1 - (A). Ramesh Kumar Gupta S/o Late Shri Ram Sajeewan Aged About 60 Years R/o Sanjay Ward Near Marwadi Kuwa, Bhatapara, Tehsil Bhatapara, District Balodabazar Bhatapara., District : Balodabazar-Bhathapara, Chhattisgarh
 - 1.2 - (B). Suresh Kumar Gupta S/o Late Shri Ram Sajeewan Aged About 56 Years R/o Sanjay Ward Near Marwadi Kuwa, Bhatapara, Tehsil Bhatapara, District Balodabazar Bhatapara., District : Balodabazar-Bhathapara, Chhattisgarh
 - 1.3 - (C). Dinesh Kumar Gupta S/o Late Shri Ram Sajeewan Aged About 51 Years R/o Sanjay Ward Near Marwadi Kuwa, Bhatapara, Tehsil Bhatapara, District Balodabazar Bhatapara., District : Balodabazar-Bhathapara, Chhattisgarh
 - 1.4 - (D). Mukesh Kumar Gupta S/o Late Shri Ram Sajeewan Aged About 49 Years R/o Sanjay Ward Near Marwadi Kuwa, Bhatapara, Tehsil Bhatapara, District Balodabazar Bhatapara., District : Balodabazar-Bhathapara, Chhattisgarh
 - 1.5 - (E). Smt. Manorama Gupta D/o Late Shri Ram Sajeewan Aged About 62 Years W/o Shri Rishi Kumar Gupta, R/o Ganga Chowk, Baniya Para, Raigarh, District Raigarh Chhattisgarh., District : Raigarh, Chhattisgarh
 - 1.6 - (F). Smt. Rama Gupta D/o Late Shri Ram Sajeewan Aged About 58 Years W/o Shri Raj Kumar Gupta, 58 Years, R/o Bilaspur Road, Kargi Road Kota, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
 - 1.7 - (G). Smt. Sarita Gupta D/o Late Shri Ram Sajeewan Aged About 54 Years W/o Shri Dinesh Gupta, R/o Lallu Ram Colony, Transport Nagar, Korba, District Korba Chhattisgarh., District : Korba, Chhattisgarh
2. Ishwarlal Dead Through Lrs Nil
 - 2.1 Smt. Sadhna Gupta W/o Late Ishwarlal Gupta, Aged About 65 Years R/o Nagpur, Maharashtra
 - 2.2 Smt. Shradha Gupta Aged About 28 Years Nagpur, Maharashtra
 - 2.3 Ku. Namita Gupta D/o Late Ishwarlal Gupta, Aged About 22 Years Nagpur, Maharashtra
 - 2.4 Ku. Khushi Gupta D/o Late Vivek Gupta, Aged About 6 Years C/o Smt. Sadhana Gupta, Nagpur, Maharashtra
 - 2.5 Ku. Pallavi Gupta D/o Late Ishwarlal Gupta, Aged About 20 Years Nagpur, MaharashtraPlaintiffs

---- Appellants/Plaintiffs**Versus**

1. Smt. Shanti Bai W/o Peelu Beldar, Aged About 40 Years R/o Nehru Ward Bahatapara, Tah. Balodabazar, Distt. Raipur M.P. Now Chhattisgarh, District : Raipur, Chhattisgarh
2. Gulabchand Golchha S/o Dahichand Golchha, Aged About 45 Years R/o Nehru

Ward, Bhatapara, Tah. Balodabazar, Distt. Raipur M.P. Now Chhattisgarh,
District : Raipur, Chhattisgarh

3. Sukhi Bai Died - Deleted
4. Purushottamdas Dead Through Lrs
 - 4 (A). Deleted Smt. Asha Devi As Per Honble Court Order Dated 03.04.2017
 - 4 (B) Ramesh Kumar S/o Late Purushottam Das Aged About 45 Years
 - 4 (C) Mahesh Kumar S/o Late Purushottam Das Aged About 42 Years
 - 4 (D) Suresh Kumar S/o Late Purushottam Das Aged About 40 Years
 - 4 (E) Rajesh Kumar S/o Late Purushottam Das Aged About 37 Years
 - 4 (F) Vijay Kumar S/o Late Purushottam Das Aged About 33 Years
5. Hetram Soni Dead Through Lrs
 - 5.2 Tejpal Soni S/o Late Hetram Soni, Aged About 55 Years R/o Sanjay Ward, Bhatapara, District Raipur, Chhattisgarh
 - 5.3 Goverdhan Soni S/o Late Hetram Soni, Aged About 42 Years R/o Sanjay Ward, Bhatapara, District Raipur, Chhattisgarh
 - 5.4 Ghanshyam Soni S/o Late Hetram Soni, Aged About 40 Years R/o Sanjay Ward, Bhatapara, District Raipur, Chhattisgarh
 - 5.5 Giridhari Soni S/o Late Hetram Soni, Aged About 35 Years R/o Sanjay Ward, Bhatapara, District Raipur, Chhattisgarh
6. Ram Dulari Bai W/o Jawaharlal Gupta, Aged About 43 Years R/o Near Bajrang Mandir, Juna Bilaspur M.P. Now ChhattisgarhLegal Representative Of Deceased Plaintiff No.3 Ramkali Bai, District : Bilaspur, Chhattisgarh
7. Smt. Shyam Bai Dead Through Lrs
 - (A). (Deleted) Shiv Kumar Gupta As Per Honble Court Order Dated 13.05.2019.
 - 7(i) Vijay Kumar Gupta S/o Late Shri Ganesh Prasad Gupta Aged About 62 Years R/o Village - Malhaar, Ganesh Kirana Store, Main Road , Malhaar, P.S. Masturi, Distt. - Bilaspur Chhattisgarh.
 - 7(ii) Ajay Kumar Gupta S/o Late Shri Ganesh Prasad Gupta Aged About 45 Years R/o Village - Malhaar, Ganesh Kirana Store, Main Road , Malhaar, P.S. Masturi, Distt. - Bilaspur Chhattisgarh.
8. Ku. Savitri Bai D/o Late Shri Mahavir Prasad Gupta, Aged About 33 Years R/o Nehru Ward, Tah. Bhatapara, Distt. Raipur M.P. Now Chhattisgarh, District : Raipur, Chhattisgarh
9. Smt. Suman Gupta Aged About 36 Years R/o Nehru Ward, Bhatapara, Distt. Raipur M.P. Now Chhattisgarh, District : Raipur, Chhattisgarh

---- Respondents

Present:-

Shri Prafull Bharat, counsel for appellant/s.

Shri Vivek Tripathi, counsel for respondent No.2.

Shri H.B. Agrawal, Senior Advocate with Ms. Shefali Arora, counsel for respondents No.4(B) to 4(E)

Shri Anand Kumar Gupta, counsel for respondent No.6(A) to 6(D).

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

JUDGMENT

23/10/2019

Heard.

1. This second appeal is preferred against the impugned judgment and decree dated 26-02-1999 passed by the First Additional District Judge, Baloda Bazar, District Raipur in Civil Appeal No.117-A/1991 arising out of the judgment and decree dated 28-10-1985 passed by the learned Trial Court in Civil Suit No.14-A/1981, by which, the learned lower appellate Court has reversed the judgment and decree of the trial Court and dismissed the suit of the plaintiff.

2. Appellant/plaintiff filed a suit seeking decree of possession and permanent injunction against the defendants on the pleadings, inter alia, that property in dispute originally belonged to one Lal Singh in occupancy. The plaintiff's case was that Mahadev, under various sale deeds (registered/unregistered) purchased different parcel of land held in occupancy of tenancy by defendant No.1 from time to time and came into possession of the property in dispute. These transactions of sale, according to the plaintiff, had taken place between Mahadev and Lal Singh before coming into force of M.P./C.G. Land Revenue Code, 1954. According to the plaintiff, by virtue of sale made by Lal Singh in favour of Mahadev, Mahadev became occupancy tenant of the disputed property and then acquired status of Bhumidhari and finally acquired the status of Bhoomiswami. A part of the subject land was also sold in

favour of Baldev Prasad, brother of Mahadev Prasad and uncle of Radha Mohan. Further case of the plaintiff was that one of the subject land was purchased by Mahadev from Bihari Satnami by registered sale deed. The cause of action arose for the plaintiff, when on 16-06-1964, the defendant No.1 started agricultural work on the disputed lands, except land situated in Khasra No.16/1(kha), on which, house was situated. According to the plaintiffs, they having been put in possession by the defendant under sale transaction, were entitled to protect their possession, as such, the defendant No.1 is not entitled to interfere with their possession.

3. The defendant No.1 filed written statement, denying all the allegations and stated that he had never executed sale deed. He stated that the plaintiff's claim of sale transaction was only sham transaction and there were only loan transaction between the plaintiffs and defendant. He has also stated that the documents, if any, executed were only security towards repayment of loan.

Defendants No.2 to 4 filed separate written statement and contested the case of the plaintiff and according to them, they were title holder and in possession of the disputed property. Other defendants also contested the case of the plaintiff. The learned trial Court, after framing issues, allowed the parties to lead oral as well as documentary evidence and recorded a finding that by virtue of aforesaid sale deeds, though, unregistered and under various sale transactions, Mahadev and other purchasers were put in possession of the property in dispute and therefore, the plaintiff being successors in interest are entitled to retain the possession. On these findings, decree was granted in favour of the plaintiff.

4. Aggrieved by the aforesaid judgment and decree, one of the defendants namely Shanti Bai, successor in interest of Lal Singh filed an appeal impleading

the plaintiff and other defendants as respondents. The learned lower appellate Court allowed the appeal and reversed the judgment and decree of the trial Court and dismissed the suit.

5. This appeal was admitted for hearing on 11-08-2017, on the following substantial questions of law:-

- (i) “Whether the First Appellate Court is justified in reversing the findings of the trial Court without meeting the reasonings recorded by the trial Court for granting the decree to the plaintiffs?
- (ii) “Whether the First Appellate Court was justified in holding that the sale deed Ex.P-14, P-16 & P-17 was only for collateral security for a loan and was not a real sale and/or whether the sale deed Ex.P-14, P-16 & P-17 being an unregistered one could not have been admitted in evidence ?
- (iii) Whether, the Appellants became the owner of the land by virtue of holding their possession under Section 158 of M.P./C.G. Land Revenue Code, 1959?
- (iv) Whether, the First Appeal was fully abated as Purushottam Gupta & Smt. Sukhi Bai (Respondents No.4 & 3) died on 29-03-1990 & 28-09-1990 respectively and they were not brought on record?”

6. Fourth substantial question of law framed by this Court is whether, the First Appeal was fully abated as Purushottam Gupta & Smt. Sukhi Bai (Respondents No.4 & 3) died on 29-03-1990 & 28-09-1990 during the pendency of appeal. As far as this substantial question of law is concerned, whether the appeal before the lower appellate Court was itself abated or not, learned counsel for the appellant addresses on this question of law first, because consideration of other questions of law would arise only when it is held that the appeal of Shanti Bai, the defendant, did not fully abate upon death of Purushottam Gupta and Smt. Sukhi Bai during the pendency of this appeal.

7. Learned counsel appearing for the appellant would argue that the records of the Court below clearly shows that during the pendency of the appeal, when Purushottam Gupta died on 29-03-1990 and Smt. Sukhi Bai died on

28-09-1990, which fact was known to the appellant-Shanti Bai, as is clear from order sheet dated 27-07-1996 and 28-01-1999, even then, no steps were taken by the appellant-Shanti Bai to bring on record the legal heirs of the deceased-defendants. His argument is that once appeal of Shanti Bai was abated as against Purushottam Gupta and Sukhi Bai, the appeal itself fully abated, because success of the appeal might lead to Court to come to a decision, which would be in conflict with the decision between Shanti Bai, the appellant and the deceased respondent namely Purushottam and Sukhi Bai. In support of his submission, learned counsel for the appellant placed reliance on the decision of the Supreme Court in the case of ***State of Punjab vs. Nathu Ram¹ and Jaladi Suguna (Deceased) through L.R.s vs. Satya Sai Central Trust and others²***.

8. On the other hand, learned counsel for the respective respondents would submit that the consequences of not bringing on record the legal heirs of the deceased-respondents in appeal namely, Purushottam Gupta and Sukhi Bai would be only partial abatement of the appeal and not abatement of the appeal as a whole, because, even if the appeal of Shanti Bai (appellant in First Appeal) is abated as against Purushottam Gupta and Sukhi Bai, the judgment and decree that could be passed which actually have been passed by the learned lower appellate Court, cannot be said to be affirming the judgment and decree passed by the learned trial Court, which become final as between the First Appellant and the deceased-respondents therein. According to them, the judgment and decree passed by the learned trial Court was against all the defendants including Purushottam Gupta and Sukhi Bai and therefore, the effect would be that the plaintiff could still continue to enjoy the fruits of the decree against their legal heirs, though it would amount to decree against Sukhi Bai, in whose favour, the learned lower appellate Court passed the judgment and

1 AIR 1962 SC 89

2 (2008) 8 SCC 521

decree. It is also argued that in such a situation, the decree is severable and it cannot be said that without operating judgment and decree against Purushottam Gupta and Sukhi bai, it could not be operated against the remaining defendants, who were respondents in the pending appeal before the lower appellate Court.

9. I have heard learned counsel for the parties and perused the records and considered the submissions made before this Court as far as fourth substantial questions of law is concerned.

10. The plaintiff's claim that title in respect of the property in dispute, by virtue of aforesaid sale transaction executed in favour of Mahadev, Baladev and Radha Mohan, finally vested in them and plaintiffs succeeded to the property as title holder was not only contested by the defendant Lal Singh, but also other defendants including Purushottam Gupta and Nathmal. After death of Nathmal, his widow Sukhiya Bai was impleaded in the proceedings. Purushottam Gupta and Sukhi Bai contested the respondents-defendant's claim. Learned trial Court granted decree in favour of the respondents, including Purushottam Gupta and Sukhi Bai. Aggrieved by the aforesaid judgment and decree, only Shanti Bai filed an appeal impleading plaintiffs, Purushottam Gupta and Sukhi Bai as respondents. Admittedly, Purushottam Gupta and Sukhi Bai died during the pendency of the appeal, as is clear from the order sheets which have been taken on record by the learned lower appellate Court. The appeal, as against them, therefore stood abated. The question, which arise for consideration is whether the appeal, as against other respondents, would also abate so as to say that the appeal would wholly abate against all the respondents or only partial abatement as against Purushottam Gupta and Sukhi Bai.

The effect of abatement of appeal of Shanti Bai against Purushottam Gupta and Sukhi Bai is that the judgment and decree passed by the lower

appellate Court as against Purushottam Gupta and Sukhi Bai would attain finality, in respect of the subject matter of the suit, for which, the plaintiff sought declaration in his favour against them and thus will also be entitled to enjoy possession and decree of injunction. However, in case, the appeal of the plaintiff-Shanti Bai is allowed by the learned lower appellate Court, the plaintiff's suit, as against Shanti Bai would be dismissed. In the written statement filed by Lal Singh as also Nathmal and Purushottam, in respect of the property in dispute, all of them claimed their title and possession. This would eventually lead to conflicting decree. In such a situation, the appeal will abate as a whole.

11. The legal position in this regard has been considered by Their Lordships in the Supreme Court in the case of ***State of Punjab vs. Nathu Ram*** (supra), as below:-

4. "It is not disputed that in view of O.22 R. 4, Civil Procedure Code, hereinafter called the Code, the appeal abated against Labhu Ram, deceased, when no application for bringing on record his legal representatives had been made within the time limited by law. The Code does not provide for the abatement of the appeal against the other respondents. Courts have held that in certain circumstances, the appeals against the co-respondents would also abate as a result of the abatement of the appeal against the deceased respondent. They have not been always agreed with respect to the result of the particular circumstances of a case and there has been, consequently, divergence of opinion in the application of the principle. It will serve no useful purpose to consider the cases. Suffice it to say that when O. XXII, r. 4 does not provide for the abatement of the appeals against the co-respondents of the deceased respondent, there can be no question of abatement of the appeals against them. To say that the appeals against them abated in certain circumstances, is not a correct statement. Of course, the appeals against them cannot proceed in certain circumstances and have therefore to be dismissed. Such a result depends on the nature of the relief sought in the appeal.

5. The same conclusion is to be drawn from the provisions of O. 1, r. 9, of the Code which provides that no suit shall be defeated by reason of the misjoinder or non-joinder of parties and the Court may, in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. It follows, therefore, that if the Court can deal with the matter in controversy so far as regards the rights and interests of the appellant and the respondents other than the deceased respondent, it has to proceed with the appeal and decide it. It is only when it is not possible for the Court to deal with such matters, that it will have to refuse to proceed further with the appeal and therefore

dismiss it.

6. The question whether a Court can deal with such matters or not, will depend on the facts of each case and therefore no exhaustive statement can be made about the circumstances when this is possible or is not possible. It may, however, be stated that ordinarily the considerations which weigh with the Court in deciding upon this question are whether the appeal between the appellants and the respondents other than the deceased can be said to be properly constituted or can be said to have all the necessary parties for the decision of the controversy before the Court. The test to determine this has been described in diverse forms. Courts will not proceed with an appeal (s) when the success of the appeal may lead to the Court's coming to a decision which be in conflict with the decision between the appellant and the deceased respondent and therefore which would lead to the Court's passing a decree which will be contradictory to the decree which had become final with respect to the same subject matter between the appellant and the deceased respondent; (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who are still before the Court and (c) when the decree against the surviving respondents, if the appeal succeeds, be ineffective, that is to say, it could not be successfully executed."

12. Having considered the aforesaid legal position, the Supreme Court thus held that out of three contingencies, one would be when success of the appeal may lead to the Courts coming to a decision which would be in conflict with the decision between the appellant and the deceased respondents.

13. In a subsequent decision in the case of ***Jaladi Suguna (deceased) through L.Rs.*** (supra), the Supreme Court held, as under:-

14. "When a respondent in an appeal dies, and the right to sue survives, the legal representatives of the deceased respondent have to be brought on record before the court can proceed further in the appeal. Where the respondent-plaintiff who has succeeded in a suit, dies during the pendency of the appeal, any judgment rendered on hearing the appeal filed by the defendant, without bringing the legal representatives of the deceased respondent - plaintiff on record, will be a nullity. In the appeal before the High Court, the first respondent therein (Suguna) was the contesting respondent and the second respondent (tenant) was only a proforma respondent. When first respondent in the appeal died, the right to prosecute the appeal survived against her estate. Therefore it was necessary to bring the legal representative/s of the deceased Suguna on record to proceed with the appeal."

14. In view of above consideration, I am of the opinion that the appeal of the appellant-Shanti Bai is abated as a whole and it is not a case of partial

amendment against Purushottam Gupta and Sukhi Bai. Therefore, fourth substantial question of law framed by this Court is answered in affirmative. As a result thereof, there is no need for this Court to examine other substantial questions of law. The impugned judgment and decree passed by the learned trial Court is nullity and is therefore, set aside by declaring it to be nullity. However, it would be open for the respondents to move appropriate application, if so advised, for setting aside the amendment of the appeal. It would also be open for Shanti Bai/her legal heirs to apply for setting aside abatement before the learned lower appellate Court. Let appellate decree be drawn accordingly.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE