

HIGH COURT OF CHHATTISGARH, BILASPUR  
Second Appeal No.141 of 2007

1. Rama, S/o-Shankar Lal Satnami, Aged About-57 years (At present 59 years)
  2. Vinod, S/o-Rama, Aged About-36 years (At present 38 years)
  3. Khemlal, S/o-Rama, Aged About-33 years, (At present 35 years)
  4. Chandraprakash, S/o-Rama, Aged About-26 years (At present 28 years)
- All resident of Nawapara, Mungeli, Tahsil-Mungeli, Distt. Bilaspur (CG)

(Defendants)

---- Appellants

Versus

1. Mangatinbai, W/o-Anta, Caste-Satnami, Aged About-59 years, (at present 61 years), R/o-Navapara, Mungeli, Tahsil-Mungeli, Distt. Bilaspur (CG)

(Plaintiff)

2. State of Chhattisgarh, Through Collector Bilaspur (CG)

---- Respondents

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|---------------------------|-------------------------------|
| For Appellants/Defendants | : Mr.Ajit Singh, Advocate     |
| For Res.No.1/Plaintiff    | : Mr.Vivek Tripathi, Advocate |
| For Respondent No.2       | : Ms Shivali Dubey, P.L.      |

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Hon'ble Shri Justice Sanjay K. Agrawal  
Judgment on Board

08/11/2019

1. The second appeal preferred by the appellants herein/defendants was admitted for hearing by formulating the following substantial questions of law:-

"1. Whether the first appellate court was justified in holding plaintiff is entitled for  $\frac{1}{2}$  share of the suit property ?

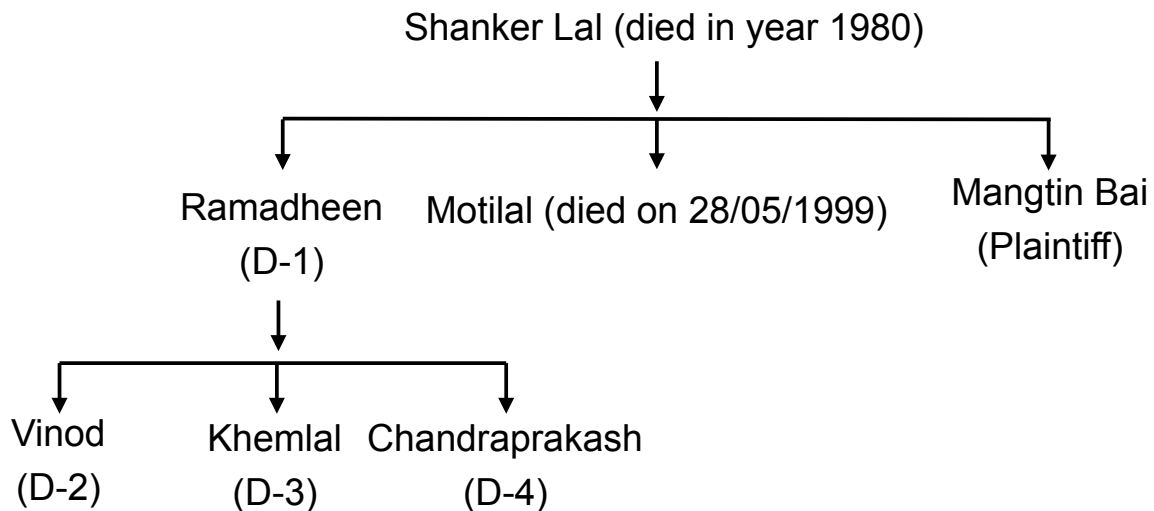
2. Whether the first appellate court was justified in holding suit property described in Schedule-B as ancestral property of Shankar Lal, father of the plaintiff and defendant No.1 ?

3. Whether Will deed dated 07.05.1990 executed

by late Motilal in favour of defendant No.2 to 4 is valid to the extent of his share in the suit property ?"

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

2. The following genealogical tree will demonstrate the relationship among the parties:-



3. Plaintiff-Mangtinbai, daughter of Shankar Lal, filed a civil suit on 26.4.2001 against her brother Rama-defendant No.1 and his three sons i.e. defendants No.2 to 4 stating inter-alia that the suit properties shown in Schedule 'A' and 'B' of the plaint situated at village Hedsapur & Town Mungeli, Tahsil-Mungeli were ancestral properties of his father Shankar Lal, who died in the year 1980 and her brother Motilal died issueless on 28.5.99, as such, she is entitled for 1/2 share in the suit property and the Will dated 7.5.1999 allegedly executed by Motilal in favour of defendants No.2 to 4 is null and void as at the time of death Motilal was suffering from paralysis and cancer and

therefore, he did not make valid Will in favour of defendants No.2 to 4 on 7.5.1999 as he died on 28.5.99 and mutation made in favour of defendants No.2 to 4 is also not binding on the plaintiff.

4. The defendants denied the claim of the plaintiff by filing joint written statement and pleaded that the plaintiff is already married and is staying with her husband in her in-laws house and the suit property to the extent of share of Mangtin Bai has already been bequeathed in favour of defendants No.2 to 4 by registered Will dated 7.5.1999. It is not self-acquired property of Shankar Lal and Defendant No.1- Rama and his brother Motilal both have acquired the property from some land left by their father, as such, the plaintiff is not entitled for any share in the suit property.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 9.9.2005, dismissed the suit holding that only the property shown in Schedule 'A' of the plaint is ancestral property of Shankar Lal and the Will executed by Motilal in favour of defendants No.2 to 4 is duly executed and attested in accordance with law. On appeal being preferred by the plaintiff, the first appellate Court allowed the appeal and held that the property shown in Schedule 'A' and 'B' of the plaint is ancestral property of father of the

plaintiff & defendant No.1 and the Will has not been validly executed by Motilal in favour of defendants No.2 to 4, as such, each of them i.e. the plaintiff and defendant No.1 both will be entitled for 1/2 share in the suit property shown in Schedule 'A' and 'B' of the plaint. Being aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

6. Mr.Ajit Singh, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in holding that the properties shown in Schedule 'A' and "B" of the plaint are ancestral property of Shankar Lal and further unjustified in holding that the Will dated 7.5.1999 executed by Motilal in favour of defendants No.2 to 4 has not been proved in accordance with law. Even otherwise, in alternative, it was ancestral and coparcenary property of Shankar Lal with Rama and Motilal, therefore, Section 6 of the Hindu Succession Act, 1956 (hereinafter called as "the Act of 1956") would apply and therefore, the plaintiff would not be entitled for 1/2 share in the suit property, as such, the appeal deserves to be allowed in toto or in alternative, share of plaintiff-Mangtin Bai be reduced

as per Section 6 of the Act of 1956.

7. On the other hand, Mr.Vivek Tripathi, learned counsel for respondent No.1/plaintiff, would submit that the first appellate Court is absolutely justified in holding that properties shown in Schedule 'A' and 'B' of the plaint are ancestral properties of Shankar Lal and also submit that finding of the trial Court that the property shown in Schedule 'A' is ancestral property of Shankar Lal was not even challenged by the defendants. He would also submit that the Will has rightly been held to be not proved by the first appellate Court. He would also submit that the judgment and decree of the first appellate Court is in accordance with law and no interference is called for.
8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

(For the sake of convenience, **substantial question of law No.2** is taken first for consideration)

**Answer to substantial question of law No.2:-**

9. The plaintiff pleaded in her plaint that the suit property is self-acquired property / ancestral property of her father shown in Schedule 'A' and 'B' appended with the plaint, which the defendants refuted by holding that the property shown in Schedule 'B' was

the property purchased from joint family funds of defendant No.1 and his brother Motilal. However, the trial Court after appreciating oral and documentary evidence available on record has held that the suit property described in Schedule 'A' of the plaint is ancestral property of father of the plaintiff and defendant No.1 and that finding was not even challenged by the defendants by filing any appeal or cross-objection, as such, the property described in Schedule 'A' of the plaint is ancestral property of Shankar Lal and said finding is re-affirmed.

10. Now, question for consideration would be, whether the property shown in Schedule 'B' of the plaint is the property purchased from joint family funds or it is ancestral property in the hands of the parties and earlier held by their father Shankar Lal. The plaintiff in para-1 of the plaint and in para-3 of her statement under Order 18 Rule 4 of the CPC has clearly stated that the property shown in Schedule 'A' and 'B' is ancestral property, but a careful perusal of statement of plaintiff-Mangtin Bai would show that she has not been even effectively cross-examined to hold that the suit property was not ancestral property of the parties and it is self-acquired property of Motilal and Rama, defendant No.1. Defendant No.1 in his statement under Order 18 Rule 4 of the CPC has stated that the suit property is not ancestral

property, it is the property earned jointly by both brothers i.e. he and Motilal, but no further evidence has been brought on record to establish that the suit property is the property which they have purchased from their own income. No document demonstrating that they have purchased the property from their joint income has been brought on record. No evidence has been brought on record to hold that the suit property was not ancestral property particularly with regard to the property shown in Schedule 'B' of the plaint, which is under challenge. Not a single document has been brought on record on behalf of defendant No.1 to establish that the suit property was not ancestral property and it was self-acquired property by defendant No.1 and his brother Motilal, as such, finding recorded by the first appellate Court that the suit property shown in Schedule 'B' of the plaint was ancestral property earlier held by Shankar Lal and thereafter, it was succeeded by his two sons Rama, defendant No.1, Motilal and daughter Mangtin Bai-plaintiff is finding of fact based on evidence available on record. The said finding is re-affirmed. Accordingly, the substantial question NO.2 is answered holding that the first appellate Court is absolutely justified in holding that the suit property shown in Schedule 'B' appended with the plaint is ancestral property of Shankar Lal and succeeded by the parties.

**Answer to substantial question of law No.3:-**

11.As it has already been held that the suit property was ancestral property of Shankar Lal and Motilal had also share in the suit property along with his brother defendant No.1. Motilal is said to have executed the Will dated 7.5.999 in favour of defendants No.2 to 4 of his share, which has been specifically denied by the plaintiff. In order to prove the Will, out of four attesting witnesses namely Pardeshi, Kalpa, Kali Ram and Piritram, two attesting witnesses Piritram and Kaliram have been examined. Pirit Ram (DW-2) in his statement under Order 18 Rule 4 of the CPC has stated that Motilal has executed the Will as instructed and it was prepared by scribe Deepak Kumar Awasthy (DW-4), it was read over and thereafter Motilal has made his thumb impression and thereafter he, Kaliram and Pardeshi signed on the Will and thereafter, it was registered. A careful perusal of statement of this witness would show that he has not stated that they have signed the Will in presence of Motilal, testator of the Will and Motilal, testator of the Will, had seen them signing the Will, which is mandatory requirement of Section 63(c) of the Indian Succession Act, 1925. Likewise, other witness Kaliram (DW-3) has stated that he, Piritram and Pardeshi were present at the time of execution of Will by Motilal and has named Kalpa that he has signed the Will. He has not stated

that Motilal signed the Will in their presence and testator Motilal seen them signing the Will. Likewise, scribe Deepak Kumar Awasthy (DW-4) has clearly stated that at the time of execution of Will, Motilal was suffering from paralysis and he was aged about 85 years.

12. Considering the finding of the first appellate Court in light of statements of attesting witnesses, it cannot be held that finding of the first appellate Court holding that the Will has not been proved in accordance with law is a finding, contrary to record or perverse. In the considered opinion of this Court, the first appellate Court has rightly held that the Will executed by Motilal in favour of defendants No.2 to 4 is not proved in accordance with law and said finding is re-affirmed hereby.

**Answer to substantial question of law No.1:-**

13. It is the case of the plaintiff that the property shown in Schedule 'A' and 'B' of the plaint was ancestral property in the hands of Shankar Lal, her father, he had two sons namely, Rama-defendant No.1 and Motilal, who died on 28.5.1999. In this regard, finding of the first appellate Court that the suit property was ancestral property in the hands of Shankar Lal and thereafter the plaintiff, defendant No.1 and his brother Motilal succeeded the suit property as already been affirmed by this Court, as

such, the suit property was coparcenary property and coparcenary consisted of Shankar Lal, Rama and Motilal.

14. At this stage, it would be appropriate to notice Section 6 of the Act of 1956 which states as under:-

**"6. Devolution of interest in coparcenary property.**-When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.-For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.-Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein."

15. After death of Shankar Lal in the year 1980, following the provisions of Section 6 of the Act of 1956, a notional partition just before the death of Shankar Lal will have to be presumed. There would, therefore, be 3 sharers in the joint family properties

and the share of each one of them would be as follows:

|             |     |
|-------------|-----|
| Shankar Lal | 1/3 |
| Rama        | 1/3 |
| Motilal     | 1/3 |

Now, share of Shankar Lal i.e.  $1/3$  will be further divided between plaintiff-Mangtin Bai, Rama-defendant No.1 & Motilal. Plaintiff-Mangtin Bai would be entitled for  $1/9 = 3/27$  share in the suit property and Rama & Motilal each of them would be entitled  $1/3 + 1/9 = 12/27$  share in the suit property. Since Motilal died issueless and the Will executed by him has been held to be invalid by the first appellate Court and that finding has been affirmed by this Court in above-stated paragraphs, therefore, his share i.e.  $1/3 + 1/9 = 12/27$  will be divided as per Section 8(b) read with Class II Entry 3 and 4 of the Act of 1956 between sister and brother i.e. plaintiff-Mangtin Bai and defendant No.1-Rama as per Section 11 of the Act of 1956 and thereby plaintiff-Mangtin Bai would be entitled for  $3/27 + 12/54 = 18/54$  share in the suit property i.e. 33.33% and defendant No.1-Rama would be entitled for  $12/27 + 12/54 = 36/54$  share in the suit property i.e. 66.67%. The substantial question of law No.1 is answered accordingly.

16. Accordingly, the judgment and decree of the first appellate Court is partly modified.

17. The second appeal is allowed to the extent

indicated hereinabove leaving the parties to bear their own cost(s).

18. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)  
Judge

B/-