

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.336 of 2009**

1. Vishun Ram son of Late Kulan aged about 55 years

2. Dilip Kumar S/o Vishun Ram, aged about 21 years,

3. Anup Kumar S/o Vishun Ram, aged about 19 years,

All are Rajwar, R/o. Vill Aamadarha, Tah. Ambikapur,
Distt. Surguja (CG)

----- Appellants/Defendants No.1 to 3**Versus**

1. Ramkishun S/o Late Kulan, aged about 50 years,

2. Ramsundar S/o Kulan, aged about 45 years,

Both are Rajwar, R/o. Vill Aamadarha, Tah. Ambikapur,
Distt. Surguja (CG)

3. Buto (Died) through LR's

3.1 Smt. Revti Bai, D/o Kushal Ram Rajwade, aged about
45 years, R/o Vill. Jharpara, Post-Lakhanpur, Tah.
Ambikapur, Distt. Surguja (CG)

3.2 Smt. Babbee D/o Kushal Ram Rajwade, aged about 40
years, R/o Vill. Bhakura, Nawapara, Tah. Ambikapur,
Distt. Surguja (CG)

3.3 Tej Bahadur S/o Kushal Ram Rajwade, aged about 35
years, R/o Vill. Sarikapara, Post Bhitthi, Tah.
Ambikapur, Distt. Surguja (CG)

4. Badka Kendi, D/o Late Kulan W/o. Adheen Ram, aged
about 40 years, Caste-Rajwar, R/o. Vill. Kanthi, Tah.
Ambikapur, Distt. Surguja (CG)

----- Plaintiffs

5. Nankendi D/o Late Kulan W/o. Bhuvneshwar, aged about
38 years, caste Rajwar, R/o Vill Sonpurkala, Tah.
Ambikapur, Distt. Surguja (CG)

6. Sukhan (died and deleted)

----- Respondents

For Appellants/Defendants No.1 to 3:

Mr.A.N.Bhakta and Mr.Vivek Bhakta,
Advocates

For Respondent No.2/Plaintiff No.2:

Mr.Awadh Tripathi and Mr.Vivek Tripathi,
Advocates

For Respondent No.8/State:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/12/2020

1.The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellants/defendants No.1 to 3 is as under:-

“Whether the first appellate Court is justified in holding that sale deed dated 01.12.2001 executed by late Kulan in favour of defendants 2 & 3 is void, by recording a finding which is perverse and contrary to the record ?

[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 suit property was originally held by Thunmun Rajwar and Kulan was his grandson. The plaintiffs are sons & daughters of Kulan and defendants No.1 & 4 are also son and daughter of Kulan, whereas defendants No.2 & 3 are sons of defendant No.1-Vishun. The plaintiffs brought a suit for declaration of title and partition in the property shown in Schedule 'A' of the plaint including the land bearing Khasra No.353/1 area 0.454 hectare stating inter-alia that it is joint family property, therefore, they are entitled for declaration of title and possession, in which

defendants NO.2 and 3 pleaded that the suit property bearing Khasra No.353/1 area 0.454 hectare was purchased by them by registered sale deed dated 01.12.2001 (Ex.D-1), therefore, they are title-holders of the suit land.

3. After appreciation of oral and documentary evidence available on record, the trial Court by its judgment and decree dated 23.12.2006 decreed the suit for declaration of title and partition except the suit land bearing Khasra No.353/1 area 0.454 hectare, against which, the plaintiffs preferred first appeal before the first appellate Court, in which the first appellate Court vide impugned judgment and decree allowed the appeal and held that the plaintiffs are also entitled for declaration of title and partition of the land bearing Khasra No.353/1 area 0.454 hectare and sale deed executed by Kulan in favour of defendants No.2 and 3 on 01.12.2001 (Ex.D-1) is void document. Questioning 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 No.1 to 3, in which substantial question of law has been formulated and set-out in opening paragraph of this

judgment for sake of completeness.

4. Mr.A.N.Bhakta, learned counsel for the appellants/defendants No.1 to 3, would submit that registered sale deed dated 01.12.2001 (Ex.D-1) executed by Kulan in favour of defendants No.2 and 3 is a valid document and it cannot be declared void as it is registered document and title has been passed in favour of defendants No.2 and 3. He would rely upon the judgment of the Supreme Court in the matter of Prem Singh and others v. Birbal and others¹ and further followed in the matter of Rattan Singh & Ors. v. Nirmal Gill & Ors.².

5. On the other hand, Mr.Vivek Tripathi, learned counsel for respondent No.2/plaintiff No.2, would submit that the first appellate Court is absolutely justified in reversing the judgment & decree of the trial Court with respect to the land bearing Khasra No.353/1 area 0.454 hectare as it is joint family property and the plaintiffs are also entitled for declaration of title and partition and sale deed was got executed influencing deceased Kulan by his son defendant No.1-Vishun as immediately thereafter Kulan has

1 (2006) 5 SCC 353

2 Civil Appeal No.3681-3682/2020, decided 16.11.2020

died on 18.12.2001, as such, the second appeal deserves to be dismissed.

6. I have heard learned counsel for the parties and considered their submissions made hereinabove and also went through the records with utmost circumspection.

7. Admittedly, the suit was filed with regard to the properties shown in Schedule 'A' of the plaint for declaration of title and partition including the land bearing Khasra No.353/1 area 0.454 hectare. The suit has been decreed for all the properties shown in Schedule 'A' of the plaint except the land bearing Khasra No.353/1 area 0.454 hectare and that decree has become final as none of the parties have questioned that decree except the land bearing Khasra No.353/1 area 0.454 hectare, which was not decreed by the trial Court in favour of the plaintiffs and was decreed by the first appellate Court in favour of the plaintiffs. Defendants No.2 and 3, who are grandsons of Kulan, have claimed that they have purchased the said land from Kulan by registered sale deed dated 01.12.2001 (Ex.D-1), whereas it has been refuted by the plaintiffs that it is fake transaction and taking advantage of ill-health of Kulan, his son defendant No.1-Vishun executed sale deed in favour of his two minor sons i.e. defendants

No.2 & 3 as no consideration has been passed, therefore, they are entitled for declaration of title and partition, which defendants No.2 and 3 have asserted that being registered document and title has already been passed, therefore, it cannot be held to be void transaction. Ex.D-1 is a registered sale deed executed by Kulan in favour of defendants No.2 & 3 and it has duly registered in accordance with the provisions of the Indian Registration Act, 1908.

8. In order to prove the said document, defendants No.2 and 3 have examined one of the attesting witness Sukhan Ram as DW-2, who has proved the execution of sale deed in favour of defendants No.2 and 3 by Kulan. Therefore, the onus of proof was on the plaintiffs who lead evidence to rebut the presumption.

9. In the matter of Prem Singh (supra), the Supreme Court has held that there is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.

10. In the present case, the plaintiffs have not been able to rebut the said presumption available in favour of defendants No.2 and 3 in whose favour a registered instrument has validly been executed. On the other hand, defendants No.2 and 3 have examined Sukhan Ram

(DW-2) who has clearly stated about the execution of registered sale deed by Kulan in their favour, though Sukhan Ram has been subjected to cross-examination, but nothing has been elicited to say that sale deed was executed by taking advantage of ill-health of Kulan, as such, execution of registered instrument of sale executed by Kulan in favour of defendants No.2 and 3 has been duly proved, therefore, the first appellate Court was absolutely unjustified in holding that by registered sale deed dated 01.12.2001 (Ex.D-1), no title has been passed in favour of defendants No.2 and 3. Merely because that immediately after two weeks Kulan who has executed sale deed in favour of defendants No.2 and 3 has died, it cannot be held that sale deed was not executed by Kulan in favour of defendants No.2 and 3, as such, the first appellate Court is absolutely unjustified in reversing the well merited finding of the trial Court on issue No.4 holding that by sale deed dated 01.12.2001 (Ex.D-1) no title has been passed in favour of defendants No.2 and 3.

- 11.** On the basis of aforesaid analysis, finding of the first appellate Court holding that sale deed dated 01.12.2001 (Ex.D-1) executed by Kulan in favour of defendants No.2 and 3 is void document, deserves to be and is hereby set-aside, as such, the judgment and

decree of the first appellate Court with respect to the land bearing Khasra No.353/1 area 0.454 hectare is hereby set-aside and that of the trial Court is hereby restored by answering the substantial question of law in favour of defendants No.1 to 3 and against the plaintiffs.

12. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

13. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Second Appeal No.336 of 2009

Vishun Ram and others **Versus** Ramkishun and others

17/12/2020	The matter is listed for correction in the judgment dated 09.12.2020. In the judgment dated 09.12.2020, inadvertently names of respondents No.7 and 8 have not been typed out in cause title, who are as under:- “7. Antu Singh, S/o. Balrup Singh, aged about 32 years, caste – Kanwar, R/o. Vill. Sakhauli, Tah. Ambikapur, Distt.Sarguja (CG). 8. State of Chhattisgarh, through the District Collector, Sarguja (Ambikapur) C.G.” Respondents No.7 and 8 be read in continuation of respondent No.6 in cause title and be made the part of judgment and decree. Rest of the judgment shall remain intact. Sd/- (Sanjay K. Agrawal) Judge
B/-	