

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 290 of 2009**

1. Robert Anthony, S/o Matul @ Mattus Anthony, Aged 45 years, R/o Tarbahar, Indira Colony, Bilaspur, Chhattisgarh.
2. Francis @ Francina Anthony D/o Matul @ Mattus Anthony, Aged about 50 years, W/o Rajendra Jha R/o Bangali Para, Sarkanda, Bilaspur, Chhattisgarh.
3. Asleena @ Anjleena Anthony, D/o Matul @ Mattus Anthony, Aged about 40 years, W/o Santu R/o Jabda Para, Sarkanda, Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs**Versus**

1. Shakuntla W/o John Anthony, Aged 55 years.
 2. Deziz Agastin Anthony, S/o John Anthony, Aged 39 years.
 3. Johnlooks Anthony, S/o John Anthony, Aged 30 years.
 4. Joseph Anthony, S/o John Anthony, Aged 32 years.
 5. Seema Anthony, W/o Arun Ekka, Aged 29 years.
- All R/o Tikrapara, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.
6. State of Chhattisgarh, through Collector, Bilaspur.
 7. Smt. Marium Anthony, Aged 45 years, W/o George Anthony, R/o Indira Colony, Tarbahar, Bilaspur, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:-	Mr. Ravindra Agrawal, Advocate
For Respondents	:-	Mr. V.K. Pandey, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

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

07/02/2020

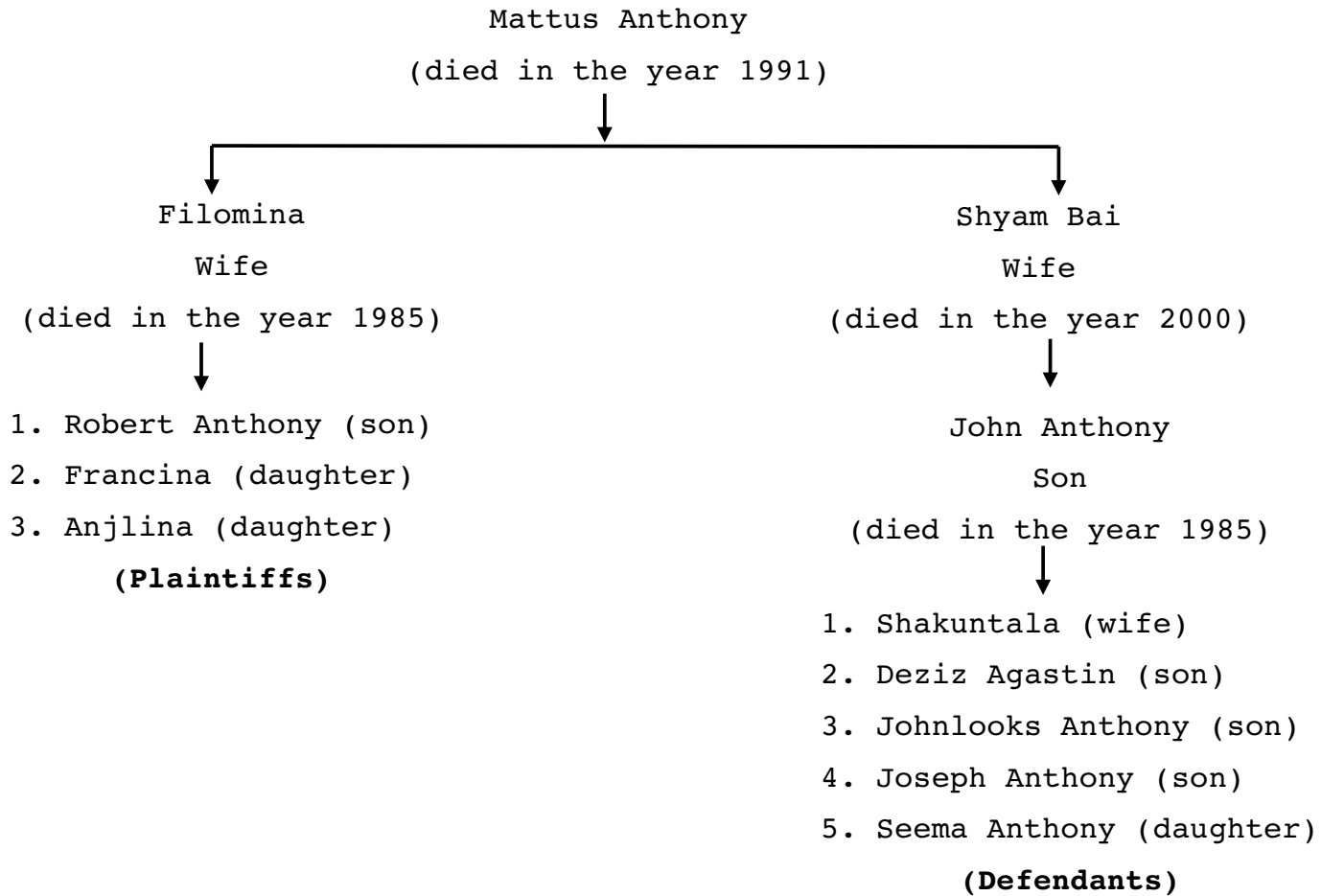
1. This second appeal preferred by the appellants/plaintiffs was admitted for hearing on the following substantial question of law :-

“1. Whether the lower appellate Court was justified and rejecting the appeal particularly in view of Section 33 to 40 of the provision of Indian Succession Act, 1925 ?

2. Whether the a sale deed which has been executed was a valid sale deed on account of the same have been executed for the property beyond the share in joint property in favour of Section 54 to 55 of Transfer of Property Act ?”

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

2. Following genealogical tree would demonstrate the relationship between the parties :-



3. Admittedly, the suit property bearing Khasra No. 690/7 admeasuring 1776 sq. ft. was purchased by the propositus herein i.e. Mattus Anthony who had two wives namely Filomina and Shyam Bai. Plaintiffs are the son and daughters of Mattus Anthony out of his wedlock with Filomina whereas defendants are wife and sons and daughter of deceased John Anthony who was the son of Mattus Anthony born out of his wedlock with Shyam Bai.

4. The dispute revolves around the suit property left by Mattus Anthony who died in the year 1991. The legal heirs of John Anthony, being defendants No. 1 to 5, sold part of the suit property in

favour of defendant No. 6 vide registered sale deed dated 18/08/2002 which necessitated filing of the suit by the plaintiffs seeking declaration of title and declaration of sale deed dated 19/08/2002 executed by defendants No. 1 to 5 in favour of defendant No. 6 as void as it is the case of the plaintiffs that defendants No. 1 to 5 had no right to alienate the suit property without consent of the plaintiffs.

5. Defendants filed their written statement and set up a plea that Mattus Anthony had already partitioned the suit property between his two wives Filomina and Shyam Bai during his lifetime, as such, plaintiffs' suit deserves to be dismissed.

6. Learned trial Court framed six issues and upon appreciation of oral and documentary evidence on record, decreed the suit vide judgment and decree dated 29/09/2008 holding that plaintiffs are entitled for $\frac{3}{4}$ share in the suit property ($\frac{1}{4}$ each) as the suit property was purchased by Mattus Anthony in the name of his two wives namely Filomina and Shyam Bai and suit property being the joint family property, defendants No. 1 to 5 had no right to alienate it in favour of

defendant No. 6 without consent of the plaintiffs, as such, the sale deed dated 19/08/2002 is not binding upon the plaintiffs.

7. On appeal being preferred by the defendants, learned first appellate Court, though held that the suit property was purchased by Mattus Anthony in the name of his two wives, therefore, the suit property belonged to them jointly, but further held that even if the suit property has not been partitioned between them, both of them would be entitled for $\frac{1}{2}$ share each and ultimately, vide judgment and decree dated 14/11/2008 allowed the appeal of the defendants by setting aside the judgment and decree of the trial Court.

8. Questioning the impugned judgment and decree of the first appellate Court dated 14/11/2008 passed in Civil Appeal No. 31-A/2008 (*Shakuntala and Ors. v. Robert Anthony and Ors.*), this second appeal under Section 100 of the CPC has been preferred by the plaintiffs in which two substantial questions of law have been framed for determination and set out in the opening paragraph of this judgment.

9. Mr. Ravindra Agrawal, learned counsel for the appellants/plaintiffs would submit that the first

appellate Court has gravely erred in reversing the well-reasoned judgment and decree of the trial Court ignoring the provisions contained under Section 25 read with Sections 35 and 33(a) of the Indian Succession Act, 1925 wherein it has clearly been mentioned that a widow would get $1/3^{\text{rd}}$ share and lineal descendants would get $2/3^{\text{rd}}$ share in the property left behind by the intestate, as such, the impugned judgment and decree passed by the first appellate Court deserves to be set aside and that of the trial Court be restored.

10. Mr. V.K. Pandey, learned counsel for the respondents/defendants would support the impugned judgment and decree passed by the trial Court and would submit that the second appeal deserves to be dismissed.

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

12. It is not in dispute that the suit property was purchased by Mattus Anthony out of his own income in the name of his two wives Filomina and Shyam Bai. There is an agreement in the finding of both

the Courts below that the suit property was held by Mattus Anthony in the names of his two wives, but the dispute remained with regard to the distribution of the share between the legal heirs of first wife Filomina and legal heirs of the second wife Shyam Bai.

13. Undisputedly, parties herein are Christians governed by Indian Succession Act, 1925. Section 33 of the Act which comes under Part V (Intestate Succession) provides as under :-

"33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred – Where the intestate has left a widow –

(a) if he has also left any lineal descendants, one-thirds of his property shall belong to his widow, and the remaining two-thirds go to his lineal descendants, according to the rules hereinafter contained;

(b) [save as provided by section 33A], if he has left no lineal descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained;

(c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow."

14. A careful perusal of Section 33(a) of the Act of 1925 would show that where the intestate has left widow as well as lineal descendants, $1/3^{\text{rd}}$ of his property would belong to his widow and the remaining $2/3^{\text{rd}}$ of his property would go to his lineal descendants. Section 25 of the Act of 1925 defines lineal consanguinity which reads as under :-

"25. Lineal consanguinity – (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line, or between a man and his son, grandson, great-grandson and so downwards in direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great grandson in the third degree, and so on."

15. The Supreme Court, in the matter of **B.C. Singh (dead) by legal representatives v. J.M. Utarid (dead) by legal representatives**¹, has clearly held that lineal consanguinity is that between two persons connected in one straight line whether descending or ascending, drawn from the propositus whereas collateral consanguinity is between two persons connected by a line which is not a straight line.

16. Now, the question for consideration in the present case would be whether 'widow' would include both the wives of Mattus Anthony and if yes, whether both of them would jointly be entitled for 1/3rd share in the suit property or only his first wife Filomina would be entitled for the entire 1/3rd share to be given to the widow ?

17. In this regard, reference may be made to the decision rendered by the Allahabad High Court in the matter of **Smt. Shephali Chatterjee and Ors. v. Smt. Kamala Banerjee and Ors.**² Wherein it has clearly been held that the word 'widow' in Section 33 of the Indian Succession Act, 1925

1 (2018) 16 SCC 585

2 AIR 1972 ALLAHABAD 531

should include 'widows' as the singular should include the plural.

18. I am in agreement with the view taken by the Allahabad High Court in **Smt. Shephali Chatterjee** (supra) that the word 'widow' used in Section 33(a) of the Act of 1925 would include widows and accordingly, in the present case, both the widows of Mattus Anthony namely Filomina as well as Shyam Bai would jointly inherit $1/3^{\text{rd}}$ share in the suit property and thereby, each one of them would get $1/6^{\text{th}}$ share in the suit property.
19. Now, the next question for consideration in the present case is, who would fall under the category of lineal descendants ?
20. Admittedly, plaintiffs No. 1 to 3 i.e. son and daughters of Mattus Anthony born out his wedlock with his first wife Filomina would definitely fall within the category of lineal descendants in terms of the provisions contained under Section 33(a) read with Section 25 of the Act of 1925, but the question is whether deceased John Anthony i.e. son of Mattus Anthony born out his wedlock with his second wife Shyam Bai would fall within the category of lineal descendant ?

21. A 'lineal descendant' as the term is used in Section 27 (now Section 33) in the Act of 1925 is the offspring of a lawful marriage and not the offspring of a union which is not that of husband and wife. (see : AIR 1931 Cal 560).

22. The Calcutta High Court in In the goods of Sarah Ezra, deceased³ has held as under :-

"The second point taken is that although illegitimate, the caveator is the child of the deceased within the meaning of the Succession Act. Mr. Roy maintains that S. 8, which speaks of an "illegitimate child," is an indication that where the word "child" is used without qualification it includes children both legitimate and illegitimate.

In my opinion this is concluded by authority. In *Smith v. Massey*⁴, Batchelor, J., held that where there were two sisters born of unmarried parents the son of one of them was not the nephew of the other for the purposes of S. 105, Succession Act, 1865, and he observed that he could not conceive that such an act which defines certain relations simpliciter intended any other relations than those flowing from lawful wedlock. If this is correct "child" cannot possibly include an illegitimate child."

³ AIR 1931 Calcutta 560

⁴ [1906] 30 Bom. 500 = 8 Bom. L.R. 322

23. As such, since John Anthony does not fall within the category of lineal descendant, therefore, plaintiffs, being the lineal descendants of Mattus Anthony, would be entitled to get $2/3^{\text{rd}}$ share in the suit property in view of Section 33(a) of the Act of 1925.

24. In view of the aforesaid legal discussion, it is held that plaintiffs will be entitled for $1/6^{\text{th}}$ + $2/3^{\text{rd}}$ share in the suit property and defendants will only be entitled for $1/6^{\text{th}}$ share in the suit property and only upto that extent, the alienation made by defendants No. 1 to 5 in favour of defendant No. 6 is held to be legal, rest otherwise is declared void. The impugned judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is restored with the aforesaid modifications.

25. The second appeal is allowed to the extent indicated herein-above with no order as to cost(s).

26. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge