

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.460 of 2007

1. Dal Sai S/o. Late Vakil, aged about 60 years,
 2. Roop Sai, S/o. Late Vakil, aged about 55 years
 3. Ram Kumar S/o. Tamsai, aged about 35 years
- All by Caste – Rajware, Occupation-Agriculture, All
R/o. Village-Khopa, P.S. Jai Nagar, Tahsil Surajpur,
District Surguja (CG)

----- Appellants/Plaintiffs

Versus

1. Amikan, S/o. Late Chaudhari, aged about 40 years,
 2. Ramaram, S/o. Late Chaudhari, aged about 38 years,
 3. Gulam Sai, S/o. Late Chaudhari, aged about 35 years,
 4. Somar Sai, S/o. Late Chaudhari, aged about 32 years,
 5. Jirjodhan, S/o. Late Tamsai, aged about 40 years,
 6. Suraj Prasad S/o. Late Tem Sai, aged about 35 years
- All by Caste – Rajware, Occupation-Agriculture,
All R/o. Village-Khopa, P.S. Jai Nagar, Tahsil
Surajpur, District Surguja (CG)
7. The State of C.G. through Collector Surguja (CG)

----- Respondents/Defendants

For Appellants/Plaintiffs : Mr.A.K.Prasad, Advocate
For Res.No.1 to 4/Defendants:Mr.R.V.Rajwade, Advocate
For Respondent No.7/State : Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

03/01/2020

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

“Whether both the Courts below were justified
in dismissing the suit by disbelieving Exhibit
P-4 and recording finding 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. Three plaintiffs filed a suit for declaration of title, permanent injunction, partition and possession and also for declaring the registered gift deed dated 27.7.59 (Ex.P-5) as null and void on the ground that it was not executed by one Lati Rajwar, grandfather of the plaintiffs and the defendants' father, though Lati Rajwar died in the year 1957, yet the defendants' father got the forged gift deed (Ex.P-5) executed by unknown person by forging the signature of Lati Rajwar and got it registered on 27.7.59. Therefore, it is null & void and also got his name mutated deleting the name of father of the present appellants/plaintiffs, which is *ex-facie* illegal and bad in law and claimed above-stated decree in his favour. In the said suit, the defendants remained *ex-parte* and did not appear to contest the suit.
3. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 26.6.2006, dismissed the suit holding that gift deed was executed by Lati Rajwar in presence of two witnesses, which was registered on 27.7.59 and the plaintiffs' father has already been separated from Lati Rajwar, as such, the plaintiffs are not entitled for any relief, which has been affirmed by the first appellate Court, against

which, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

4. Mr.A.K.Prasad, learned counsel for the appellants/plaintiffs, would submit that both the Courts below are absolutely unjustified in holding that Ex.P-5 is valid document ignoring the document Ex.P-4 in which it has been clearly recorded that Lati Rajwar has already died in the year 1957, therefore, execution of gift deed (Ex.P-5) in favour of Chaudhari, father of defendants No.1 to 4, does not arise and finding in this regard is perverse and liable to be set aside.
5. On the other hand, Mr.R.V.Rajwade, learned counsel for respondents No.1 to 4/defendants, would support the impugned judgment and decree.
6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. It is not in dispute that Lati Rajwar executed a gift deed of his property in favour of Choudhari, father of defendants No.1 to 4 on 27th June, 1957 and presented to the office of the Sub-Register, Surguja for registration, but registration could not be made

for want of deficit stamp duty and it was rectified on 27.7.59 as requisite stamp duty was paid on 01.10.58 by order of the Collector Stamps dated 13.10.58 and it was registered on 27.7.59. The said document has been branded by the plaintiffs as forged document stating that Chaudhari, father of defendants No.1 to 4, obtained the same by forging the signature of Lati Rajwar and in order to prove this fact, reliance has been placed on Ex.P-4, coy of khasra panchshala, in which details of that document is missing except stating that Lati Rajwar died in the year 1957 and patwari has made endorsement on 9.5.57, therefore, it has been inherited by Vakil, plaintiffs' father.

8. In order to prove the said document (Ex.P-4), the plaintiffs could have examined the person concerned or they could have summoned the original along with with officer from the said office and could have proved the said document, but nothing has been done in this regard. At the instance of plaintiff No.1, said document (Ex.P-4) has been marked and exhibited. Even as stated earlier, particulars of the document are absolutely missing on the top of Ex.P-4. Gift deed (Ex.P-5) is registered document executed and presented before the Sub-Registrar on 27.6.1957, in which requisite stamp duty was paid on 01.10.58, it was validated on 13.10.58 and ultimately, it was registered on 27.7.59. Gift deed dated 27.7.59 was

sought to be challenged by the plaintiffs in civil suit filed on 25.8.2004 particularly when pursuant to the gift deed, name of Chaudhari, father of defendants No.1 to 4, was entered into in revenue records deleting the name of the plaintiffs' father. Nothing has been done by the plaintiffs in this regard.

9. In that view, the trial Court as well as the first appellate Court have held that gift deed executed on 27.6.57 and registered on 27.7.59 is neither forged document nor invalid document and it was validly executed by Lati Rajwar in favour of Chaudhari, father of defendants No.1 to 4, in accordance with law. The plaintiffs ought to have made specific pleading about the date of death of Lati Rajwar and could have proved by leading clinching evidence of appropriate nature. Nothing has been done except placing reliance on Ex.P-4, which has been disbelieved by the trial Court as well as by the first appellate Court by holding that the plaintiffs have failed to prove the actual date of death of Lati Rajwar and Ex.P-5 is valid document. Concurrent finding recorded by two Courts below that registered gift deed (Ex.P-5) is valid document executed by Lati Rajwar in favour of Chaudhari, father of defendants No.1 to 4, is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. The substantial question of law is answered in favour of the

defendants and against the plaintiffs.

10. I do not find any substance in this second appeal. Accordingly, the second appeal is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

11.A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-