

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 19.05.2020Judgment delivered on: 21.05.2020Second Appeal No.108 of 2008

1. Janaki Bai, aged 70 years, W/o. Arjun Yadu, resident of village Borsi, Tahsil Bhatapara, Distt. Raipur (CG)
2. Bimla Bai, wife of Arjun Yadu, resident of village Parasthetha, Tah. Baloda Bazar, Distt. Raipur
3. Shatruhan Yadu (died) thorough his LR's:
 - (i) Devendra Kumar Yadu S/o Late Shatruhan Yadu, aged about 21 years,
 - (ii) Savitri Yadu Wd/o. Late Shatruhan Yadu, aged about 47 years,
 - (iii) Sagar Kumar Yadu S/o Late Shatruhan Yadu, aged about 13
 - (iv) Sandeep Kumar Yadu S/o Late Shatruhan Yadu, aged about 11 years,
 - (v) Ku. Rinu Yadu D/o Late Shatruhan Yadu, aged about 17 years,
 Appellant No.III, IV, V through Natural Guardian their namely mother Savitri Yadu Wd/o Late Shatruhan)
 All R/o Village – Borsi, (Dhh), Tah.-Bhatapara, Dist. Balodabazar-Bhatapara (CG)
4. Kailash son of Nathuram Yadu (Minor) through natural guardian – mother Heerabai wife of Nathuram Yadu
5. Lallu son of Nathuram Yadu (Minor) through natural guardian mother – Heerabai Yadu wife of Nathuram Yadu
6. Heera Bai wife of Nathuram Yadu,
 S.No.4 to 6 R/o. Vill Borsi, RNM Nipaniya, Tah. Bhatapara, Distt.Raipur (CG)
7. Rukmani Bai D/o. Nathuram Yadu, R/o. vill. Raipur, Tah. Bhatapara, Distt. Raipur
8. Igla Bai D/o. Nathuram, R/o. vill.Kosmanda, Tah. Bhatapara, Distt. Raipur
9. Rewati Bai D/o. Natuaram Yadu, resident of village Datrengi, Tah. Bhatapara, Distt. Raipur
10. Ratna Bai D/o. Nathuram Yadu, resident of village Datrengi, Tah. Bhatapara, Distt. Raipur (CG)

---- Appellants/Defendants

Versus

1. Ramki Bai Wd/o Late Ramji Yadu, aged about 58 years,
2. Puniya Bai daughter of Dhaniram Yadu, aged about 55 years,
Both are resident of village Borsi PHN 22, R/o. Vill. Ponsari/Bosri, Tah. Bhatapara, Distt. Raipur (CG)

----- Respondents/Plaintiffs

3. The State of Chhattisgarh through the Collector, Distt. Raipur (CG)

----- Respondents

For Appellants/Defendants:	Ms Sharmila Shinghai, Advocate
For Res.No.1&2/Plaintiffs:	Mr.H.B.Agrawal, Senior Advocate with with Mrs.Preeti Yadav, Advocate
For Res.No.3/State	: Mr.Rahul Jha, Govt.Advoacte

Hon'ble Shri Justice Sanjay K. Agrawal

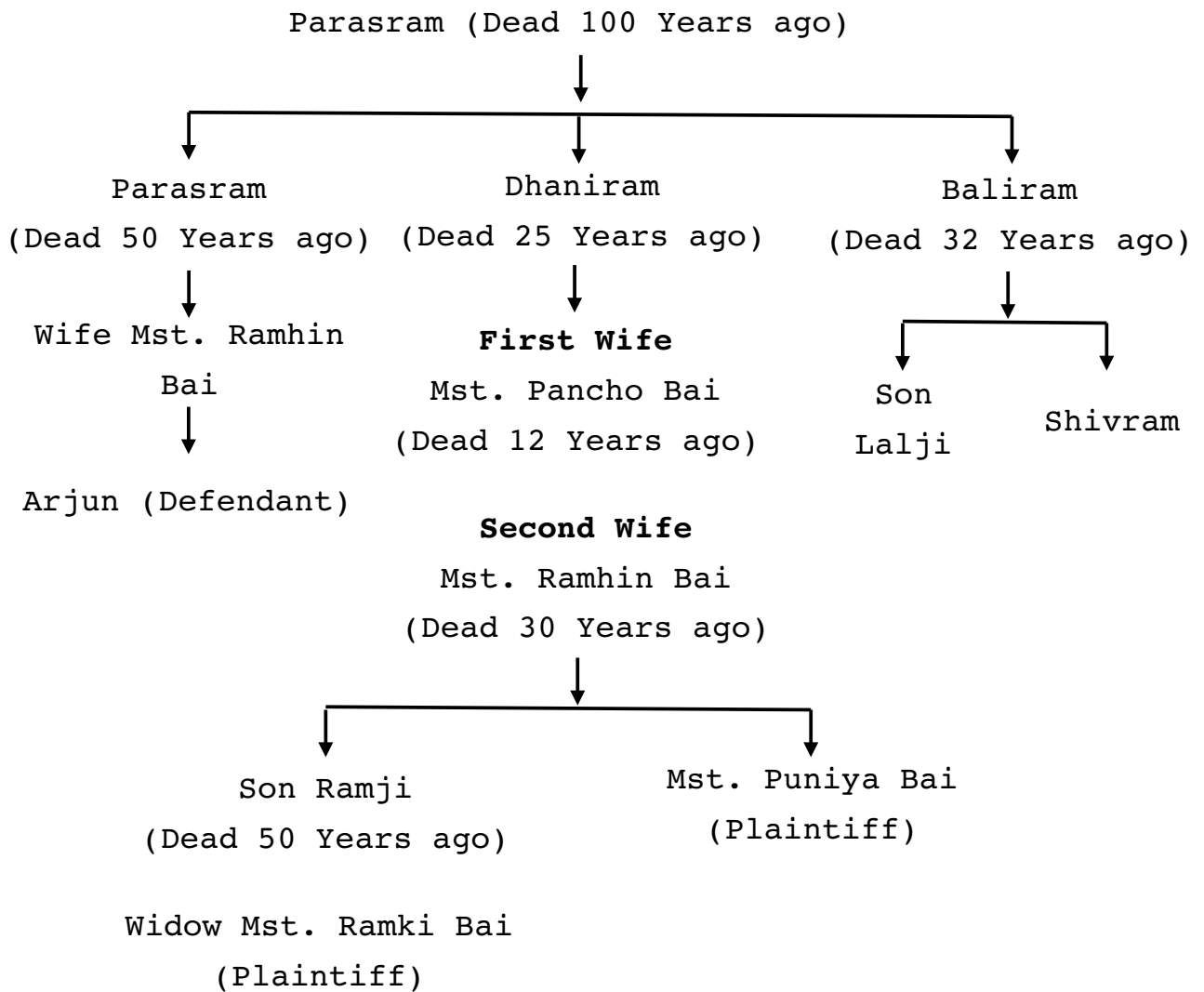
C.A.V. Judgment

1. The substantial question of law involved, formulated and to be answered in this defendants' second appeal is as under: -

“Whether a decree for permanent injunction against the appellants/defendants could be passed in view of the specific pleadings and admission by the respondents/plaintiffs that they have sold the suit land prior to the date of suit”?

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

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



3. The suit property was originally held by one Parasram. Parasram had three sons namely Atmaram, Dhaniram and Baliram. Plaintiff No.1 is widow of Dhaniram's second wife's son and plaintiff No.2 is daughter of Dhaniram, whereas original defendant No.1-Arjun, who died during pendency of first appeal, was son of Atmaram. Two plaintiffs filed a suit against defendant No.1 only for permanent injunction stating inter-alia that the suit land bearing Khasra No.15 area 6.134 hectare fell in their share. They are bhumiswami and possession

holders of the said land, which they got in partition pursuant to the order of the Tahsildar dated 9.9.93 (Ex.P-1) and since then, they are cultivating the said land, but in the month of March, 1997, defendant No.1 threatened them not to do the agricultural work and not to alienate the suit property leading to filing of suit only for permanent injunction.

4. Defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that Dhaniram's first wife is Pancho Bai, who has executed a Will (Ex.D-8) in his favour and as such, he is title-holder of the suit land and the plaintiffs have no right and title over the suit land and prayed for dismissal of the suit.
5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 24.1.2006, partly decreed the suit holding that the plaintiffs are in possession of part of suit land pursuant to the order of the Tahsildar, Bhatapara dated dated 9.9.93 (Ex.P-1) and as such, plaintiff NO.1 is entitled to hold 3.2659 hectare of land and plaintiff NO.2 is entitled to hold .8169 hectare of land and since

they are in possession of the said land, therefore, they are entitled for permanent injunction. Being aggrieved and dissatisfied with the judgment and decree of the trial Court partly dismissing the suit, the plaintiffs filed first appeal before the first appellate Court stating inter-alia that the trial Court ought to have granted decree in toto and refusing the decree to rest of suit land is perverse and contrary to record. The first appellate Court by the impugned judgment and decree allowed the appeal and decreed the suit of the plaintiffs in toto, against which, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellant/legal representatives of defendant No.1, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

6. Ms.Sharmila Shinghai, learned counsel for the appellants/legal representatives of original defendant No.1, would submit that since the plaintiffs have already alienated the suit property prior to filing of the suit, therefore, the suit could not have been decreed in toto by the first appellate Court and therefore, the judgment and

decree of the first appellate Court deserves to be set aside.

7. Mr.H.B.Agrawal, learned Senior Counsel with Mrs.Preeti Yadav, learned counsel for respondents No.1 and 2/plaintiffs, would submit that the defendant has accepted the judgment and decree of the trial Court partly decreeing the suit and did not challenge the same by filing appeal and in an appeal filed by the plaintiffs, the first appellate Court has rightly held that Will (Ex.D-8) executed by Pancho Bai in favour of defendant No.1-Arjun has not been proved in accordance with Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872, as such, the plaintiffs were entitled for decree in toto as admittedly the suit property fell in share of the plaintiffs by partition vide Ex.P-1 and the first appellate Court rightly granted decree in toto in their favour.
8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the records with utmost circumspection.

9. The trial Court has clearly recorded a finding that Pancho Bai, widow of Dhaniram, has executed a Will (Ex.D-8) in favour of defendant-Arjun in respect of entire property, whereas she could have executed a Will only to the extent of her share in the suit property. The first appellate Court has recorded a finding that Will (Ex.D-8) executed by Pancho Bai in favour of defendant-Arjun is not proved in accordance with Section 63(c) of the Indian Succession Act read with Section 68 of the Indian Evidence Act and that finding qua *Will* has attained finality as the defendant has not questioned that part of finding in this second appeal filed before this Court and consequently no substantial question of law has been proposed or formulated and only submission has been raised that the plaintiffs have alienated the suit property much prior to filing of the suit, therefore, the plaintiffs are not entitled for decree for permanent injunction.
10. A careful perusal of the record would show that the plaintiffs have come out with a clear case that sale deed has been executed in favour of some person with respect of part of suit land, but still they are in physical/actual possession of the suit land, whereas

in written statement the defendant has clearly stated that said sale deeds are null and void and it does not confer any title, but the fact remains that sale deeds have been executed though sale deeds have not brought on record and in view of that, the trial Court did not frame any issue and the defendant did not raise any plea in that regard before the first appellate Court and for the first time this plea has been raised before this Court.

11. The first appellate Court has reached to the conclusion that the plaintiffs are in possession of the suit land pursuant to the order of partition made by the Tahsildar, Bhatapara vide Ex.P-1 under Section 178 M.P. Land Revenue Code, 1959 proceeding. Finding recorded by the trial Court and the first appellate Court that the plaintiffs are in possession of entire property and possession is legal and lawful is finding of fact based on evidence available on record. It is not the case of the defendant that since the plaintiffs have already alienated the suit property and delivered peaceful possession thereof, therefore, they are not in possession of the suit property and consequently, the plaintiffs are not entitled for permanent

injunction. Finding recorded by two Courts below that the plaintiffs are in lawful possession of the suit property and therefore, they are entitled for permanent injunction is absolutely correct finding recorded after appreciation of oral and documentary evidence available on record. It is neither perverse nor contrary to record. The substantial question of law is answered in favour of the plaintiffs and against the defendant.

12. Accordingly, I do not find any merit in this second appeal. The second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

13. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-