

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 253 of 2011**

1. Manrakhan S/o Gambhira Rajwar, Aged 50 years, Occupation Agriculturist, R/o Karji, Post Patna, Tahsil Baikunthpur, Distt. Surguja, Chhattisgarh, (died) through LRs. :-

(a). Dilbas Wd/o Manrakhan Rajwar, Aged about 60 years, Occupation Housewife, R/o Village Karji (dead).

(b). Dhansai S/o Manrakhan Rajwar, Aged about 35 years, Occupation Labour, R/o Katkona Colliery.

(c). Meera Bai D/o Manrakhan Rajwar W/o Rampratap, Occupation Colliery Labour, Katkona Colliery.

(d). Jawahar Lal S/o Manrakhan Rajwar, Aged about 28 years, Occupation Colliery Labour, Katkona Colliery.

All Tahsil Baikunthpur, Distt. Surguja, Chhattisgarh.

---Appellants/LRs. Of Plaintiff

Versus

1. Gambhira S/o Sitaram Rajwar, Aged 65 years, Occupation Agriculturist (Dead) through Legal representatives.

2. Phool Sai S/o Late Gambhira Rajwar, Aged 40 years, Occupation Agriculturist & Service (Katkoni Colliery).

Both R/o Village Karji, Post Patna, Tahsil Baikunthpur, Distt. Koriya, Chhattisgarh.

3.State of Chhattisgarh, through the Collector,
Koriya, Baikunthpur, Chhattisgarh.

--- Respondents

For Appellants :- Ms. Sharmila Singhai, Advocate

For Respondents 1 & 2 :- None

For Respondent 3/State:- Mr. Ravi Bhagat, Dy. G.A.

As Amicus Curiae :- Mr. Ratan Pusty, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

02/03/2021

1. This second appeal preferred by the appellants/Lrs. Of original plaintiff was admitted for hearing on 15/01/2015 by formulating the following two substantial questions of law :-

“(i) Whether even in the admitted pleading the self acquired property can be relinquished in favour of another by virtue of Section 173 of C.G. Land Revenue Code even if beneficiary do not have share in it ?

(ii) Whether as against the provisions of Transfer of Property Act the immovable property can be transferred ?”

[The parties will hereinafter be referred to as per their status given and ranking shown in the plaint before the trial Court.]

2. Original plaintiff as well as defendant No. 2 both are sons of defendant No. 1 namely Gambhira, who out of his free will and desire, executed relinquishment deed dated 29/07/1985 (Ex. P/1 / Ex. D/9) in favour of his son/defendant No. 2 thereby, relinquished the suit property shown in Schedule 'A' and 'B' annexed with the plaint in his favour and got it registered in accordance with the provisions of Indian Registration Act, 1908. Plaintiff filed a suit, during the lifetime of his father Gambhira and impleading him as a party/defendant No. 1 stating inter-alia that he be declared the co-owner of the suit property as the suit property is the ancestral property of the parties and decree with regard to that be granted in his favour. In alternative, averment was also made by the plaintiff that the relinquishment deed executed by his father defendant No. 1 in favour of his brother defendant No. 2 on 29/07/1985 (Ex. P/1 / Ex. D/9) is illegal and bad in law and the mutation made on that basis is also illegal, therefore, appropriate decree be granted in his favour.

3. Defendants No. 1 and 2 resisted the claim of the plaintiff stating inter alia that the suit property is the self-acquired property of defendant No. 1 which he purchased on 24/05/1978 by his own income and as such, he can relinquish the said suit property in favour of his other son i.e. defendant No. 2, therefore, plaintiff has no right or title over the suit property and the relinquishment deed (Ex. P/1 / Ex. D/9) executed by him in favour of defendant No. 2 with the consent of his wife Patango Bai is strictly in accordance with law, as such, plaintiff's suit deserves to be dismissed.

4. It is pertinent to mention here that defendant No. 1 Gambhira died during the pendency of the suit on 07/08/1993.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit vide its judgment and decree dated 15/12/1988 holding that the suit property shown in Schedule 'A' and 'B' of the plaint is not the ancestral property of the parties rather it is the self-acquired property of defendant No. 1 and the relinquishment deed dated 29/08/1985 (Ex. P/1 / Ex. D/9) executed by defendant No. 1

in favour of defendant No. 2 is strictly in accordance with law, as such, plaintiff does not have right or title in the suit property. In turn, the decree of the trial Court having been questioned before the first appellate Court, the appellant/plaintiff suffered the same fate as learned first appellate Court too, finding no merit in the second round of litigation after the matter being remanded from this Court, affirmed the judgment and decree of the trial Court and dismissed the appeal. Feeling aggrieved and dissatisfied with the judgment and decree of both the Courts below, this second appeal has been preferred by the plaintiff in which two substantial questions of law have been formulated which have been set out in the opening paragraph of this judgment.

6. Ms. Sharmila Singhai, learned counsel for the appellants/Lrs. of plaintiff, would vehemently submit that since the suit property is admittedly the self-acquired property of defendant No. 1, as held by both the Courts below, therefore, he could not have executed the relinquishment deed (Ex. P/1) in favour of defendant No. 2 as release deed can only be

executed in favour of a person who has some semblance of a pre-existing right, title, interest over the property and a release can only enlarge an existing title, right and interest of the releasee, and there can be no release in favour of a releasee who has no title, right or interest in the property. She would rely upon the decisions rendered by the Supreme Court in the matter of Kuppuswamy Chettiar vs A.S.P. A. Arumugam Chettiar¹, to buttress her submission. She would also submit that the judgment and decree passed by both the Courts below holding that relinquishment deed (EX. P/1 and D/9) executed by defendant No. 1 in favour of defendant No. 2 is illegal and bad in law and deserves to be set aside by answering the two substantial questions of law in favour of the plaintiff.

7. Despite service of notice, none appears on behalf of the respondents/defendants No. 1 and 2.

8. At the request of the Court, Mr. Ratan Pusty, learned counsel has readily agreed to appear as Amicus Curiae and assist the Court by making

¹ AIR 1967 SC 1395

submission. He would submit that a Mitakshara father has absolute right to transfer his self-acquired property as per his wish to which no exception can be taken by his male descendants and he can even transfer the property in favour of a stranger. He would rely upon the decision rendered by the Supreme Court in the matter of C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar² and would also submit that since the suit property is the self-acquired property of defendant No. 1, therefore, during his lifetime, plaintiff, who had no right over the suit property, had no legal right to institute the suit as per Section 9 of CPC. A person filing a suit under Section 9 of CPC must have legal right to the property involved in the suit. However, plaintiff has no legal right in the suit property and as such, he could not have filed the suit under Section 9 of CPC.

9. I have heard learned counsel for the parties, considered their submissions made herein-above and went through the records with utmost circumspection.

10. Plaintiff filed the suit wherein he claimed the suit property to be the ancestral property of

the parties and in alternative, he also pleaded that his father Gambhira i.e. defendant No. 1 could not have relinquished the suit property in favour of his brother/defendant No. 2 as according to the plaintiff, defendant No. 2 had no pre-existing right in the property of their father i.e. defendant No. 1, as both the Courts below have held that suit property was the self-acquired property of defendant No. 1 which has not been questioned by in the instant appeal, as such, the said finding has become final.

11. The only part that has been challenged by the plaintiff in the instant appeal is the manner of transfer of suit property by stating that since defendant No. 2 had no existing right on the date of execution of relinquishment deed (Ex. P/1 / Ex. D/9), therefore, the said relinquishment deed executed by defendant No. 1 in favour of defendant No. 2 is illegal and bad in law, which both the Courts below have not accepted and rejected the said plea.

12. At this stage, it would be appropriate to notice the relinquishment deed (Ex. P/1 / Ex. D/9) executed by defendant No. 1 in favour of defendant No. 2, which states as under :-

त्यागपत्र (दस्तबरदारी) मय सहमति-पत्र

त्याग की जाने वाली सम्पत्ति का मूल्य

मुबलिंग 25,000-00 रु०

बिना मूल्य लिये

यह त्यागपत्र विलेख आज दिनांक 29-7-85 को स्थान बैकुण्ठपुर में मुझ गम्भीरा एवं मु० पतांगो बाई द्वारा सम्पादित किया गया ।

मैं गम्भीरा आत्मज सीताराम रजवार, आयु 65 वर्ष करीब निवासी ग्राम करजी, तहसील-बैकुण्ठपुर जिला-सरगुजा का हूँ । मेरे पास ग्राम करजी में निम्नलिखित भूमि है जो मेरी निजी कमाई की है । इस भूमि का सेटिलमेन्ट पर्चा मेरे नाम से ही मिला था । मेरे भाईगण अलग रहते थे और उन्हें, उनकी बनाई हुई जमीन का पट्टा मिला था । मेरी इस जमीन में से कुछ जमीन मेरे द्वारा जंगल काटकर बनाई गई थी और कुछ भूमि मैंने रामसागर लाल मुंशी से तथा कुछ भूमि श्रीमती अजौरिया उर्फ असोतहिन से खरीदा था । यह सब भूतपूर्व कोरिया स्टेट अर्थात् सन् 1948 के पूर्व की बात है इस भूमि में से सिर्फ एक खसरा नम्बर 710 । 2 रकबा 0-117 हे० को मैंने सेटेलमेंट परचा के बाद खरीदा था ।

-: भूमि का विवरण :-

ग्राम	<u>खसरा नम्बर</u>	<u>रकबा</u>	लगान
करजी	108	0-129 हे०	14-69 पैसा
प०ह०न०	205	0-024 हे०	
तह० बैकुण्ठपुर	404	0-032 हे०	
	411	0-142 हे०	
	414	0-077 हे०	
	420	0-045 हे०	
	556	0-040 हे०	
	557	0-053 हे०	
	560	0-101 हे०	
	632	0-162 हे०	
	633	0-125 हे०	
	650	0-073 हे०	
	655	0-097 हे०	
	683	0-243 हे०	
	698	0-166 हे०	
	744	0-142 हे०	
	754 । 1	1-408 हे०	
	883	0-470 हे०	
	710 । 2	0-117 हे०	
योग	19	3-646 हे०	14-69 पै०

मेरी आयु लगभग 65 वर्ष की हो गई है। मेरी पत्नी श्रीमती पतांगो बाई भी करीब 60 वर्ष की हो चुकी है। मेरे दो लड़के तथा दो लड़कियां हैं। बड़ी लड़की कंजालो बाई की शादी हो गई है और वह अपने ससुराल में है। मेरी दूसरी लड़की फुलमत बाई को उसके पति ने छोड़ दिया है अतः वह मेरे साथ रहती है। मेरा बड़ा लड़का मतराखन आयु करीब 48 वर्ष है। मैंने मतराखन को अपनी उपरोक्त दर्शित भूमि में से कुछ जमीन पहले से ही दे रखा है जिस पर वह खेती करता है तथा अपना मकान एवं बाड़ी बनाया है। मतराखन को अपना मकान बनाने के लिये मैंने अपने पुराने मकान का कुंडी, बांस, खपड़ा भी दिया था। इस तरह मैंने उसे अलग कर दिया है। मतराखन कालरी में नौकरी करता है और करीब दो हजार रुपया मासिक कमाता है। इस प्रकार वह हर प्रकार से सम्पन्न है। मेरे द्वारा मतराखन (बड़े पुत्र) को दी गई जमीन के बाद शेष बची हुई जमीन पर मेरा पूरा हक व कब्जा है। चूंकि मेरा दूसरा पुत्र फुलसाय मेरी सेवा अनेक वर्षों से कर रहा है तथा मेरी, मेरी पत्नी एवं पुत्री फुलमत बाई का पालन पोषण फुलसाय ही कर रहा है और वह ही मेरी खेती की देख रेख भी करता है अतः मैंने यह निश्चय किया है कि अपनी इस शेष भूमि जिसका विवरण नीचे दर्शित है, का त्याग पत्र अपने पुत्र फलसाय के नाम पर सम्पादित कर दूं। इस संबंध में मेरी पत्नी भी मुझ से सहमत है वह भी मेरी नीचे लिखी भूमि पर, उसके जो कुछ भी कानूनी हक व अधिकार होते हैं, उन्हें वह भी फुलसाय के पक्ष में त्याग करने को सहमत तथा तैयार है तथा अभिस्वीकृति देते हुये मेरी पत्नी भी इस दस्तावेज पर अपने हस्ताक्षर कर रही है।

फुलसाय आ० गम्भीरा जात रजवार निवासी ग्राम करजी
के पक्ष में त्याग की जाने वाली भूमि का विवरण:-

ग्राम	खसरा नम्बर	रकबा	जमा
करजी	108 में से	0-101 हे०	9-37 पै०
प०ह०नं०	205	0-024 हे०	
तह० बैकुण्ठपुर	405	0-032 हे०	
स्टाम्प फीस का	411 में से	0-093 हे०	
क्र. 410803	414 में से	0-049 हे०	
	556	0-040 हे०	
	557	0-053 हे०	
	560 में से	0-065 हे०	
	632 में से	0-113 हे०	
	633	0-125 हे०	
	650 में से	0-056 हे०	
	655 में से	0-077 हे०	
	683 में से	0-153 हे०	
	698 में से	0-142 हे०	
	744	0-142 हे०	
	754 में से	0-041 हे०	
	754 में से	0-049 हे०	
	754 में से	0-889 हे०	
	883 में से	0-320 हे०	
	710 । 2	0-117 हे०	
योग	20	2-681 हे०	9-37 पै०

अतः इस दस्तावेज के द्वारा मैं गम्भीरा अपनी उपरोक्त दर्शित भूमि अर्थात् कुल खसरा नम्बर 20, रकबा 2-681 हेक्टर जमा 9-37 पै० जो मेरे स्वत्व तथा हक की है, उसके समस्त स्वत्व व हक पुत्र फुलसाय आ० गम्भीरा रजवार के पक्ष में त्याग करता हूँ अर्थात् दस्तबरदारी करता हूँ। इस जमीन का राजस्व खाता अपने नाम पर अलग से कायम कराने का तथा भूमिस्वामी के रूप में अपना नाम चढ़वाने का अब फुलसाय को पूरा अधिकार रहेगा। आज दिनांक से मैं इस भूमि का स्वामी अपने पुत्र फुलसाय को करार देता हूँ। इस सम्पत्ति पर वास्तविक अधिकार, दखल व कब्जा भी मैंने फुलसाय को सौंप दिया है और उक्त भूमि से सम्बन्धित राजस्व कागजात आदि भी फुलसाय को सौंप दिया है। अब फुलसाय को पूरा अधिकार है कि वह इस सम्पत्ति को जिस कदर चाहे उपयोग में लावे।

अतः यह त्याग पत्र आज दिनांक 29-7-1985 को स्थान बैकुण्ठपुर में अपने होश हवाश से स्वस्थचित तथा स्थिर बुद्धि की स्थिति में स्वेच्छा से लिखवाकर व सुन तथा समक्ष कर अपने हस्ताक्षर कर दिये जिससे कि प्रमाण रहे और समय पर काम आवे।
लेखक जगमोहन लाल गुप्ता सही/-जगमोहन लाल गुप्ता बैकुण्ठपुर दिनांक 29-7-85

साक्षीगण

हस्ताक्षर त्यागकर्ता

(अंगुठा चिन्ह) (1) नि० अं० बां० बन्धुराम
आ० गंगाराम कोहरं, करजी

(अंगुठा चिन्ह) निशानी अंगूठा बांया
गम्भीरा ब० क०

(अंगुठा चिन्ह) (2) नि० अं० बां० प्रेमसाय
आ० गोपी बिंझिया (बैंगा)
सा० करजी ब०क०

मेरे पति द्वारा लिखित उपरोक्त त्याग पत्र से मैं
सहमत हूँ।

हस्ताक्षर सहमतदाता

नि० अं० बां० पतांगो बाई जौ० गम्भीरा
(अंगुठा चिन्ह) रजवार ब०क०

साक्षीगण:-

(1) नि० अं० बां० बन्धुराम आ० गंगाराम कोहरं
(अंगुठा चिन्ह) सा० करजी ब०क०

(2) नि० अं० बां० प्रेमसाय आ० गोपी बिंझिया (बैंगा)
(अंगुठा चिन्ह) सा० करजी ब०क०

13. A careful perusal of the aforesaid document (Exhibit D/9) would show that since defendant No. 1 desired and expressed his wish to give the suit property standing in his name in favour of his other son i.e. defendant No. 2, he executed the said relinquishment deed in favour of defendant No. 2 with the consent of his widow namely Patango Bai, and Exhibit P/1:D/9 is also attested by two witnesses namely Bandhu Rai and Prem Sai and is also registered in accordance with the provisions of Indian Registration Act, 1908.

14. The principle argument raised on behalf of appellant/plaintiff (now his LRs.) is that since defendant No. 2, one of the sons of defendant No. 1, had no existing right, title and interest over the suit property during the lifetime of his father, suit property being the self-acquired property of defendant No. 1, therefore, there can be no release in favour of defendant No. 2 who has no interest in the suit property by way of the relinquishment deed (Ex. P/1 / Ex. D/9).

15. In the matter of Thayyil Mammo v. Kottiath

Ramunni³, at page 340, it has been clearly held

by Their Lordships of the Supreme Court that a registered instrument styled as a release deed releasing the right, title and interest in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses the intention to effect a transfer.

16. The principle of law laid down in the aforesaid judgment further came up for consideration before the Surpeme Court in the matter of Kuppuswamy Chettiar (supra) wherein the aforesaid principle of law laid down in Thayyil Mammo (supra) was relied upon and it was held by Their Lordships in paragraph 4 as under :-

"4. The question is whether Ex. B-1 on its true construction conveyed properties to the respondents. In T. Mammo v. K. Ramunni, AIR 1966 SC 337 at p. 340 this Court held :-

"a registered instrument styled a release deed releasing the right, title and interest of the executant in any property in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses an intention to effect a transfer".

In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under S. 123 of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument

releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-1 stated that the releasor was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses. "

Thereafter, in paragraph 6, Their Lordships clearly held that a deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer and rejected the contrary submission made therein. As such, the argument raised by learned counsel for the plaintiff in this count deserves to be rejected.

17. However, this issue can be considered from another angle. Plaintiff filed a suit that relinquishment deed (Ex. P/1 / Ex. D/9) executed by his father defendant No. 1 in favour of his brother defendant No. 2 is illegal and bad in law as by way of the said relinquishment deed, no title can be transferred in favour of defendant No. 2 because he had no right or title over the suit property during the lifetime of

his father, reason being that the suit property was the self-acquired property of defendant No. 1.

18. Now, the question for consideration would be, whether plaintiff himself, who had no legal right over the suit property, during the lifetime of his father in his self-acquired property, can bring a suit under Section 9 of CPC for declaring the relinquishment deed (Ex. P/1 / Ex. D/9) executed by his father defendant No. 1 in favour of his brother defendant No. 2 as illegal and bad in law ?

19. At this stage, it would be appropriate to notice Section 9 of CPC, which states as under :-

"9. Courts to try all civil suits unless barred. - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

20. A careful perusal of the aforesaid provision would show that Section 9 of CPC confers on every person an inherent right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute. In order to have the said right to file a suit, one must have a legal

right in the suit property then only the suit can be filed under Section 9 of CPC.

21. The Allahabad High Court in the matter of **Dukh Chor & Ors. v. Ram Ratti & Ors.**⁴ held in paragraph 4 as under :-

"4. Counsel contended that the Appellant are entitled to show that the gift is void for want of permission by the Settlement Officer as they had taken this plea in the lower court. I do not agree. This plea could be considered only after they had established that the property was joint and they had an interest in it. After the Court had found that they have no interest in it, their objection against the gift becomes incompetent. Section 9 of the Code of Civil Procedure provides that the courts have jurisdiction "to try all suits of a civil nature". The words "suits of a civil nature" mean suits enforce legal rights and the law court will not entertain suits by busy bodies with no interest to protect."

22. Thus, plaintiff, on the date of filing of the suit seeking declaration of the relinquishment deed (Ex. P/1 / Ex. D/9) to be illegal and void on the property being the self-acquired property of his father defendant No. 1, that too in his lifetime, has no legal right over the suit property to file a suit under Section 9 of CPC. Section 9 bars a person to file a suit in a case in which he has no legal right over the suit property. Therefore, in this Court also,

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plaintiff's suit deserves to be dismissed as well being barred by Section 9 of CPC.

23. Similarly, the Supreme Court in the matter of **C.N. Arunachala Mudaliar** (supra) has clearly laid down the law with regard to the power of Mitakshara father to alienate his property even to a stranger as per his wish in paragraph 9, which states as under :-

"9. Quite at variance with the precept which seems to restrict the father's right of disposition over his self-acquired property in an unqualified manner and in the same way as ancestral lands, there occur other texts in the commentary which practically deny any right of interference by the sons with the father's power of alienation over his self-acquired property. Chapter 1, S.5, placitum 9 says:

"The grandson has a right of prohibition if his unseparated father is making a donation or sale of effects inherited from the grandfather: but he has no right of interference if the effects were acquired by the father. On the contrary he must acquiesce, because he is dependent."

The reason for this distinction is explained by the author in the text that follows:

"Consequently the difference is this: although he has a right by birth in his father's and in his grandfather's property; still since he is dependent on his father in regard to the paternal estate and since the father has a predominant interest as it was acquired by himself, the son must acquiesce in the father's disposal of his own acquired property."

Clearly the latter passages are in flat contradiction with the previous ones and in an early Calcutta case: vide - 'Muddun Gopal v. RamBuksh, 6 WR 71 (A), a reconciliation was attempted at by taking the view that the right of the sons in the self-acquired property of their father was an imperfect right incapable of being enforced at law. The question came pointedly for consideration before the Judicial Committee in the case of - Rao Balwant v. Rani Kishori, 25 Ind App 54 (PC) (B) and Lord Hobhouse, who delivered the judgment of the Board, observed in course of his judgment that in the text books and commentaries on Hindu Law, religious and moral considerations are often mingled with rules of positive law. It was held that the passages in Chap. I, Sec. 1, verse 27 of Mitakshara contained only moral or religious precepts while those in S. 5, verses 9 and 10 embodied rules of positive law. The latter consequently would override the former. It was held, therefore, that the father of a joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way.

This statement of the law has never been challenged since then and it has been held by the various High Courts in India, and in our opinion rightly, that a Mitakshara father is not only competent to sell his self-acquired immovable property to a stranger without the concurrence of his sons: vide - 6 WR 71 (Cal) (A), but he can make a gift of such property to one of his own sons to the detriment of another: vide - Sital v. Madho, 1 All 394 (C); and he can make even an unequal distribution amongst his heirs: vide - 'Bawa Misser v. Rajah Bishen, 10 WR 287 (Cal) (D)."

24. Reverting finally to the facts of the present case, it is held that since the suit property was the self-acquired property of defendant No.

1 and he has relinquished the said property in favour of his other son defendant No. 2 by registered instrument Exhibits P/1:D/9 as per his free will and desire with the consent of his widow Patango Bai and in presence of two attesting witnesses, it cannot be said to be illegal and contrary to law, particularly when defendant No. 1 had the right title and interest over the suit property to deal with this property in a manner in which he wishes to as Right to Property is a constitutional right under Article 300-A of the Constitution of India. Even otherwise, plaintiff has no legal right to file the suit as the suit property was self-acquired property of his father and his father/defendant No. 1 was empowered to deal with the property and rightly relinquished it in favour of defendant No. 2. As such, both the Courts below are absolutely justified in dismissing the suit filed by the plaintiff in which I do not find any perversity or illegality. Both the substantial questions of law are answered in favour of defendants and against the plaintiff.

25. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed. No cost(s). This Court also appreciates the assistance rendered by Mr. Ratan Pusty, learned counsel appearing as Amicus Curiae.

26. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet