

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 134 of 2007****Judgment reserved on 21/06/2021****Judgment delivered on 29/06/2021**

1. A. Pritam S/o Sunher, Aged about 47 years.

B. Mansharam, S/o Sunher, Aged about 42 years.

C. Balchandra S/o Sunher, Aged about 27 years.

D. Balkrishna S/o Sunher, Aged about 24 years.

E. Kamala D/o Sunher, Aged about 40 years.

All R/o Village Selegaon, Tahsil Bhanupratappur,
Distt. Kanker, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Bharatram Sahu S/o Shri Johan Sahu, Aged about 46
years.

2. Banshilal Sahu S/o Shri Johan Sahu, Aged about 44
years.

3. Anand Sahu, S/o Johan Sahu, Aged about 40 years.

All R/o Village Selegaon, Tahsil Bhanupratappur,
Distt. Kanker, Chhattisgarh.

4. State of Chhattisgarh, Through Collector, Kanker,
Chhattisgarh.

--- Respondents/Defendants

For Appellants	:-	Mr. Ramesh Kumar Sharma, Advocate
For Respondents	:-	Mr. Rajkumar Pali, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the appellants/LRs. Of original plaintiff was admitted for hearing on 02/04/2019 by formulating the following two substantial questions of law :-

"1. Whether the lower appellate Court, by relying upon Kistbandi Khatoni, a revenue paper (Ex.P.2), has erred in holding that Kapil, the original defendant No. 1, was the owner of the property in question and acquired his interest upon the death of Shyama Bai and thereby erred in holding that the registered deed of sale dated 05.07.1980 (Ex.D.1) was validly executed by him in favour of original defendant No.2, namely, Johan ?

2. Whether the finding of the lower appellate Court holding that original defendant No. 1 Kapil is the husband of Shyama Bai while reversing the finding of the trial Court in relation to issue No. 7, is perverse ?"

[For the sake of convenience, the parties will hereinafter be referred to as per their status and ranking given in the plaint before the trial Court.]

2. Original plaintiff – Sunher filed a suit for declaration of title and recovery of possession stating inter alia that the suit property bearing Khasra No. 86.1 area 4.10 decimal was originally held Hirau S/o Bhukhau Satnami which

he obtained from plaintiff's uncle Sukrit Satnami. Hirau only had one daughter namely Shyambai who was brought up and taken care of by the plaintiff after the death of Hirau. After the death of Shyambai, original defendant No. 1 Kapil got his name mutated in the revenue records on 27/10/78 against which the appeal preferred was dismissed by the S.D.O., as such, defendant No. 1 has no right or title over the suit property and he further had no right to alienate the suit property in favour of defendant No. 2 Johan vide sale deed dated 05/07/1980 (Ex. D/1).

3. Defendant No. 1 filed his written statement stating inter alia that he had right, title over the suit property and he has rightly alienated the said suit property in favour of defendant No. 2 as he was the brother of Chaitu Satnami – husband of Shyambai and after the death of Chaitu Satnami, Shyambai married with him in Choodi form. Defendant No. 2 also supported defendant No. 1 stating that he has purchased the suit property from defendant No. 1 as Shyambai was the title-holder of the suit property and defendant No. 1 being her husband

was fully entitled to alienate the suit property in his favour.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit of the plaintiff for declaration of title and recovery of possession vide judgment and decree dated 23/07/1999 holding that defendants have failed to prove that defendant No. 1 was the husband of Shyambai, as such, he had no right or title to alienate the suit property in favour of defendant No. 2. On appeal being preferred by defendant No. 2, learned first appellate Court reversed the judgment and decree passed by the trial Court and dismissed the suit vide its impugned judgment and decree dated 14/07/2006 against which this second appeal has been preferred by the appellants/LRs. Of original plaintiff under Section 100 of CPC in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.
5. Mr. Ramesh Kumar Sharma, learned counsel for the appellants/LRs. Of original plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that defendant

No. 1 Kapil, who died during the pendency of the suit, was the husband of Shyambai and he has rightly alienated the suit property in favour of defendant No. 2 as Shyambai was married to Chaitu Satnami and there is absolutely no evidence on record to hold that Shyambai, at any point of time, was married to defendant No. 1 by choodi form. He would rely upon the decision rendered by the Madhya Pradesh High Court in the matter of Kanhaiyalal & Anr. v. Ram Kunwarbai¹ and submit that the instant appeal be allowed by setting aside the impugned judgment and decree passed by the first appellate Court.

6. Mr. Rajkumar Pali, learned counsel for respondents No. 1 to 3/ LRs. Of defendant No. 2, would support the judgment and decree passed by the first appellate Court and submit that defendant No. 1, being the husband of Shyambai, has rightly alienated the suit property in favour of defendant No. 2, as such, plaintiff has no right title over the suit property and the instant appeal deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made herein-

¹ 1994 JLJ 223

above and went through the records with utmost circumspection.

8. Learned trial Court, in the suit filed by the plaintiff, while deciding issue No. 1 as to whether plaintiff is title-holder of the suit land, answered the issue holding that plaintiff is the title-holder of the suit land and decreed the suit of the plaintiffs by further holding that the alienation made by defendant No. 1 Kapil in favour of defendant No. 2 Johan is invalid and on appeal being preferred by LRs. of defendant No. 2, learned first appellate Court reversed the findings recorded by the trial Court and dismissed the suit. However, the first appellate Court simply held that on the basis of Kistbandi Khatoni, a revenue paper (Ex. P/2), defendant No. 1 Kapil is the owner of the suit property and he had the right and title to alienate the said suit property in favour of defendant No. 2.
9. Admittedly and undisputedly, the suit property was held by Shyambai. Defendant No. 2 Johan has been examined before the trial Court as D.W. 1 and in paragraph 5 of his statement, he has clearly admitted that Shyambai was earlier

married to the brother of defendant No. 1 Kapil namely Chaitu and he has also admitted that the suit land which he has purchased from defendant No. 1 was earlier recorded in the name of Shyambai whereas he has also admitted that at the time of sale of the suit property, Shyambai was staying with defendant No. 1 and she died issueless.

10. It is the claim of the plaintiff that Shyambai was married to Chaitu and he was her legally wedded husband and defendant No. 1 Kapil was never legally married with Shyambai even after the death of Chaitu, as such, defendant No. 1 did not inherit the suit property held by Shyambai and he had no right and title to alienate the suit property in favour of defendant No. 2 Johan.

11. It is well settled law that mutation in the revenue records does not confer any right or title upon the person in whose name the land is recorded in the revenue records and it is only for the purpose of keeping the records upto date and it only enables the person in whose favour mutation is ordered to pay the land revenue. As such, the first appellate Court fell into error

in relying upon Kistbandi Khatoni, a revenue paper (Ex. P/2) and holding that defendant No. 1 is the title-holder of the suit property being the husband of Shyambai and he was fully entitled to alienate the suit property in favour of defendant No. 2. There is overwhelming evidence on record to hold that Shyambai was only staying with defendant No. 1 and there was no relation of husband and wife between them as defendant No. 1 was never married to Shyambai legally even after the death of her husband Chaitu. As such, the finding recorded by the first appellate Court that defendant No. 1 Kapil, being the husband of Shyambai, inherit the suit property after her death and he had the right and title to alienate the suit property in favour of defendant No. 2 Johan is a finding of fact which is not based on evidence on record and it suffers from perversity and illegality.

12. As a fallout and consequence of the aforesaid discussion, both the questions of law are answered in favour of the plaintiff and against the defendants and the judgment and decree passed by the first appellate Court is hereby

set aside and that of the trial Court is restored.

13. The second appeal is allowed to the extent indicated herein-above. No order as to cost(s).

14. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet