

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.238 of 2012**

- 1.Devlal S/o. Subran, caste Panika, aged about 68 years,
 - 2.Ghuran (wrongly stated as Puran), S/o Mohan, caste Gond, aged about 65 years,
 - 3.Babai, S/o Shobha, caste Sahu, aged about 42 years,
- All are Occupation Agriculture, R/o Village Amhar, Police Station Patna, Tahsil Baikunthpur, District Korea (CG)

----- Appellants/Defendants**Versus**

- 1.Ranjeet S/o. Babai, Caste Kushwaha, aged about 68 years, R/o Village Amhar, Police Station Patna, Tahsil Baikunthpur, District Korea (CG)

----- Plaintiff

- 2.State of Chhattisgarh, Through-Collector Korea, District Korea (CG)

----- Respondents

For Appellants/Defendants:

Mr.A.K.Prasad, Advocate

For Respondent No.1/Plaintiff:

Mr.Ashok Kumar Shukla, Advocate

For Respondent No.2/State: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****28.6.2021**

- 1.Proceedings of this matter have been taken-up through video conferencing.
- 2.Heard on admission and formulation of substantial question of law in second appeal preferred by the appellants / defendants.
- 3.By the impugned judgment and decree, the first appellate Court has dismissed the appeal preferred by the appellants / defendants affirming the judgment and decree of the trial Court decreeing the suit of the

plaintiff.

4. Mr. A.K. Prasad, learned counsel for the appellants / defendants, would submit that both the Courts below concurrently erred in holding that the plaintiff has acquired title by gift deed executed by Sheshi Mani in his favour on 4.12.1970 (Ex.P-6) and thereby he became owner of the suit land, by recording a finding which is perverse and contrary to record, as such, the appeal involves substantial exhaustion of law for determination.
5. The suit property was earlier held by Tapeswar. After his death, it was inherited by his widow Sheshi Mani and Shesh Mani has executed a gift deed in favour of plaintiff-Ranjit on 4.12.1970 (Ex.P-6) and as such, he is in possession of the suit land. It is the case of the defendants that Tapeswar during his life time executed a Will in favour of Shobhnath on 18.2.1969 and in lieu of that, Shobhnath has taken loan from bank which he has not repaid and in auction proceeding, the suit land has been purchased by Biharilal and Biharilal sold the suit land in favour of the defendants.
6. Both the Courts below have held that in earlier round of litigation in Second Appeal No.242 of 1982 between Shobhnath v. Ranjit, decided on 27.2.87 (Ex.P-7) it has been held that the alleged Will executed by Tapeswar

in favour of Shobhnath has been held to be invalid and inoperative and also held that by that Will Shobhnath has not got any right / interest in the suit property and even alienation made by Biharilal, auction purchaser and auction proceeding is held to be illegal and as such, Biharilal has no right to alienate the suit property in favour of the defendants on 18.4.94.

7. Both the Courts below have rightly held that Sheshi Mani has executed gift deed in favour of the plaintiff and he become title-holder by said gift deed as Will executed by Tapeswar in favour of Shobhnth and subsequent auction proceeding in favour of Biharilal has declared to be null and void in earlier round of litigation by the High Court of Madhya Pradesh in Second Appeal No.242 of 1982, as such, I do not find any illegality in the said finding and even I do not find any substantial question of law for determination of this second appeal.

8. Accordingly, the second appeal being without substance is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-