# IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

**BEFORE**

**HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA**

**ON THE 2nd OF FEBRUARY, 2024**

**SECOND APPEAL No. 325 of 2014**

**BETWEEN:-**

**RADHESHAYAM MANDLOI S/O PYAAR SINGH MANDLOI, AGED ABOUT 48 YEARS, OCCUPATION: AGRICULTURIST VILLAGE AKKALBARA, TEHSIL MANAWAR DHAR / MOHHAMADPUR TEHSIL GOGAWA KHARGONE (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI KULDEEP PATHAK - ADVOCATE FOR THE APPELLANT).***

**AND**

1. **UDAYBAI D/O LATE NARSINGH, AGED ABOUT 63 YEARS, OCCUPATION: AGRICULTURIST VILLAGE MOHHAMADPUR TEHSIL GOGAWA KHARGONE (MADHYA PRADESH)**

2. **BALRAM SINGH S/O SHIR DATAR SINGH RAJPOOT, AGED ABOUT 73 YEARS, OCCUPATION: AGRICULTURE VILLAGE MOHHAMADPUR TEHSIL GOGAWA KHARGONE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI PANKAJ KUMAR SOHANI - ADVOCATE FOR THE RESPONDENTS NO. 1 AND 2)***

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*This appeal coming on for admission this day, the court passed the following:*

**ORDER**

The present second appeal has been filed being aggrieved by the judgment and decree passed by the III Additional District Judge, Khargone dated 03.09.2013 in Civil Appeal No.22-A/2012 by which the judgment and

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decree passed by II Civil Judge, Class-II, Khargone, dated 31.07.2012 in Civil Suit No. 10-A/2011 was modified and the plaintiff/appellant suit for injunction was dismissed.

2. In nutshell the appellant/plaintiff case before the trial Court was that the disputed house situated in village Mohammadpur, Tehsil Gogava, District Khargone measuring 90 x 30 ft, that 30 x 15 ft open land adjacent to originally belongs to the deceased Narsingh Rajpoot, who left behind two widows Jadavbai and Sajanbai after his death on 07.10.2002. Both widows Jadavbai and Sajanbai partitioned the movable and immovable property of the deceased Narsingh Rajpoot on 29.09.1975. Second wife Sajanbai became the owner of the disputed property. First wife Jadavbai after taking her share in partition got separated. Respondent No.1 Udaibai is the daughter of first wife Jadavbai. Sajanbai expired on 12.08.2011, but before her death due to certain accident her feet got fractured and the plaintiff took her to his home. Sajanbai during her lifetime executed a registered will in favour of appellant plaintiff on 07.10.2002 and by that he got the ownership of the disputed house and is in possession of the house. Respondents were interfering in his possession so he filed a suit for permanent injunction.

3. Respondents Udaibai and Balramsingh filed a written statement and denied all the plaint statements and stated that Jadavbai was the first wife of the deceased Narsingh Rajpoot and from that wedlock two daughters Shivkuwarbai and Udaibai were borne. Deceased Narsingh Rajpoot soleminized second marriage after 18.05.1955, without divorcing the first wife and, therefore the marriage with the second wife was not a valid marriage and on that basis second wife has no right on the property of the deceased Narsingh Rajpoot. The disputed house and land is the ancestral property. The will dated

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07.10.2002 does not confer any right on plaintiff as the Sajanbai was having no legal right to execute the will of the disputed property. The respondent defendant has also denied the partition between two widows on 29.09.1975 and the respondent also denied the possession of the plaintiff on the disputed land.

4. The trial Court on the pleadings, framed the issues and recorded the evidence of the parties decreed the suit of the plaintiffs.

5. Respondents being aggrieved with the judgment and decree filed an appeal before the Court of III Additional District Judge, Khargone. The first Appellate Court after hearing the parties reversed the decree regarding ownership and also amended the decree regarding the injunction and only granted the relief that plaintiff shall not be dispossessed from the possession of the disputed house, without following the due process of law. Being aggrieved with the above judgment, the plaintiff filed this second appeal.

6. Learned counsel for the appellant has argued that trial Court has decreed the suit and granted the relief of declaration as well as injunction. The trial Court has properly appreciated the evidence and it was not proved that the second wife of deceased Narsingh Rajpoot was not legally wedded wife. The will was executed by the Sajanbai was proved before the trial Court. It was also proved that both widows of Narsingh Rajpoot have partitioned movable and immovable property and partition deed Exhibit-P-7 was executed between them, but the first appellate Court has admitted the appeal and without any sufficient reasons illegally disturbed the decree passed by the trial Court.

7. Learned counsel for the respondents has supported the judgment and decree passed by the trial Court. Argued that trial Court has granted the decree of declaration of ownership of the disputed property that was not prayed by

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the plaintiff in his suit and the burden to prove that the marriage solemnized between the deceased Narsingh Rajpoot and Sajanbai was a valid marriage after the enactment of Hindu Marriage Act, 1955 on plaintiff as it was not proved and if that marriage is also proved to be legal as per Hindu Succession Act, 1956 the deceased Narsingh Rajpoot have two daughters, one is the Udaibai and another one was Shivkuwarbai and as per the Hindu Succession Act, the two daughters were the legal heirs of the deceased Narsingh Rajpoot and in this factual situation the movable and immovable property of the deceased can be partitioned only between two daughters and widows and the maximum what the widows get was collectively 1/3rd share and 1/3rd share to the first daughter and 1/3rd share to the second daughter. If any partition has taken place they are not bounded to that. Thus, in that situation Sajanbai was not competent to execute the will regarding half of the share of the property. Trial Court has wrongly decreed the suit. First appellate Court has discussed the fact and passed the judgment as per the law and no interference is called for.

8. I have gone through the record. It is an admitted position in the case that the deceased Narsingh Rajpoot got married firstly with the mother of the respondent No.1 Udaibai in the lifetime of his first wife he remarried with Sajanbai, from second marriage there was no issue and from the first wife Jadavbai deceased Narsingh Rajpoot had two daughters, Udaibai and Shivkuwarbai. Both were got married and after the marriage Shivkuwarbai has expired .

9. On this issue, the first appellate Court has discussed the fact that the marriage of Sajanbai was solemnized before the Hindu Marriage Act, 1955 came into force i.e. prior to 18.05.1955, has not proved, on that basis alone the deceased second wife Sajanbai have no right on the property of the deceased

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Narsingh Rajpoot, as marriage between them has been solemnized after 18.05.1955 in the lifetime of first wife being violation of Section 5 of the Hindu Marriage Act is void and wife from void marriage cannot claim any right over the ancestral property of the deceased. Further more, first appellate Court has also discussed that the will was executed on the basis that the Sajanbai got the disputed house through partition deed (Exhibit-P-7), but as per Hindu Succession Act, 1956 deceased Narsingh Rajpoot had two daughters from his first wife Jadavbai i.e. Udaibai and Shivkuwarbai and deceased Narsingh Rajpoot expired without executing the will. In that situation, widow would only get a share jointly and two daughters would have get separate share and thus the partition deed Exhibit-P-7 is against the provisions of Hindu Succession Act, 1956 and on that basis the respondent No.1 Udaibai was not competent to execute the will regarding the disputed property.

10. The first appellate Court has also concluded that the plaintiff has not claimed the relief of declaration of title and that was granted by the trial Court so it was reversed and regarding the possession it was concluded by the first appellate Court that the plaintiff is in possession, but it was not proved that he was having the right to possess the property so the limited injunction was granted that without following the due process of law the plaintiff shall not be dispossessed by the respondents.

11. Thus after above discussion, it is clear that no infirmity or perversity is found in the impugned judgment and, therefore, the appeal is not admissible. Accordingly, the appeal is dismissed in limine.

12. A copy of this order along with record be sent back to the courts below for information and its compliance.

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**(DEVNARAYAN MISHRA)**
**JUDGE**

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