
(2019) 10 CHH CK 0207
Chhattisgarh High Court
Case No: First Appeal No. 14 Of 1998

Bhagwat Prasad Sahu And Ors

APPELLANT

Vs

Dilharan And Ors

RESPONDENT

Date of Decision: Oct. 24, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 96, Order 41 Rule 27
- Hindu Succession Act, 1956 - Section 14(i)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: H.B. Agrawal, Prabha Sharma, Waquar Naiyar

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. Heard on application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908.

2. By this application, the appellants seek to file copy of the revenue record regarding property in question. As the documents are required to enable the court for ascertaining as to who was the original owner and how the property was mutated in the name of successor, therefore, application is allowed and documents are taken on record.

3. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 19-9- 1997 passed by 7th

Additional District Judge, Bilaspur (CG) in Civil Suit No. 1-A/1994 wherein the said court dismissed the suit filed by the appellants for declaration of

title, possession and permanent injunction over the property of land bearing survey No. 298 area 0.51 decimal, 824 area 1.50 acres, 1562 area 0.40

decimal, 1577 area 0.82 decimal, 1579 area 0.65 decimal, 1624 area 0.50 decimal and 2547 area 0.69 decimal, total area 5.07 acres and two houses

and one kitchen garden situated in same place.

4. The property in question was originally owned by Chhattoo Sahu who was father of Jhagru Sahu and Rikhiram. Both sons namely Jhagru Sahu and

Rikhiram died during lifetime of their father Chhattoo Sahu. After death of Rikhiram, his two wives namely Kari Bai and Bundeliya Bai succeeded

property. Said Bundeliya Bai alienated property in favour of Pyarelal on 15-6- 1955 against which suit was filed by Chhattoo Sahu and it is decided in

that suit that Chhattoo Sahu's right of reversioner after death of Kari Bai and Bundeliya Bai, shall be maintained because on the date of execution of

sale deed i.e., 15-6-1955 both Kari Bai and Bundeliya Bai have limited interest. As per appellants, said Pyarelal again executed sale deed in favour of

Kari Bai and Bundeliya Bai on 3-7-1964 to frustrate the decree passed in favour of Chhattoo Sahu. It is also pleaded on behalf of the appellants that

sale deed executed by Kari Bai and Bundeliya Bai in favour of Mohanlal on 1-1-1965 and sale deed executed by Bundeliya Bai in favour of

respondent Pannalal Verma and respondent Ashwani Kumar is also not valid. Respondent Narayan alias Mana Mandal is son of said Mohanlal in

whose favour sale deed was executed. Again, a will was executed by Bundeliya Bai in favour of respondent Dilharan is also not valid.

5. Learned counsel for the appellants would submit as under:

I) Sale deed executed by Pyarelal in favour of Kari Bai and Budeliya Bai is not valid because same is executed to frustrate the decree passed by the

court of Civil Judge, in Civil Suit No. 32-A/1955 vide judgment dated 17-9-1956 which was affirmed by High Court of Madhya Pradesh in Second

Appeal No.343 of 1957 vide judgment dated 11-9-1959, therefore, no title is passed in favour of Bundeliya Bai and Kari Bai.

ii) After execution of sale deed Pyarelal was in possession of property and when Hindu Succession Act, 1956 (for short, "the Act, 1956") came into

force, on that date Bundeliya Bai and Kari Bai were not in possession of the land in question, therefore, the Act, 1956 has no application in the present

case.

iii) Sale deed executed by Bundeliya Bai and Kari Bai is not binding on the right of Chhattoo Sahu, therefore, appellants who are reversioners and successors of Chhattoo Sahu, are entitled for the property in question and again they are entitled for possession.

Reliance has been placed in the matter of Eramma vs. Verrupanna and others, reported in AIR 1966 SC 1879.

6. On the other hand, learned counsel for the respondents would submit as under.

I) Bundeliya Bai and Kari Bai were in possession of the land in question on 17-6-1956 and after coming into force of the Act, 1956 both were in

possession of the property as full owners and not limited owners, therefore, they had all the right to alienate the property by way of sale deed and by way of a will.

ii) Will is executed by Bundeliya Bai in favour of Dilharan on 5-2-1995 which is valid document as per evidence adduced before the trial court. Again, sale deed are also valid after the Act, 1956.

ii) Earlier the suit was filed under the old Act i.e., Hindu Women's Right to Property Act, 1937 in which both Bundeliya Bai and Kari Bai have limited

interest but after coming into force of the Act, 1956, they are not limited owners of the property in question and their title was perfect, therefore,

finding of the trial court is not liable to be interfered with while invoking jurisdiction of the appeal.

7. I have heard learned counsel for the parties and perused the record of the court below including the judgment and decree.

8. The core issue for consideration of this court is whether Bundeliya Bai and Kari Bai were in possession of the property on the date of coming into

force of the Act, 1956 i.e., 17-6-1956. Though it is stated that Kari Bai and Bundeliya Bai were not in possession of the property after execution of

sale deed in favour of Pyarelal, but from the evidence of appellant Bhagwat Prasad Sahu (PW/1) (para 10) it is clear that property in question was in

possession of Kari Bai, Bundeliya Bai and Pyarelal even after sale. He further admitted that Kari Bai and Bundeliya Bai were in possession of the

property and he purchased property from Bundeliya Bai (para 15).

9. Heeralal (PW/2) also deposed before the trial court that Kari Bai and Bundeliya Bai were in possession of the property in question because

Pyarelal is living with them and they were maintaining said Pyarelal from his child-hood. From the evidence of appellants side it is clear that Kari Bai

and Bundeliya Bai were in possession of the property even after execution of sale deed on the date of coming into force of the Act, 1956. When both

were in possession of the property, they became full owner of the property as per Section 14(i) of the Act, 1956. It appears that Kari Bai and

Bundeliya Bai were guardians of Pyarelal that is why they were in possession of the property with Pyarelal and Pyarelal again executed sale deed in

favour of Kari Bai and Bundeliya Bai for the land in question. If Pyarelal would not have executed sale deed in their favour, even then they were in

possession of the property in question that is why Mohanlal, respondents No.4 and 5 have purchased property from them. Appellant Bhagwat Prasad

also purchased property from Bundeliya Bai, therefore, it is clear that property was possessed by Kari Bai and Bundeliya Bai and they alienated

property as full owner. Again Will is executed in favour of Dilharan and as per evidence of Dilharan (DW/1) and attesting witnesses Sanjay Sharma

(DW/2) and Devideen (DW/3) it is established that Bundeliya Bai executed a will in favour of Dilharan and it is clear from the record that Dilharan is

in possession of property in question. There is no law which is preventing Pyarelal from executing sale deed in favour of Kari Bai and Bundeliya Bai,

therefore, looking to the entire evidence, it is clear that Kari Bai and Bundeliya Bai were real owner of the property in question and they had all the

right to alienate the same.

10. After re-assessing the entire evidence, argument advanced on behalf of the appellants is not sustainable. Finding of the trial court is based on oral

and documentary evidence adduced by both sides and same is not based on any irrelevant or extraneous material. After re-assessing the evidence,

this court has no reason to substitute contrary finding. The appeal is liable to be dismissed. Case law cited by learned counsel for the appellants does

not help as the same is very distinguishable from the facts of the present case.

11. Accordingly, decree is passed in favour of respondents and against the appellants as under:

Â (i) The appeal is dismissed with cost.

Â (ii) Parties to bear their own costs.

Â (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

Â (iv) A decree be drawn up accordingly.