2026:CGHC:6134

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 32 of 2013

Reserved on: 14.10.2025

Delivered on: 03.02.2026

Uploaded on : 03.02.2026

- Smt. Laxmi Yadav W/o Shatrughan Yadav Aged About 54 Years Occupation House Wife, R/o Shanker Nagar, Bilaspur, Tah. And Distt. Bilaspur (C.G.)

--- Appellant/Plaintiff

versus

1. (*Died and Deleted*) Smt. Urmila Yadav
2. (*Deleted*) Umesh Yadav (*Died*)

   2.1 Smt. Urmila Yadav W/o Late Umesh Aged About 57 Years R/o Qtr. No. 56, Palash, Rajkishore Nagar, Devika Vihar, Bilaspur, Tehsil Bilaspur, District Bilaspur (C.G.)

   2.2 Santosh Yadav S/o Late Umesh Aged About 38 Years R/o Qtr. No. 56 Palash Rajkishore Nagar, Devika Vihar, Bilaspur Tehsil Bilaspur, District Bilaspur (C.G.)

   2.3 Rajeshwari D/o Late Umesh Aged About 28 Years R/o Qtr. No. 56, Palash Rajkishore Nagar, Devika Vihar, Bilaspur, Tehsil Bilaspur, District Bilaspur (C.G.)
3. Deepak Yadav S/o Late Rama Yadav Aged About 50 Years Occupation Property Dealer, R/o Shanker Nagar, Bilaspur (C.G.)
4. Smt. Indrawati W/o Faguram Aged About 48 Years Occupation - House Wife, R/o Rayees Banger Store, Baaji Gali, Infront Of S.K. Two Wheeler Workshop, Near Balmukund School, Talapara, Bilaspur (C.G.)
5. Smt. Vrindavati W/o Sunder @ Sundaru Yadav Aged About 46 Years Occupation House Wife, (Posted As Peon In Government High School Dayalband), Behind Govt. High School, Dayalband, Bilaspur (C.G.)

6. Smt. Jamuna Bai W/o Jagdish @ Jaggu Yadav (Plumber) Aged About 46 Years Occupation - House Wife, Near Rao Electrical Gali, Infront Of Shiv Shanker Singhs House, 27 Kholi, Bilaspur (C.G.)
7. Smt. Kapura Yadav W/o Late Ram Khilawan Yadav Aged About 62 Years Occupation Service, Office- P.W.I. Railway Inspection Office, Bhilai-3, Distt. Durg (C.G.)
8. State Of Chhttisgarh Thru- Collector, Bilaspur (C.G.)

---Respondents

For Appellant	:	Mr. Surfaraj Khan, Advocate
For Respondents No. 2.1 to 2.3 & 3 to 7	:	Mr. Aishwarya Pandey, Advocate with Mr. P.K. Tulsyan, Advocate
For Respondent No. 8-State	:	Mr. Aman Tamboli, Panel Lawyer

Hon'ble Shri Justice Parth Prateem Sahu

C.A.V. Judgment

1. Appellant-plaintiff has filed this second appeal under Section 100 CPC challenging the legality and sustainability of impugned judgment and decree dated 08.10.2012 passed by learned 5th Additional District Judge, Bilaspur, District Bilaspur in Civil Appeal No. 22-A/2011, whereby learned First Appellate Court dismissed the appeal filed under Section 96 of CPC affirming the judgment and decree dated 29.03.2011 passed by learned 8th Civil Judge, Class-II, Bilaspur, in Civil Suit No. 65-A/2010 dismissing the suit filed by plaintiff.

2. For the sake of convenience, parties shall be referred to in terms of their status shown in Civil Suit No. 65-A/2010 before the Trial Court.

3. Brief facts of the case necessary for disposal of this appeal are that plaintiff filed a civil suit before the trial court seeking declaration of title and permanent injunction pleading therein that the property situated at

village Torwa Tehsil and District Bilaspur bearing Khasra Nos. 840, 889/3, and 895, admeasuring 0.47, 0.82, and 0.55 acres respectively (total 1.84 acres) (hereinafter referred to as “the suit land”) was initially owned by Dhaniram Yadav. Dhaniram purchased the land bearing khasra no. 840 measuring 0.47 acres from Udiya son of Manohar for consideration of Rs. 500/- on 02.07.1961. Land bearing khasra No. 889/3 and 895 measuring 0.82 acre and 0.55 acre was purchased by Dhaniram from Smt. Sukhmat Yadav for consideration of Rs. 1,000/- on 15.05.1970 and came in possession of aforementioned lands. Name of Dhaniram was also mutated in the revenue records vide mutation orders No. 1429 and 1430 dated 30.01.1976. Dhaniram was issue-less and therefore he had kept and brought up plaintiff, daughter of his brother, as his own and continued to live with her along with his wife as family after his retirement from Railways. During lifetime, Dhaniram executed Will on 28.05.2001 bequeathing the suit land to the plaintiff. It is pleaded that defendant No. 1 in greed of property on false and fabricated grounds questioned the mutation order dated 30.01.1976 in favour of Dhaniram in an appeal before the Sub-Divisional Officer, Bilaspur which was allowed without giving proper opportunity of hearing to Dhaniram. The order passed by SDO(R.) was put to challenge before the Additional Commissioner Bilaspur, Division Bilaspur, which was also dismissed. Aggrieved by which, the order of Commissioner was put to challenge before the Board of Revenue, Gwalior, which, upon reorganization of the State of Madhya Pradesh, was transferred to the Board of Revenue, Bilaspur. During pendency of said revision before the Board of Revenue, Bilaspur, Dhaniram died on

14.03.2002. Plaintiff submitted an application for substitution of her name, which remained pending. It was also pleaded that defendant No. 1 also filed an appeal against the order of mutation in favour of Dhaniram which came to be dismissed. Defendants No. 1 to 3 thereafter influencing Smt. Milapa Bai and Sheela Bai submitted an application in the pending proceeding before the Board of Revenue in a revision filed by Dhaniram (since deceased) on 28.03.2005. The Board of Revenue thereafter dismissed the revision vide order dated 14.09.2005. Application for restoration of revision was filed and also an application claiming herself to be legal heir of late Dhaniram which also came to be dismissed on the ground that plaintiff could seek appropriate relief from the competent civil court. Name of plaintiff continuously recorded based on the registered Will executed in her favour, however, defendants therein were making all attempts to sale the property, subject matter of suit, and also being threat to dispossess her. Plaintiff in the suit has prayed for relief of declaration that the plaintiff become owner and possessor of the suit property based on the Will dated 28.05.2001. The order passed by Board of Revenue dated 10.07.2009 to be contrary to law. Defendants be restrained from interfering with the title and possession of plaintiff either themselves or through other persons.

4. Defendants Nos. 1 to 7 filed a written statement, denying pleadings made therein. They have specifically denied the pleading with regard to purchase of property, subject matter of the suit by Dhaniram from Udiya and Smt. Sukhmat. In fact, they have denied entire pleadings made in the plaint. It is also pleaded that the alleged sale deed dated

02.07.1961 is an unregistered sale-deed and therefore it is void and does not confer any right to Dhaniram and consequently the mutation order passed based on the unregistered sale-deed, also to be void. The property, subject matter of sale deed dated 15.05.1970 was ancestral property of Udiya S/o Manohar (husband of Sukhmat). As there was no partition, Sukhmat Bai did not have any right or title on the said property bearing Khasra No. 889/3 and 895. She was illiterate lady i.e., mother of Dhaniram (so called purchaser). It is forged and fabricated document. The property, subject matter of the suit, was ancestral property of Udiya son of Manohar who died in the year 1968. Udiya was having four sons namely Fudku, Rambharos, Dhaniram and Goverdhan and a wife ie., Sukhmat Bai. After death of Udiya name of four sons and his widow was to be substituted in revenue records. There was no partition of the ancestral property between Dhaniram and his other three brothers and mother. It is also pleaded that as Fudku and Dhaniram sons of Sukhmat were in railway service, Sukhmat was not having any need of money. Dhanriram being literate person, playing cunningly got his name mutated in the entire ancestral property based on alleged sale deed, one unregistered and another registered stated to be executed by his mother. The order of mutation dated 30.01.1976 in favour of Dhaniram is also illegal and void. The order of mutation in favour of Dhaniram was challenged in appeal and it was set aside. In reply, defendants have pleaded that Dhaniram was issue-less and had kept his two niece, plaintiff and one Sheela Bai, with him and after their marriage, they started living in their matrimonial home. Dhaniram has not executed any Will on 28.05.2001, it is forged and fabricated. On the

alleged date of execution of Will, Dhaniram was very old, his mental status was not good and further that on the date of execution of Will no property was recorded in name of Dhaniram and therefore the plaintiff could not got any right and title based on the Will. It is also pleaded that Dhaniram died on 14.03.2002 but the suit is not filed within three years of the death of Dhaniram but is only filed on 28.06.2009 and therefore the civil suit is barred by limitation as it was not filed within three years. In additional pleadings, defendants have also pleaded that the property, subject matter of the suit, is owned by Udiya son of Manohar. Udiya died in the year 1968 leaving behind four sons namely Fudku, Rambharos, Dhaniram and Goverdhan, he has also survived by his widow Smt. Sukhmat Bai who died in the year 1970. There was no partition of the property between sons and widow of Udiya. Out of four brothers, Dhaniram was the only person who was more educated. He, behind the back of other brothers, got his name alone recorded in revenue records. Mutation of name of Dhaniram alone in ancestral property came to their knowledge in the year 1997 and thereafter an appeal was filed challenging the order of mutation which was allowed and the appeal and revision preferred by plaintiff came to be dismissed. It is also pleaded that the land transferred through sale deed in favour of one S.C. Das vide sale deed dated 20.02.1995 was questioned in a separate civil suit pending before the 9th Civil Judge, Class-II, Bilaspur by defendant No. 1 and others. The property, subject matter of the suit, is a joint hindu family property, it was not partitioned and therefore Dhaniram was not having any right and title to execute the Will.

5. Learned trial Court considering the pleadings made by the respective parties has formulated five issues for consideration. Upon appreciation of pleadings and evidence of respective parties, dismissed the suit recording a finding that Ext. P-2 is an unregistered sale deed said to be executed by Udiya in favour of Dhaniram. It does not confer any title on the purchaser in view of provision of Section 17 read with Section 49 of the Registration Act 1908. It is also observed that the sale deed dated 15.06.1970 said to be executed by Sukhmat (mother of Dhaniram) in favour of Dhaniram to be without any authority of law as name of Sukhmat was not recorded in revenue record as owner of the property and further considering that there was no partition of the property of Udiya between his legal heirs/ legal representatives ie., four sons and widow. The Will could not be proved in accordance with Section 63 of the Indian Succession Act readwith Section 68 of the Evidence Act and held that it could not be proved that the plaintiff is owner and possessor of the land, subject matter of the suit, to be not proved. Other issues No. 2 and 3 were also not found to be proved, decided against plaintiff and dismissed the suit.

6. Learned First appellate court upon appreciating the evidence as brought by the respective parties has affirmed the finding recorded by the trial court that the Dhaniram has not accrued any right and title over the land, subject matter of the suit, pursuant to the sale deeds Ext. P-1 & P-2, further recorded a finding that plaintiff could not able to prove valid execution of Will Ext. P-3 dated 28.05.2001 in accordance with law and could not able to succeed in removing the shadow of clouds over her title based on Will. Learned first appellate court also made an

observation that the plaintiff could not able to prove that she is successor of late Dhaniram and accordingly dismissed the appeal by impugned judgment and decree.

7. Learned counsel for plaintiff would submit that both the courts below erred in recording a finding that Dhaniram was not conferred with any right or title over the suit property based on the sale deed Ext. P-1 & P-2. Finding recorded by both the courts below that the Will dated 28.05.2001, Ext. P-3, to be not proved in accordance with the provisions under Section 63 of the Indian Succession Act, 1925 readwith Section 68 of the Evidence Act to be perverse to the evidence of PW-3, Dileep Kumar (attesting witness). In support of his contention, he places reliance upon the decision in case of **Dayashankar and others v. Jaishankar (since deceased) through his L.Rs. and others** reported in **2012 (2) CGLJ 518;** and **Rajni v. Basudev Narayan Singh (Smt. Gyaneshwari Devi and Others)** reported in **2013 (2) CGLJ 280.**

8. Learned counsel for Defendants No. 1 to 7 would oppose the submission of learned counsel for plaintiff and would submit that learned both the courts below upon appreciation of pleadings and evidence brought on record have rightly recorded a finding and concluded that Dhaniram, testator of Ext. P-3, was not having any right and title to bequeath the property as mentioned therein. Dhaniram was not conferred with any right or title based on unregistered sale deed Ext. P-2 dated 02.07.1961 executed by Udiya (his father) in his favour and further that on the date of execution of registered sale deed Ext. P-1 dated 15.05.1970 the executant/ seller Sukhmat Bai, mother of

Dhaniram and therefore the sale deed executed is null and void. Partition of ancestral property recorded in the name of Udiya was not proved and all the four brothers ie., Fudku, Rambharos, Goverdhan and Dhaniram along with Sukhmat, widow of Dhaniram, were the joint owner of the property. There is concurrent finding fo the facts recorded by both the courts below.

9. This second appeal was admitted on 11.02.2015 on the following substantial questions of law:-

> *"1. Whether the Revenue Court, SDO Bilaspur has the power to declare the registered sale deed as null and void?*
>
> *2. Whether mutation done on the basis of the sale deed the mutation could have been challenged to annul the sale deed 20 years back?"*

10. On 29.08.2025, in exercise of power under Section 105 of CPC, another question of law has been formulated as under:

> *"3. Whether both the courts below were justified in recording its finding that the Will has not been duly executed, is legal and justified?"*

11. I have heard learned counsel for the parties and also perused the record of both the courts below.

12. Undisputedly the suit filed by plaintiff seeking declaration of title that plaintiff has acquired title and is in possession of the suit property based on Will dated 28.05.2001 and to declare the order dated 10.07.2009 passed by Board of Revenue, Bilaspur, Chhattisgarh to be contrary to law.

13. Will is filed as Ext. P-3 in which name of testator is mentioned as Dhaniram son of Udiya aged about 74 years, it was executed in favour of six persons named therein. In the body of Will, it is mentioned that the land of his ownership, title and his possession situated at village Torwa including the property bearing Khasra Nos. 889/3 895 and 840 (subject matter of the Will deed Ext. P-1 and P-2 along with other property) to have been willed in their favour.

14. According to the provision of law, any person claiming title over any property based on the Will executed in his/ her favour then even if the Will is registered it is to be proved before the court in accordance with the provisions under Section 63 of the Indian Succession Act, 1925 readwith Section 68 of the Evidence Act. Section 63(c) of the Act of 1925 which is relevant in the facts of the case is extracted below for ready reference:

> "**Section 63. Execution of unprivileged wills.--** Every testator, not being a soldier employed in an expedition or engaged in actual warfare, [1][or an airman so employed or engaged,] or a mariner at sea, shall execute his will according to the following rules:--
>
> (a) x x x x
>
> (b) x x x x
>
> (c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same

> time, and no particular form of attestation shall be necessary.

15. Section 68 of the Evidence Act is also relevant to the facts of the cse, which is also extracted below **B. Venkatamuni v. C.J. Ayodhya Ram Singh**.

> "**68. Proof of execution of document required by law to be attested.**—If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence: 3[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]"

16. The requirement to prove a valid execution of any privileged Will is that it shall be attested by two or more witnesses and each of whom has seen the testator sign or affix his mark to the will or has seen some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator.

17. Plaintiff to prove pleadings in the plaint had examined herself as PW-1 and Dileep Kumar as PW-3, the attesting witness. PW-1 in her examination-in-chief had stated that the testator Dhaniram was issue-less who after retirement from service from Railways started living along with his wife and with plaintiff. He executed his last Will on

28.05.2001 (registered Will). It is also pleaded that he died on 14.03.2002. In cross-examination, it is admitted that she was having knowledge of execution of Will by Dhaniram of the property of his share. Before death of Dhaniram, she became aware of execution of will. She has not made any statement as to whether the Will was executed in her presence or not and therefore she is not the witness to the execution of Will.

18. PW-3, Dileep Kumar, in his examination-in-chief has stated that Dhaniram prior to the date before 28.05.2001 (date of execution of Will) called him and expressed his view that he wanted to execute Will and he had to come to witness the Will. He also stated that on asking of Dhaniram, he along with Dhaniram and Santosh Yadav came to the Registrar Office at Bilaspur and have put signature on the Will. In cross-examination, he stated that at the time of execution of Will, he was being with Dhaniram,Santosh Yadav and Shatrughan Yadav. He is not aware as to how many property, and which property to whom, Dhaniram bequeathed in his Will. In para-8, this witness admitted that the Will deed was typed prior to 28.05.2001. He also made statement that he is not aware as to how many days before 28.05.2001 Will was typed. He has not come when the Will deed was typed. In his presence Will was not prepared and he has only put his signature over it. In earlier paragraph, this witness has stated that the Will was typed in Registrar Office and thereafter he changed his statement and stated that the Will was typed in District Court where Advocate C.L. Yadav used to sit.

19. From the aforementioned statement of this witness, it is *prima facie* appearing that he made contradictory statement with regard to preparation of Will due to which testimony of this witness cannot be accepted as reliable evidence.

20. The law with regard to prove of Will is no longer *res integra*. Section 63 of the Indian Succession Act, 1925 and Section 68 of the Evidence Act, 1872 are relevant in this regard. Propounder of a Will must examine one or more attesting witnesses to prove the valid execution of Will and under the aforementioned provision of law the onus is placed on the propounder to remove all suspicious circumstances, of valid execution of Will.

21. In the case of **Jaswant Kaur v. Amrit Kaur**, reported in **(1977) 1 SCC 369** Hon'ble Supreme Court had observed that when a Will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the Will is such, as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the Will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the Will.

22. In case of **Bharpur Singh v. Shamsher Singh,** reported in **(2009) 3 SCC 687** hon'ble Supreme Court has narrated few suspicious circumstances being illustrative but not exhaustive as under:

> "**23.** Suspicious circumstances like the following may be found to be surrounded in the execution of the will:
> (*i*) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.
> (*ii*) The condition of the testator's mind may be very feeble and debilitated at the relevant time.
> (*iii*) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.
> (*iv*) The dispositions may not appear to be the result of the testator's free will and mind.
> (*v*) The propounder takes a prominent part in the execution of the will.
> (*vi*) The testator used to sign blank papers.
> (*vii*) The will did not see the light of the day for long.
> (*viii*) Incorrect recitals of essential facts."

23. In the aforementioned case, Hon'ble Supreme Court further observed that the circumstances narrated as above are not exhaustive subject to offering of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory requirements of proving the will need not be complied with.

24. In case of **B. Venkatamuni v. C.J. Ayodhya Ram Singh**, reported in **(2006) 13 SCC 449** Hon'ble Supreme Court has held that the court must satisfy its conscience as regards due execution of the Will by the testator and the court would not refuse to probe deeper into the matter only because the signature of propounder on the Will is otherwise proved.

25. In the light of above decisions of Hon'ble Supreme Court, if the facts of the case in hand is taken into consideration would show that the document Will Ext. P-3 has been stated to be forged and fabricated document by the defendants. The attesting witness Dilip Kumar, PW-3, though had made an attempt to state that the Will was typed in the Registrar office, thereafter correct it to say that it is typed in civil court and he thereafter in his cross-examination stated that it was typed prior to 28.05.2001 (on the date of execution of Will). In his evidence, he clearly stated that he is not aware as to what and which property is given to whom. The Will is executed in favour of six persons, out of which suit was filed by only one, ie., Laxmi Yadav. W/o Shatruhan Yadav. On the date of execution of Will, Shatruhan Yadav was present in the Registrar office as stated by attesting witness PW-3.

26. Husband of beneficiary of the Will ie., Shatruhan Yadav husband of Laxmi Yadav (PW-1) has got prepared the document Ext. P-3 Will prior to coming in picture of attesting witness. This attesting witness has further admitted in evidence that he has not read the Will.

27. In the above facts of the case, it appears to be suspicious as to whether the testator was aware about contents and the properties, subject matter of disposition mentioned in the Will. The beneficiary of the Will actively participated in preparation of the Will through her husband.

28. In the aforementioned facts of the case, even if the evidence of PW-3 to the extent that signing of the Will by testator to be proved will not prove that the testator had understood the nature of effect of disposition as mentioned on the Will, more so when in the facts of the

attesting witness PW-3 had made statement that he is not aware as to where the Will was typed which is brought for registration in the Registrar office and which property is given to whom.

29. From the aforementioned evidence of PW-3, Dileep Kumar, the clouds on the valid execution of Will could not be removed as the testimony of this witness appears to be not reliable. Apart from the above, a person can execute the Will of the property of which he is having right and title. From the evidence of plaintiff, PW-1, it is appearing that the property bearing Khasra No. 840, subject matter of the Will deed, Ext. P-2, dated 02.07.1961 and the land bearing Khasra No. 889/3 and 895 measuring 0.82 and 0.55 acres respectively of the sale deed dated 15.05.1970 was ancestral property (as admitted in para-12 of her deposition). He also stated that she is grand-daughter of Udiya and Sukhmat and they were having four sons namely Fudku, Rambharos, Dhaniram and Goverdhan. Though she made statement that there was partition between all the four brothers of his father, however, she made further statement that she is not aware as to which brother out of four received which property and where. She also stated that she was not aware about when partition took place between four brothers. In para-13, she admitted that all the brothers were cultivating agricultural lands jointly.

30. In the aforementioned facts of the case, evidence of plaintiff herself, it is apparent that the property, subject matter of the sale deed Ext. P-1 and P-2 was co-parcenary property being ancestral property of late Udiya. Sale deed said to be executed by Udiya, original owner of the ancestral property, was an unregistered sale deed (Ext. P-2). Perusal

of sale deed Ext. P-2 would reflect that it mentions that it is to be executed by Udiya son of Manohar, in favour of Dhaniram son of Udiya on 02.07.1961.

31. The value of the property/ sale consideration is mentioned as Rs. 500. However, the sale deed is not registered in accordance with the Registration Act, 1908. Section 17 of the Registration Act mandates that non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, any right, title or interest to be registered. Section 49 of this Act talks of effect of non-registration of documents required to be registered. It mentions that no document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882),] to be registered to affect any immovable property comprised therein, or confer any power to adopt, or be received as evidence of any transaction affecting such property or conferring such power.

32. In the case at hand, admittedly, Ext. P-2 is an unregistered document and therefore it does not affect any immovable property comprised therein and therefore Dhaniram has not acquired any title of property mentioned in Ext. P-2 which mentions transfer of property bearing Khasra No. 840 measuring 0.47 acre.

33. In the aforementioned facts of the case, as no right or tile of Dhaniram was created on land bearing Khasra No. 840 based on the sale deed Ext. P-2, Dhaniram was not having any right or title to execute the Will of the aforementioned land in favor of others. It is settled law that a person cannot transfer better title than what he possessed.

34. So far as the sale deed Ext. P-1 is concerned, it is executed by Smt. Sukhmat Bai widow of Udiya on 15.05.1970 in favour of his son Dhaniram. As discussed in preceding paragraphs, the property, subject matter of the sale deed bearing Khasra No.. 889/3 and 895 as admitted by plaintiff was ancestral property of Udiya, he was having four sons namely Fudku, Rambharos, Dhaniram and Goverdhan. Partition between four sons and widow of Udiya is not proved in accordance with law. Defendants have denied the fact of partition between four brothers. Ext. D-1 is the copy of Adhikar Abhilesh in which name of Rama son of Fudku and others legal heirs of Fudku is also recorded along with others in revenue records against the land bearing Khasra No. 840, 889/3 and 895.

35. It is admitted case of plaintiff that the property, subject matter of sale deed, Ext. P-1, is the ancestral property of Udiya and not of Sukhmat. In the ancestral property of husband, his widow can acquire separate right and title over the joint property after partition between the co-owners of the property. Plaintiff could not proved the fact that after death of Udiya there was partition between her and her four sons and she received the property bearing Khasra No. 889/3 and 895, subject matter of sale deed Ext. P-1 in her share. According to the provision under Section 101 of the Evidence Act, it is burden upon the plaintiff to prove the facts pleaded of partition in which plaintiff utterly failed and therefore plaintiff failed to prove that the seller of land, subject matter of Ext. P-1 was having right and title over the property, subject matter of sale deed for valid transfer of immovable property bearing Khasra Nos. 889/3 and 895 through registered sale deed. Mere registration of sale

deed will not in itself be sufficient to prove that the sale deed executed transferring the immovable property in favour of purchaser is valid in law. As discussed above that for transfer of right and title, even through registered sale deed, the seller is required to first have the title and right over the property in accordance with law. If the seller himself is not having the right and title over the property, the purchaser would not confer any right and title over such property as mentioned in sale deed.

36. Even if the submission made by learned counsel for appellant or case set up by the plaintiff is considered that Sukhmat Bai executed the registered Will deed, Ext. P-1, in favour of Dhaniram, her son, then also apart from the above discussions, entitlement of the Sukhmat Bai to be owner of the property, subject matter of sale-deed Ext. P-1, if registered sale deed is to be taken into consideration looking to the relationship between the two being mother and son, the question arises for consideration whether the sale deed is a nominal sale deed and therefore it is a sham document. Hon'ble Supreme Court in the case of **Shanti Devi (since deceased) through LRs. Goran vs. Jagan Devi and others** reported in **2025 SCC OnLine SC 1961** referring decision of **Kewal Krishnan v. Rajesh Kumar and others,** reported in **(2022) 18 SCC 489** while considering the fact that whether the defendants have paid any sale consideration to the plaintiff while purchasing the plaintiff's share in the property, in para 34, has observed thus:

> "**i. *First*,** that the sale of an immovable property would have to be for a price and such a payment of price is essential, even if it is payable in the future. If a sale deed is executed without the payment of price, it is not a sale at all in the eyes of law, specifically under Section

54 of the Transfer of Property Act, 1882. *Such a sale without consideration would be void and would not affect the transfer of the immovable property.*

ii. ***Secondly***, that, in the said case, the defendants could not rebut the allegation of the plaintiff that no sale consideration was paid as no evidence was adduced to indicate - (a) the actual payment of the price mentioned in the sale deeds and, (b) that the defendants had any earning capacity at the time of the transaction such that the sale consideration could have been paid. As such the sale deed being void for want of valid consideration, could not be said to have affected the one-half share of the plaintiff in the suit properties nor have conferred any right of title on the defendants. In fact, it was held that the sale deeds were a sham and must be ignored.

iii. ***Lastly***, it was reiterated that a document that is void need not be challenged by seeking a declaration as the said pleas can be set up and proved even in collateral proceedings.

The relevant observations are thus:

"*18. Section 54 of the Transfer of Property Act, 1882 (for short "the TP Act") reads thus:*

"***54. "Sale" defined***.—*"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made.—*Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—*A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property."

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eye of the law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.

19. Now, coming back to the case in hand, both the sale deeds record that the consideration has been paid. That is the specific case of the respondents. It is the specific case made out in the plaints as originally filed that the sale deeds are void as the same are without consideration. It is pleaded that the same are sham as the purchasers who were minor sons and wife of Sudarshan Kumar had no earning capacity. No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time, of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half-share of the appellant in the suit properties. In fact, such a transaction made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10-4-1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings.

20. Hence, the issue of bar of limitation of the prayers for declaration incorporated by way of an amendment does not arise at all. The additional submissions made by the

> *respondents on 16-11-2021 have no relevance at all.*
>
> *21. As no title was transferred under the said sale deeds, the appellant continues to have undivided half-share in the suit properties. That is how the District Court passed the decree holding that the appellant is entitled to joint possession of the suit properties along with Sudarshan Kumar. Therefore, for the reasons recorded above, by setting aside the impugned judgment and order* [Rajesh Kumar *v.* Kewal Krishan, *2015 SCC OnLine P&H 20782] of the High Court, the decree passed by the District Court deserves to be restored.*"
>
> (Emphasis supplied)

37. In the case at hand also, firstly title of Sukhmat Bai, of the land subject matter of Ext. P-1 and its valid execution is not proved. The purchaser will not get any right or title on suit property of Ext. P-1.

38. In case of **Bharpur Singh (supra),** Hon'ble Supreme Court has held that registration of the Will by itself would not amount that the statutory requirement of proving the Will need not be complied with.

39. Learned Trial Court upon appreciation of the evidence on Will had taken note of evidence of PW-3, attesting witness, that he admitted that Will was not prepared in front of him. He also admitted that prior to 28.05.2001, document Will was prepared and further in the 'Will' space is left vacant at C to C ie., mentioning of date. Learned Trial court taken note of the fact that this witness admitted that he is not aware of the fact that by Will which beneficiary getting what share of the property. Trial Court has further considered that out of six beneficiaries, only one has filed the suit and other beneficiaries of the Will have not been arrayed as defendants to the civil suit and has taken into consideration it also to be one of the suspicious circumstances and held that not giving any explanation of not impleading other beneficiaries of the Will

to be party to the suit to be one of the grounds for drawing adverse inference. Trial court in fact has disbelieved the testimony of attesting witness PW-3. The finding of the Trial court was affirmed by the first appellate court on the proof that the plaintiff failed to prove the due execution of Will meeting with the requirement under Section 63 of the Indian Succession Act, 1925. There is concurrent finding fo the facts of both the courts below. Hon'ble Supreme Court in the case of **State of Haryana v. Harnam Singh**, reported in **(2022) 2 SCC 238** has observed thus:

> "**9.** The opinion of the High Court was that the will was proved in terms of Section 63 of the Succession Act, 1925 and while coming to such finding the High Court went deep into factual inquiry. It is evident from the judgment under appeal that the formulation of the question of law was on question of fact only. Moreover, in formulating the question on the basis of which the appeal was admitted, the High Court proceeded on the basis that the will was proved in terms of Section 63 of the Succession Act, 1925. The person claiming to be scribe of the will as well as the two attesting witnesses deposed to support the case of the original plaintiff, but both the trial court and the first appellate court disbelieved their testimony. The thumb impression of Kishan Singh was not matched. There was contradiction in the evidence of attesting witnesses as regards the place of execution. The requirement of Section 63 of the Succession Act, 1925 cannot be said to have been fulfilled by mechanical compliance of the stipulations therein. Evidence of meeting the requirement of the said provision must be reliable. The fact-finding courts did not find such evidence to be reliable."

40. Hon'ble Supreme Court in the aforementioned case further considering the fact that when there is concurrent finding of fact recorded by both the courts below, the finding made by the High Court has held that the

factual enquiry by the High Court in second appeal to be not permissible in exercise of jurisdiction of Section 100 of CPC has observed thus:

> "**11.** Thus, the High Court erred in formulating the question of law on the basis that the will was proved in terms of Section 63 of the Succession Act, 1925. In fact, both the fact-finding courts—the trial court and the first appellate court, had found that the will was not proved. The evidence of the witnesses was disbelieved as they failed to inspire the confidence of fact-finding courts. The High Court, however, went into a detailed factual enquiry to come to its finding. We are of the opinion that an enquiry of such nature was impermissible while hearing an appeal under Section 100 of the Civil Procedure Code, 1908.
>
> **12.** In our opinion the finding of the trial court and the first appellate court ought not to have been interfered with by the High Court. We do not find any perversity in the judgment of the first two courts of facts."

41. This court while admitting the appeal on 11.02.2015 has formulated two questions of law as extracted in preceding paragraph. However, the question of law formulated was not the issue considered by the trial court or the first appellate court. The first appellate court considered the above based on the grounds raised therein on the formulated questions of law; "Whether the property, subject matter of suit was ancestral property of the parties?; Whether the suit property was partitioned?' Whether the original owner of the land, Udiya, has partitioned the property to his legal heirs? and; whether the residential accommodation was partitioned? The said question has been formulated based on the grounds raised by the appellant therein and the submission of learned counsel for the parties. The material issue involved in the facts of the case whether due execution of the Will has

not found proved but then in the facts of the case and the pleadings made therein as discussed, as also the veracity of sale deeds Ext. P-1 and P-2, additional substantial question of law formulated under Section 105 of CPC was deemed in the facts of the case and it has also been decided as above.

42. In the aforementioned facts of the case and decisions of Hon'ble Supreme Court, in the considered opinion of this Court, appeal being devoid of substance is liable to be and is hereby **dismissed** accordingly.

43. Decree be drawn up accordingly.

Sd/-

(Parth Prateem Sahu)
Judge

pwn