

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No. 54 of 2008****Reserved on 27-2-2020****Delivered on 28-2-2020**

1. Smt.Darasmati D/o Shri Kala Ram, Caste Ravat aged 48 years (present age about 51 years) village Karhi
  2. Smt. Photo Bai, D/o. Kala Ram Rawat, aged 38 years (present age 41 years)
- Both R/o Village - Girvani, P.S. And Tehsil - Bilaigarh, District - Raipur C.G.

**---- Appellants****Versus**

1. Masat Ram S/o. Mahangu Ram Ravat, aged 27 years (present age 30 years), R/o. Village Girvani, P.S. and Tehsil Bilaigarh, Distt. Raipur.
2. State of Chhattisgarh through Collector, Raipur, Distt. Raipur (CG)

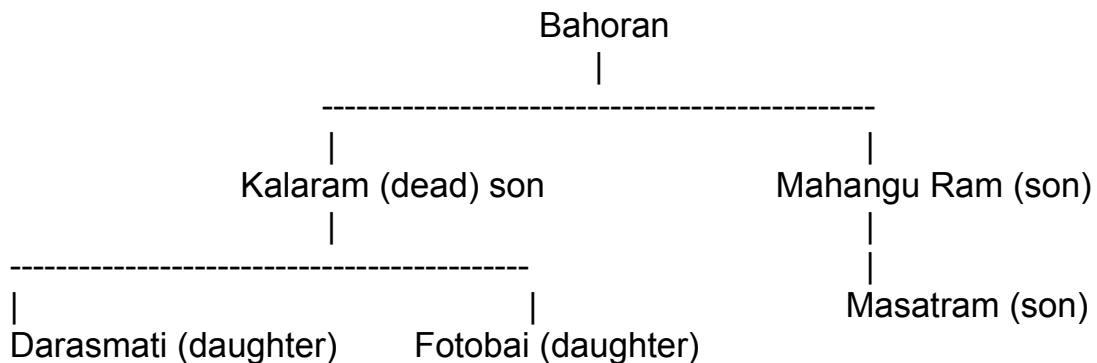
---

For Appellant	:	Mr. S.N. Nande, Adv.
For Respondents No.1	:	None present, though served
For Respondent No.2/State	:	Mr. D.C. Verma, Govt. Adv.

---

**Hon'ble Shri Sharad Kumar Gupta, Judge****CAV JUDGMENT**

1. Appellant has preferred this Civil Appeal against the impugned judgment and decree dated 26-2-2008 passed by 1<sup>st</sup> Additional District Judge, Baloda Bajar (CG) in Civil Suit No. 31-A/2006 whereby and whereunder he dismissed the suit of appellants.
2. The pedigree is admitted by respondent No. 1. This is also admitted by respondent No. 1 that he is the cousin brother of appellants, the father of the appellants namely Kalaram has died, he had executed registered sale deed on 31-7-2002 in favour of him regarding disputed land khasra No. 146/1 area 0.267 hectare, Khasra No. 176/1 area 0.073 hectare and Khasra No. 298/1 area 0.077 hectare total Khasra No. 3 area 0.417 hectare situated at village Girwani. The pedigree is as follow :-



3. In brief, the appellant's case is that her father was aged about 75 years, taking the undue advantage of his old age and his mental imbalance, respondent No. 1 got executed the sale deed. No consideration was paid to him. They and her father were joint owner of disputed land but no consent was obtained from appellants.

4. In brief, the respondent No.1's case is that except the admitted facts other facts of plaint are denied by him. The father of appellants had duly considered the proposal of sale of disputed land and after satisfying and after receiving sufficient consideration, he had sold the disputed land to him. After the execution of registered sale deed he is in possession of disputed land.

5. Trial Court by the impugned judgment and decree dismissed the suit of appellants. Being aggrieved the appellants preferred this appeal.

6. In brief the appellants' case regarding this appeal is that the trial Court has not appreciated the evidence available on record in proper perspective. The father of the appellants had died in the year 2005 but mutation proceedings were not initiated immediately after the execution of alleged registered sale deed. The liability of a bonafide purchaser as envisaged under the Transfer of Property Act has not been complied with.

7. **Point for determination:-**

There are following points for determination in the case in hand:-

- (I) Whether respondent No. 1 got executed registered sale deed dated 31-7-2002 regarding disputed land from late Kalaram by taking undue advantage of his old age and his mental imbalance without paying him consideration ?
- (ii) Whether appellants were also joint owners of disputed lands ?
- (iii) Whether registered sale deed dated 31-7-2002 is not binding upon the

appellants ?

(iv) Whether the appellants are title holders of disputed land ?

(v) Whether the appellants are in possession over the disputed land?

(vi) Whether the appellants are entitled to get permanent injunction against respondent No.1 regarding disputed land ?

(vii) Relief and costs.

**Point for determination No.(i) -Finding with reasons:-**

8. P.W. 1 Smt. Darasmati says in para 6, P.W. 2 Tirathram says in para 5, of their statements given on oath that respondent No. 1 had obtained the signature of late Kalaram on forged sale deed taking undue advantage of his old age, by cheating.

9. P.W. 3 Ghasiya says in para 2 of his statement given on oath that he had heard that respondent No. 1 had got executed sale deed from father of appellants by playing fraud.

10. P.W. 4 Chhedulal in para 3 of his statement given on oath that he had come to know that appellants had obtained thumb impression of late Kalaram taking undue advantage of his old age and unawareness on forged sale deed.

11. D.W. 1 Masatram says in para 3 and 4 of his statement given on oath that late Kalaram was in need of money, he had told in presence of reputed person of village Girwani that he wants to sell the disputed land, he and late Kalaram had entered into an agreement for sell of disputed land, he paid him consideration Rs. 70,000/- in presence of witnesses.

12. D.W. 2 Manohar Das Panika, D.W. 3 Bhishma Prasad Sahu, D.W. 4 Nanki Yadav, D.W. 5 Safed Dad say in para 3 and 4 of their statements given on oath that late Kalaram was in need of money, he had expressed before some persons that he wants to sell disputed land, they were also present at that time, he had made proposal to respondent No 1, respondent No. 1 became ready to purchase the dispute land, agreement had taken place between them for Rs. 70,000/-.

13. D.W. 2 Manohardas Panika, D.W. 4 Nanki Yadav say in para 4 that respondent No. 1 had paid Rs. 70,000/- to late Kalaram in their presence.

14. D.W. 3 Bhishma Prasad Sahu, D.W. 5 Safed Das say in para 4 that

late Kalaram had told them that after receiving consideration he had executed sale deed.

15. D.W. 2 Manohardas Panika further says in para 4 that at the time of the registration of the sale deed he was present and signed upon it.

16. Counsel for appellants raised written argument that respondent No.1 has not proved the original registered sale deed as per the provision of Section 68 of Evidence Act thus adverse inference may be drawn against him.

17. In the case in hand appellants have challenged registered sale deed 31.07.2002. They have not made any attempt that the original sale deed may be filed by respondent No.1. Moreover, the certified copy of registered sale deed has been exhibited as Ex. P-4 during evidence. Moreover, the attesting witness of registered sale deed D.W. 2 Manohar Das Panika has been examined by respondent No. 1. Thus, this Court disallows aforesaid argument raised by counsel for appellants.

18. Late Kalaram did not challenge the registered sale deed dated 31.07.2002 till his death on the grounds that allegedly respondent No.1 got executed same after taking undue advantage of his old age and mental imbalance, he had not paid him any consideration. The appellants are failed to give any explanation for not doing so by late Kalaram. Moreover, P.W.-1 Smt. Darasmati, who is the appellant No.1 herself does not give any explanation for not doing so by late Kalaram.

19. Moreover, in Ex.P-1 written by the appellants addressed to Sub Registrar, Bilaigarh received on 15.07.2002, in Ex.P-2 written by appellant No.1 Smt. Darasmati addressed to Patwari, Sarpanch, Additional Tahsildar, Sub Divisional Officer received on 21.11.2002, in Ex.P-3 written by the appellants addressed to Naib Tahsildar endorsement dated 06.07.2002, it has not been mentioned that late Kalaram was unable to understand the matter due to his old age and his mental imbalance.

20. Moreover, the appellants neither examined another witness of certified copy of registered sale deed Ex. P-4 namely Ramji nor then Sub-Registrar, Bilaigarh, District Raipur regarding the said matter and this matter that allegedly no consideration was paid to him.

21. There is no material available on record on strength of which it can be

said that D.W. 2 Manohar Das, D.W. 3 Bhishma Prasad, D.W. 4 Nanki Yadav, D.W. 5 Safed Das had stated aforesaid statements because they were interested with respondent No. 1 due to such reason or they were prejudiced with the appellants due to such reason.

22. Moreover, P.W.-1 Smt. Darasmati Bai says in para Nos.7 & 8 during her cross-examination that this is true that at the time of writing of Ex.P-4 late Kalaram was able for locomotion, he was not unsound mind, he had understanding the matter and able to identify the persons, she does not know that the money had been given late Kalaram at Bilaigarh.

23. Looking to the above mentioned facts and circumstances of the case, this Court disbelieves aforesaid statement of P.W. 1 Smt. Darasmati, P.W. 2 Tirathram, P.W. 3 Ghasiya, P.W. 4 Chhedulal in the reference that allegedly respondent No. 1 had obtained the signature of late Kalaram on sale deed taking undue advantage of his old age, by cheating, and believes aforesaid statements of D.W. 1 Masatram, D.W. 2 Manohar Das, D.W. 3 Bhisma Prasad Sahu, D.W. 4 Nanki Yadav, D.W. 5 Safed Das in the reference that, late Kalaram had need of money, he had expressed before some persons that he wants to sell disputed land, they were also present at that time, he had made proposal to respondent No 1, respondent No. 1 became ready to purchase the dispute land, agreement was occurred between them for Rs. 70,000/-, aforesaid statements of D.W. 2 Manohardas Panika, D.W. 4 nanki Yadav in the reference that respondent No. 1 had paid Rs. 70,000/- to late Kalaram in their presence, aforesaid statements of D.W. 3 Bhisma Prasad, D.W. 5 Safed Ram in the reference that late Kalaram had told them that after receiving of consideration he had executed sale deed. Aforesaid statement of D.W. 2 Manohar Das Panika in the reference that he was present at the time of registration of the sale deed and signed on it, and this Court is not impressed from written argument submitted by counsel for the appellants in above reference.

24. After appreciation of the evidence discussed herebefore, this Court finds that the appellants failed to prove that, respondent No. 1 got executed registered sale deed dated 31-7-2002 regarding disputed land from late Kalaram by taking undue advantage of his old age and his mental imbalance without paying him consideration. Thus, this Court decides point for determination No.(i) accordingly.

**Point for determination No.(ii) -Finding with reasons:-**

25. The Trial Court has not framed issue regarding this point for determination though it ought to have been by the Trial Court. The evidence available on record shows that the appellants and the respondent No. 1 have adduced evidence regarding this point for determination. The evidence available on record is sufficient to enable this Court to pronounce the judgment. Non-framing of additional issue regarding this point for determination does not cause any prejudice to either of the parties. Thus, looking to the provisions Order 41 Rule 24 of the Civil Procedure Code, 1908 (in brevity 'the CPC'), this Court finds that it may pronounce the judgment in this appeal.

26. As per Ex. P-1, Ex. P-2 and Ex. P-3 late Kalaram was title holder of disputed land.

27. P.W. 4 Chhedu Lal says in para No.2 during his cross-examination that this is true that a partition took place between Kalaram and his brothers.

28. Moreover, this is not the appellants case that, disputed land was purchased in their name also.

29. The appellants failed to show that how they had become joint owners of disputed land.

30. After the appreciations of the evidence discussed herein before, this Court finds that, the appellants were also not joint owners of disputed land. Thus, this Court decides point for determination No.(ii) accordingly.

**Point for determination No.(iii) -Finding with reasons:-**

31. This has been earlier decided that respondent No.1 had not got executed registered sale deed Ex.P-4 from late Kalaram by taking undue advantage of his old age and his mental imbalance, without giving consideration to him, the appellants were also not joint owners of disputed land. Hence, this Court finds that registered sale deed dated 31-7-2002 is binding upon the appellants and disallows the aforesaid written argument in this reference. Thus, this Court decides point for determination No.(iii) accordingly.

**Point for determination No.(iv) -Finding with reasons:-**

32. This has been earlier decided that respondent No.1 had not got

executed registered sale deed Ex. P-4 from late Kalaram by taking undue advantage of his old age and his mental imbalance, without giving consideration to him, the appellants were also not joint owners of disputed land, Ex.P-4 is binding upon the appellants. Hence, this Court finds that the appellants are not title holders of disputed land. Thus, this Court decides point for determination No.(iv) accordingly.

**Point for determination No.(v) -Finding with reasons:-**

33. P.W.1 Smt. Darasmati says in para 4, P.W.2 Teerath Ram says in para 3, P.W.4 Chhedulal says in para 4 that, appellants are in possession of disputed land and they are cultivating it.

34. P.W. 3 Ghashiya says in para 2 that he has cultivated the disputed land with the consent of appellants.

35. D.W.1 Masat Ram says in para 5, D.W. 2 Manohar Das Panika says in para 6, D.W.3 Bhishm Prasad Sahu in says in para 5, D.W.4 Nanki Yadav says in para 6, D.W. 5 Safed Das says in para 5 that after the purchasing of disputed land, respondent No. 1 is in the possession of disputed land and he is cultivating it.

36. P.W.3 Ghashiya says in para No.3 during his cross-examination that he does not know that respondent No.1 is in possession or not over the disputed land. Moreover, P.W.1 Smt. Darasmati Bai says in para No. 9 & 13 during her cross-examination that this is true that respondent No.1 is in possession over the purchased land and he sowing on disputed land, she had given the remaining land on plover to Ghashiya.

37. After the appreciation of the evidence discussed herein before, this Court disbelieves aforesaid statements P.W. 1 Smt. Darasmati, P.W. 2 Teerathram, aforesaid statement of para 2 of P.W. 3 Ghashiya, aforesaid statement of P.W. 4 Chhedulal, in the reference that appellants are in possession over disputed land and believes aforesaid statements of D.W. 1 Masatram, D.W. 2 Manohardas Panika, D.W. 3 Bhishma Prasad Sahu, D.W. 4 Nanki Yadav, D.W. 5 Safed Das in the reference that appellants are not in possession of disputed land and this Court rejects the aforesaid written argument of counsel for the appellants in this reference.

38. After appreciation of the evidence discussed herebefore, this Court finds that the appellants are not in possession over disputed land. Thus, this

Court decides the point for determination No.(v) accordingly.

**Point for determination No.(vi) -Finding with reasons:-**

39. This has been earlier decided that the appellants are not title holders of disputed land, Ex.P-4 is binding upon them, they are not in possession of the disputed land. Thus, this Court finds that the appellants are not entitled to get permanent injunction against respondent No.1 regarding disputed lands. Thus, this Court decided point for determination No.(vi) accordingly.

**Point for determination No.(vii) -Finding with reasons:-**

40. After the complete and full appreciation of the evidence, this Court finds that the instant appeal is devoid of merits and deserves to be and is hereby dismissed and the impugned judgment and decree are affirmed to the extent discussed herebefore.

The appellants shall bear their own cost as well as cost of respondents also.

A decree be drawn up accordingly.

**Sd/-  
(Sharad Kumar Gupta)  
Judge**