

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 21st OF NOVEMBER, 2024

SECOND APPEAL No. 608 of 2019

MUNNALAL AND OTHERS

Versus

BADE SINGH AND OTHERS

Appearance:

Shri Ashish Saraswat, Advocate for the appellants.

Shri Anand Vinod Bhardwaj appeared for respondents.

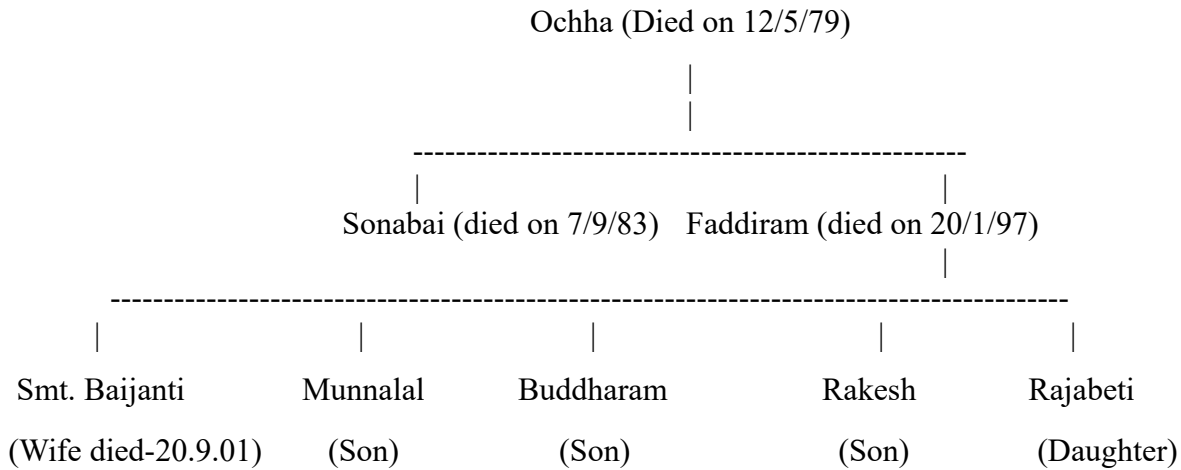
JUDGEMENT

This second appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 6/12/2018 passed by III Additional Judge to the Court of I Additional District Judge, Morena, in Regular Civil Appeal No. 18/2018, as well as, judgment and decree dated 16/2/2018 passed by I Civil Judge Class I, Morena, in Civil Suit No. 3A/2015. By these judgments, the suit filed by the plaintiffs/appellants was dismissed by the trial court, and the civil appeal filed by plaintiffs was also dismissed.

2. Facts necessary for disposal of the present appeal, in short, are that appellants/plaintiffs filed a suit for declaration of title and permanent injunction, as well as, for declaration of sale deeds dated 14/5/1979, 24/3/1992, 17/6/2011, 9/11/2010, 20/6/2011, and 6/7/2011 as null and void. It is the case of plaintiffs that plaintiffs are the sole owner and in

possession of a भवन भूमि (residential plot) admeasuring $30 \times 50 = 1500$ square feet situated near New Sabji Mandi, Madhopura, Old Ward No. 15/New Ward No. 38 in Morena, which is part of Survey No. 2156. Grandfather of appellants/plaintiffs, namely Ochha, had purchased the disputed land from Gyasi Ram and Pancham Singh, sons of Hariprasad, by a registered sale deed on 7/5/1979 after making the entire payment of consideration. The name of the grandfather of the plaintiffs was also mutated in the revenue records. After the death of Ochha, the property was transferred in the name of Faddiram, father of plaintiffs. Grandmother of plaintiffs Sonabai died on 7/9/1983, father of plaintiffs Faddiram died on 20/1/1997, and mother of plaintiffs Baijanti died on 20/9/2001. After death of parents of plaintiffs, plaintiffs inherited the property and their names were also mutated in the revenue records.

3. The family tree as per the plaint is as follows:



4. It is the case of appellants/plaintiffs that grandfather of the appellants had stayed in a hut situated on the disputed land. The plaintiffs are residing in a house situated in front of the disputed land. The land in dispute is being used by the plaintiffs for residential purposes, tying cattle,

and storing goods. On 1/12/2011, son of defendant No. 8 and nephew of defendant No. 7 namely Rajesh Parmar along with four other anti-social elements, came to the spot and started measuring the land. When plaintiffs tried to stop them, they did not agree and claimed that they would forcibly raise construction over the disputed land. They abused the plaintiffs/appellants and although appellants had shown documents of title, still they did not agree. Apprehending a dispute son of defendant no.8 and Rajesh Parmar unloaded stones, which they had brought in a trolley, by the side of disputed land and left the spot threatening to start construction soon. On 3/12/2011, they again came with culprits and tried to construct the foundation. When plaintiffs tried to stop them, they were beaten by Lathis, kicks and fists. Plaintiffs lodged an FIR and filed Civil Suit No. 83/2011 for declaration of title and permanent injunction. The trial court, by order dated 16/12/2011, directed the parties to maintain *status quo*. At that time plaintiffs came to know about execution of sale deeds dated 14/5/1979, 24/3/1992, 17/6/2011, 9/11/2010, 20/6/2011, and 6/7/2011. Thereafter, appellants collected information with regard to execution of aforesaid sale deeds and found that although grandfather of appellants, Ochha, had died on 12/5/1979, but the sale deed dated 14/5/1979 was executed on behalf of Ochha. Thus, it is submitted that since Ochha had already expired on 12/5/1979, therefore, the sale deed dated 14/5/1979 was executed by some person by impersonating as Ochha. Accordingly, plaintiffs filed the suit for declaration of title and permanent injunction, and to declare the sale deeds as null and void primarily on the ground that since Ochha had died on 12/5/1979, therefore, the sale deed dated 14/5/1979 could not have been executed by him.

5. Defendants filed their written statement and denied plaintiff averments.

6. The trial Court, by judgment and decree dated 16/2/2018 passed in Civil Suit No. 3A/2015, dismissed the suit. Being aggrieved by judgment and decree of the trial court, appellants preferred an appeal. However, the appeal was also dismissed by III Additional Judge to the Court of I Additional District Judge, Morena, in Civil Appeal No. 18/2018 by judgment and decree dated 6/12/2018.

7. Challenging the judgments and decrees passed by the Courts below, it is submitted by counsel for appellants that grandfather of appellants Ochha, had expired on 12/5/1979, whereas the sale deed (Exhibit P6-C) was executed on 14/5/1979. Since Ochha was already dead, therefore, it is clear that aforesaid sale deed was executed by producing some unknown person by impersonating him as Ochha, and proposed following substantial questions of law:-

"A- Whether the judgment and decree passed by the courts below deserves to be set aside by the Hon'ble Court, when the plaintiffs have made a specific allegation in the plaint that the sale deed dated 14.05.1979 is forged and sale deed was not executed by ओछा in favour of Ramnath Singh, the son of Ramnath Singh i.e. Bade Singh (Defendant no. 1) has neither filed the written statement nor entered the witness box to refute the averments made in the plaint?

B- Whether both the courts below were justified in holding that Ochha has expired on 02.03.1981 on the basis of averments made in plaint of previous civil suit no. 83-A/2011 whereas from the record, it is clear that in previous civil suit written statement was not filed by the defendants and the same was not decided on merits.?

C- Whether the judgment & decree passed by the courts below are sustainable in the eye of law while not properly appreciating the death certificate of ओछा (exhibit P/8) in which

date of death is mentioned as 12.05.1979 and alleged sale deed was executed on 14.05.1979 (Exhibit- P/6)?

D- Whether the alleged sale deed dated 14.05.1979 deserves to be declared null and void by the Hon'ble Court, because from the bare perusal of the same it is clear that there is the thumb impression and in the entire sale deed it is not mentioned that the matter has been recorded and explained in hindi to the seller?(AIR 1992 MP 22)

E- Whether the courts below have failed to apply judicial mind in appointing the commissioner for identification of subjected land when the defendants no. 6 to 8 have stated that subjected land is forming the part of survey no. 2156 instead of survey no. 2756? [2000 (6) Supreme 389 Shreepal Vs. Rajendra Prasad & ors]

F. Whether the courts below were justified in holding that the plaintiffs are not having possession over the subjected land whereas the plaintiffs are in continuous possession since the time of grand father Ochha and the same is evident from latest Khasra entries?

G- Whether the execution of sale deed will be presumed to have taken place on 14.05.1979 because no efforts were made by Ramnath Singh for mutation of his name in revenue records and till date the name of the plaintiff are duly mutated in revenue record? (After the death of ओछा name of his son Faddiram was duly mutated and after the death of Faddiram name of plaintiffs are duly mutated in revenue records)

H- Whether the judgment & decree passed by the courts below are sustainable in the light of law laid by Hon'ble High Court in S.A. no. 160/1980 (Decided on 05.12.1990 reported as AIR 1992 MP 22 (Para15). (Ramjan Khan Vs. Baba Raghunath Das) Where in it is held that-

"In order to prove the execution of a documents it is must be shown that the person executing it consciously subscribed to it in the sense that he put his mark on signature on it after having known and understood its content. Mere proof that the person's signature appears on the document cannot by itself amount to the person affixes his thumb marks to be documents. The onus to prove that the documents was properly explained to the person affixing his thumb mark so as to make him unidentified

its time impart is on the person relying on the documents." These all legal fact were not considered by the court below which deciding the present case.

I- Whether the judgment and decree passed by the courts below are sustainable in the eye of law, when the averments made in the plaint, oral and documentary evidence adduced by the plaintiffs were not properly considered? "

8. Heard, learned counsel for appellants.

9. The primary bone of contention of appellants is that Ochha had expired on 12/5/1979, which is evident from death certificate (Ex.P/8), then the sale deed (Ex.P/6C) could not have been executed on 14/5/1979.

10. However, from death certificate (Exhibit P8), it is clear that there is an interpolation in the date of death of Ochha. The original date of death was mentioned as 16/5/1979, but thereafter date '16' has been interpolated by over-writing and it has been made as '12'. This interpolation/correction does not bear any short signature of the Authority who has carried out the correction. Thus, it is clear that by interpolating the death certificate, appellants are claiming that Ochha had expired on 12/5/1979 whereas original date of death which has been mentioned in the death certificate (Ex.P/8) is 16/5/1979.

11. Munna Lal (PW1) has proved death certificate (Exhibit P/8). However, from paragraph 10 of his cross-examination, it is clear that said death certificate was proved without producing the original record. In view of interpolation in the date of death mentioned in the death certificate (Ex.P/8), it was incumbent upon appellants to call the original record to show that even in the original record, date of death of Ochha is mentioned as 12/5/1979. But, that has not been done.

12. In view of the fact that in the death certificate (Ex.P/8), date of death of Ochha has been interpolated and has been made to '12' in place of '16', this Court is of the considered opinion that appellants have failed to prove that Ochha had died on 12/5/1979. As per death certificate (Ex.P/8) since Ochha had died on 16/5/1979 and sale deed in question (Ex.P/6C) was executed on 14/5/1979, therefore, it is clear that Ochha had already executed the sale deed (Ex.P/6C) during his lifetime. Under these circumstances, all the subsequent sale deeds also cannot be said to be bad in law.

13. In view of the concurrent findings recorded by the Courts below, this Court is of the considered opinion that no case is made out warranting interference.

14. *Ex consequenti*, judgment and decree dated 6/12/2018 passed by III Additional Judge to the Court of I Additional District Judge, Morena, in Regular Civil Appeal No. 18/2018, as well as, judgment and decree dated 16/2/2018 passed by I Civil Judge Class I, Morena, in Civil Suit No. 3A/2015 are affirmed.

15. The appeal fails and is, hereby, dismissed.

(G.S. AHLUWALIA)
JUDGE

(and)