

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH  
ON THE 24TH OF JULY, 2024**

**FIRST APPEAL No. 501 of 2006**

*(RAGHUNANDAN SINGH (DEAD) THROUGH LRS SMT. PREMVATI SINGH AND OTHERS  
Vs  
SHARDA SINGH AND OTHERS)*

**Appearance:**

***(BY MS. SANJANA SAHNI & SHRI SAKET MALIK – ADVOCATE FOR THE APPELLANTS)***

***(BY MS. SUDIPTA CHOUBEY – ADVOCATE FOR THE RESPONDENT)***

**JUDGMENT**

This second appeal under Section 96 of the Civil Procedure Code has been filed being aggrieved by the judgment and decree dated 31.03.2006 passed in Civil Suit No. 47-A/04 by the Fifth Additional District Judge (Fast Track Court), Rewa.

2. The appeal has been preferred by the defendant No.1/ appellants on the ground that the trial Court erred in holding that the sale-deed dated 27.08.1984 executed by Markandey Singh in favour of the

defendant is illegal and void. The trial Court also erred in holding that the burden to prove that the consideration for the sale-deed had passed and possession has been delivered thereunder and other relevant circumstances connected therewith upon the defendant. It should have been appreciated that the sale-deed by Mardandey Singh in favour of the defendant is a registered sale-deed and it is the plaintiff who has pleaded that the sale-deed has been brought about by the defendant by practicing fraud upon Markandey Singh.

3. It is further submitted by the learned counsel for the appellant that Markandey Singh had admitted execution of the sale-deed in favour of the defendant in his statement given before the Revenue Court as evidenced by order passed therein dated 29.03.1985 Ex. D/1, though the final order passed in the Revenue Court was set aside in appeal on merit but it was sufficient to prove execution by Markandey Singh of sale in favour of the defendant. In view of the order Ex. D/1 the statement Ex. P/22 dated 30.07.1989 is meaningless and inadmissible in evidence also.

4. It is further submitted by counsel for the appellant that suit filed by Markandey Singh was not decided on merits and was dismissed as abated, therefore, mere filing of the suit by Markandey Singh would not be sufficient to negate the sale in defendant's favour. The suit filed by Markandey Singh during his life time having abated, it was not open for the plaintiff/ claimant to claim title under him to challenge the sale-deed in favour of the defendant. The sale consideration of Rs.25,000/- was paid.

Mere slight variation in evidence of the defendant would not be sufficient to dispute the factum regarding consideration. Signature of Shaukilal, father of P.W.2 on the sale-deed was duly proved and it was immaterial whether he was dismissed from service.

5. The trial Court erred in holding that the plaintiff was in possession of the suit land on the day it was attached. Admission made by the plaintiff witness. It was the defendant who was in possession of suit land has not been given due weightage. It ought to have been held that the defendant was in possession of the suit land at the time of attachment. The defendant acquired undivided share in the suit land and was entitled to join possession with the plaintiff and it was immaterial as to whose name was recorded in the revenue record. In Rin Pustika relating to the suit land it was not recorded that suit land has been sold then it could not be presumed in face of the registered sale-deed that no sale has been affected.

6. It is also argued that the trial Court erred in holding that Markandey Singh had executed Will Ex. P/12 on 25.10.1987 of his share in the suit land in his favour. On the contrary it should have been held that due execution, attestation and validity of Will as required under Section 63 of the Evidence Act has not been proved. It is also important that Markandey was immobile and could not see and hear and the Will purports to dis-enherit his wife and daughters. The suspicious circumstances relating to execution of the Will have not been dispelled by the plaintiff, therefore, seeks to set aside the decree.

7. On the other hand, learned counsel for the respondent/plaintiff supported the judgment of the trial Court and has relied upon the case of Yumnam Ongbi Tampha Ibema Devi Vs. Yumnam Joykumar Singh and others; (2009) 4 SCC 780 in which the Hon'ble Supreme Court has held in paragraph 11 as under :-

**“ 11.** As per provisions of Section 63 of the Succession Act, for the due execution of a will:

(1) the testator should sign or affix his mark to the will;

(2) the signature or the mark of the testator should be so placed that it should appear that it was intended thereby to give effect to the writing as a will;

(3) the will should be attested by two or more witnesses, and

(4) each of the said witnesses must have seen the testator signing or affixing his mark to the will and each of them should sign the will in the presence of the testator.”

8. Perused the pleadings of the party, the issues framed by the trial Court and evidence of both the parties, record of the case including the judgment passed by the trial Court. The trial Court has framed the following issues. :-

1. **वाद प्र नः—** क्या भोला सिंह तथा उनके भाई मारकन्देय सिंह का बंटवारा सन् 1955-56 में हुआ तथा दोनों को वाद भूमि में आधा-आधा हिस्सा मिला?  
**निश्कर्षः—** बंटवारा वर्ष 1955-56 में प्रमाणित नहीं पाया दोनों को आधा-आधा हिस्सा प्रमाणित ।
2. **वाद प्र नः—** क्या मारकन्देय सिंह के आधे हिस्से पर भोला सिंह सन् 56 से मौरूसी कृषक के रूप में लगातार का बिज रहे और फलस्वरूप भूमि स्वामी हो गये?  
**निश्कर्षः—** अप्रमाणित
3. **वाद प्र नः—** क्या वाद भूमि का विक्रय विलेख दिनांक 27.8.84 अवैध एवं निश्प्रभावी है?  
**निश्कर्षः—** प्रमाणित

4. **वाद प्र नः—** क्या वाद का मूल्यांकन उचित रूप से नहीं किया गया तथा कम न्याय शुल्क लगाया गया?  
**निश्कर्षः—** मूल्यांकन एवं न्याय शुल्क उचित
5. **वाद प्र नः—** क्या वह वाद इस न्यायालय की सुनवाई की अधिकारिता के बाहर का है?  
**निश्कर्षः—** सुनवाई की अधिकारिता होना
6. **वाद प्र नः—** क्या वाद अवधि बाह्य है?  
**निश्कर्षः—** नहीं
7. **वाद प्र नः—** सहायता एवं व्यय  
**निश्कर्षः—** निर्णय की अंतिम अवधि अनुसार
8. **वाद प्र नः—** क्या मारकंडे सिंह द्वारा भारदा सिंह के पक्ष में दि. 25.10.87 को विधिवत वसीयतनामा निश्पत दित किया गया?  
**निश्कर्षः—** प्रमाणित
9. **वाद प्र नः—** क्या मारकंडे सिंह की मृत्यु प चात् भारदा सिंह मारकंडे सिंह की वसीयत की गई सम्पत्ति के स्वामी हैं?  
**निश्कर्षः—** प्रमाणित

9. After consideration this Court is of the view that the grounds raised by the appellants in the facts and circumstances of the case are not valid. The reasons are as below. One of the grounds raised by the learned counsel for the appellant is that Will is suspicious as it seeks to exclude the natural heirs of the parties i.e. wife and children. Even otherwise he was physically paralyzed (immobile). The disputed notarized Will is dated 15.10.1987 ( Ex. P/8) whereas the disputed sale-deed on which the appellant/ defendant relies is Ex. P/1 dated 20.07.1984, therefore, when there are no medical papers on which it can be held that at the time of execution of the Will, Markandey Singh was medically unfit although his age is written as 75 years whereas in Will Ex. P/2 his age is written as 92

years, therefore, in a short span of 3 years how the age of Markandey Singh would change, therefore, it is seen that if the true age of Markandey Singh in the year 1987 was 92 years then in Ex. P/1, his age is not correctly recorded as in Ex. P/2 why would the plaintiff get the age recorded as 92 years when general presumption in this age is that one gets physically and mentally weak. Reasons have been assigned for Willing the property in favour of Sharda Singh S/o Bhola Singh. Another important aspect is that the appellant himself has submitted that Markandey Singh had deposed in the revenue Court but when that order was set aside by superior revenue Court, entire proceeding goes out as Markandey Singh did not appear in the trial Court due to his death for either party and during his lifetime when he has filed civil suit against the defendant then the revenue record proceeding would be inconsequential and filing of the civil suit may be that was abated due to death of Markandey Singh would indicate that he challenged the sale-deed.

**10.** In the facts and circumstances of the case, when the sale-deed was in cloud then it was the duty of the defendant to prove that valid consideration was passed under the sale-deed and simply because it was a registered sale-deed, then this cannot be treated to be a final conclusive proof that consideration of Rs.25,000/- was received by Markandey Singh from Raghunandan Singh. One cannot forget the fact that as per the evaluation of pleadings and evidence by this Court, it seems that at the time of execution of alleged sale-deed, Markandey Singh was more than

85 years of age and illiterate, therefore, in the facts and circumstances of this case, it cannot be held that defendant had no burden to prove valid execution of sale-deed.

11. Regarding non-mutation of the name of the purchaser of the disputed property i.e. appellant/ defendant in revenue record which has been raised as a ground of appeal, this Court is of the considered view that when a purchaser does not get his name mutated on the basis of sale-deed and no reason is assigned as to why it was not done, therefore, this fact cannot be brushed aside in the normal course of a person who purchased the land as to get his name mutated which has not been done, therefore, adverse inference against the appellant has to be taken.

12. Regarding possession, even assuming that one of the witnesses of the plaintiff admitted that defendant is in possession of the suit property but since revenue record is not updated, therefore, this admission cannot be held to be solid proof of the possession of the defendant because ultimately evidence consists of oral and documentary evidence and in the facts and circumstances of the case when evidence of prima-facie nature i.e. revenue record is not produced by the defendant then it cannot be held finally that possession of the defendant is proved. On perusal of the record, it is seen that learned trial Court, very minutely, dealt with the pleadings (documentary plus oral) and as discussed the legal position also which need not be reiterated for the sake of repetition but findings are there from paragraphs 10 to 28 of the judgment of the trial

Court and they are well reasoned and correct. Regarding suit of the plaintiffs in para 25 the trial Court has correctly discussed the pleadings and evidence regarding Will and has correctly proved the Will as proved.

The plaintiff was real brother of Markandey Singh (Class II heir) whereas defendant Raghunandan Singh who claims to have purchased the suit property does not come either in Class I or II heir of Markandey Singh as per Hindu Succession Act, 1956, therefore, sale-deed/ gift in favour of the defendant is not proved.

**13.** Accordingly, this Court finds no ground on which this appeal can be allowed. Hence, judgment and decree of the trial Court is affirmed and the appeal is dismissed.

**(AVANINDRA KUMAR SINGH)**  
**JUDGE**

VSG/rm