



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 494 of 2018**

1. Ritesh Chaudhary S/o Late Shri Shiv Kumar Chaudhary Aged About 44 Years R/o Goverdhan Bara, Chantapara, Bilaspur, Chhattisgarh, Presently Residing At 2, South Avenue, New Choubey Colony, Raipur, Chhattisgarh

(Respondent No.1)

2. Sanjay Kumar Chaudhary S/o Late Shri Shiv Kumar Chaudhary Aged About 53 Years R/o Choubey Colony, Raipur, Tehsil And District- Raipur, Chhattisgarh

(Respondent No.2)

3. Smt Deepali Sharma W/o Late Shri Aditya Chaudhary Aged About 47 Years (wrongly mentioned as Deepawli)

(Respondent No.3)

4. Ku. Valika Chaudhary D/o Late Shri Aditya Chaudhary Aged About 17 Years

(Respondent No.4)

5. Suryansh Chaudhary S/o Late Shri Aditya Chaudhary Aged About 14 Years

(Respondent No.5)

Respondent Nos.4 and 5 being minors are represented though their mother, Smt. Deepali Dharma, being the natural guardian,

Respondent Nos. 3 to 5 R/o 300-C, Near Lavkuksh Vihar, Choubey Colony, Raipur, Tehsil And District- Raipur, Chhattisgarh.,

6. Smt. Alka Kaushal W/o Late Shri Shashi Bhushan Kaushal Aged About 51 Years R/o Professor Colony, Raipur, Tehsil And District- Raipur, Chhattisgarh

(Respondent No.6)

7. Smt. Preeti Palaria W/o Shri Vinay Palaria Aged About 46 Years R/o Koshbari, Korba, District- Korba, Chhattisgrh

(Respondnet No.7)

---- **Appellants**



Versus

1. Akshay Kumar Chaudhary S/o Late Shri Ram Kumar Chaudhary R/o 2, South Avenue, New Chobe Colony, Raipur, Chhattisgarh
(Plaintiff No. 1)
2. Avinash Chaudhary S/o Late Shri Ram Kumar Chaudhary R/o 2, South Avenue, New Chobe Colony, Raipur, Chhattisgarh
(Plaintiff No. 2)
3. Smt. Amita Namdev W/o Ashok Namdev R/o R-2, Durga Nagar, Vidisha, Madhya Pradesh
(Plaintiff No.3)
4. Smt. Anita W/o Shri Yogesh Rana B/54, Avash Vikas, Delhi Road, Shahrnpur, Uttar Pradesh
(Plaintiff No.4)
5. Archana Mahapatra W/o Gianranjan Mahapatra 169, Bhomikhal, Bhuneshwar, Odisha
(Plaintiff No.5)

---- Respondents

For Appellants : Shri Amrito Das, Advocate.

For Respondents : Shri B.P. Sharma assisted by Shri Nikhil Parakh, Ms. Sameeksha Gupta and Ms. Anuja Sharma, Advocates.

**Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Sachin Singh Rajput**

Judgment on Board

Per Goutam Bhaduri, J.

28-04-2023

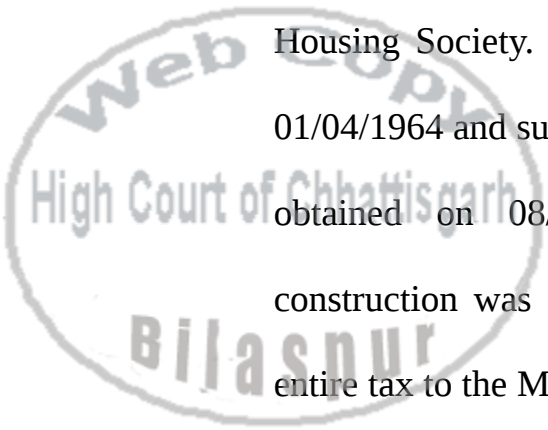
1. This appeal is by defendants against the judgment and decree dated 28/05/2018 passed by the learned 3r^d Additional District Judge, Raipur, in Civil Suit No.6A/2012 wherein the suit filed by the plaintiff Dr. Ramkumar Chaudhary (since deceased and represented by the legal



heirs) against Shiv Kumar Chaudhary (since deceased and represented by the legal heirs) for possession and damages was decreed. During pendency of the suit, the defendant Shiv Kumar Chaudhary died and after the judgment and decree, the appeal is filed by the legal heirs of Shiv Kumar Chaudhary.

2. The brief facts of this case are that, Dr. Ramkumar Chaudhary filed a suit against his brother Shiv Kumar Chaudhary that he owns a house situated at South Avenue, Choubey Colony, Raipur, which was purchased by him from his self earning from Raipur Cooperative Housing Society. It was pleaded that the plot was allotted initially on 01/04/1964 and subsequent to it, the permission to raise construction was obtained on 08/04/1964. Plaintiff further stated that thereafter construction was made from his self earning and subsequent to it the entire tax to the Municipal was being paid by him and respective receipts were also issued in his favour. The plaintiff further stated that Shiv Kumar Chaudhary (the defendant) was the younger brother, since he did not have any place to stay at Raipur and he was wandering into street, he was allowed to stay in the suit house. Pleading further is that after entering into the possession of the suit house, on some pretext or other on the ground that he is financially weak, he continued the occupation, which was allowed, as the defendant was the younger brother.

3. The plaintiff further states that after death of Ramkumar Chaudhary, the suit property devolved in favour of Akshay Kumar Chaudhary and





Avinash Chaudhary by virtue of a WILL executed by Dr. Ramkumar Chaudhary, the plaintiff. Therefore Akshay Kumar Chaudhary and Avinash Chaudhary had become the exclusive owner of the said suit house. Plaintiff further pleaded that in the year 2002, when the defendant was asked to vacate the premises, counter demand was made that it is an ancestral property which resulted into exchange of notices and eventually a suit was filed for ejectment and damages by plaintiff against his brother.

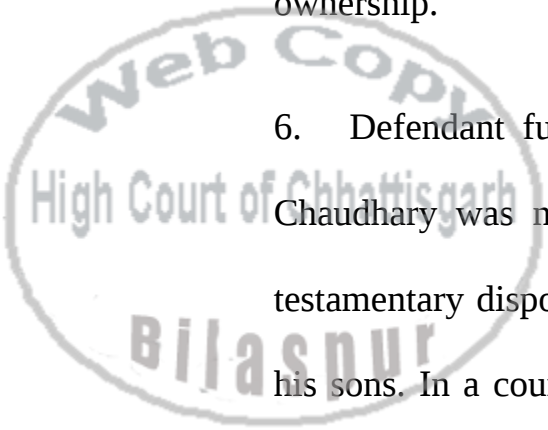
4. The defendant denied the averments of the plaint and instead it was said as per the family arrangement, the defendant was in occupation of the suit premises. It was further stated that father of Shiv Kumar Chaudhary and Dr. Ramkumar Chaudhary namely Dr. Dhaniram Chaudhary had purchased the suit property from his self earning, though the allotment was made in the name of Dr. Ramkumar Chaudhary being the eldest son. Defendant further stated that the plaintiff Dr. Ramkumar Chaudhary did not have any income when the purchase was made and father out of love and affection, purchased the property in the name of Dr. Ramkumar Chaudhary. It was stated that the plaintiff did not have any source of income at that point of time. It was further stated that the plaintiff was completely dependent on his brother even to cater his daily needs and Dr. Dhaniram Chaudhary, the father raised the construction over the said plot.

5. It was further stated that during the construction of house,



Ramkumar Chaudhary got appointment in the Municipal Corporation and was in occupation of house which was allotted by the Municipal Corporation. It was further pleaded that Ramkumar Chaudhary retired in the year 1992 and before that the defendant was in exclusive possession of the suit house along with his brother Devendra Kumar Chaudhary. Defendant further states that entire money for construction of the house was paid by Dr. Dhaniram Chaudhary and Shiv Kumar Chaudhary was in occupation of the suit house as a co-owner of Hindu undivided family. The defendant further stated that the entire money was paid by the joint ownership.

6. Defendant further pleaded that being so the plaintiff Ramkumar Chaudhary was not the exclusive owner, he could not have made a testamentary dispossession of the said property exclusively in favour of his sons. In a counter claim, the defendant further stated that while the plot was allotted, cheque of Rs.1000/- dated 26/09/1961 and further amount of Rs.1250/- by a cheque of 23/09/1961 was paid through Punjab National Bank in favour of the Co-operative Society by Dr. Dhaniram Chaudhary which would prove that the money to purchase the plot was paid by Dr. Dhaniram Chaudhary not Dr. Ramkumar Chaudhary. Further pleading was that by virtue of WILL dated 18/10/2000 though the property was given to Akshay Kumar Chaudhary and Avinash Chaudhary but they would not become the owner of the said property as the WILL would be a nullity.





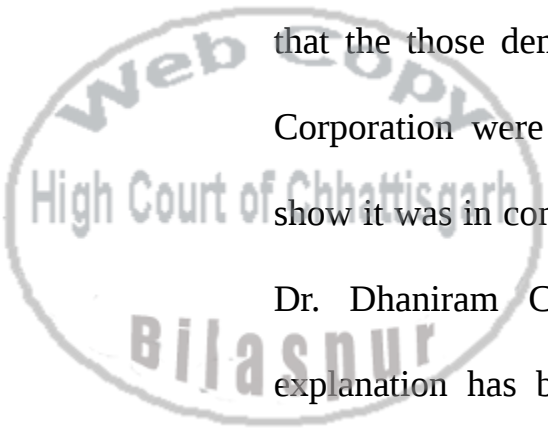
7. On the basis of pleadings, the learned trial Court framed 9 issues and decreed the suit in favour of the plaintiff passing a decree of ejectment. The plaintiff examined three witnesses namely Smt. Vimal Chaudhary as PW-1 who is widow of Dr. Ramkumar Chaudhary, Rajat Roy as PW-2, as an attesting witness for the WILL, Akshay Kumar Chaudhary as PW-3. On the other hand, defendant Shiv Kumar Chaudhary was examined as DW-1, before the entire cross-examination could be concluded, he died and other witnesses were DW-2 Sanjay Kumar Chaudhary son of Shiv Kumar Chaudhary and DW-3 Devendra Kumar Chaudhary, brother of Shiv Kumar Chaudhary, the original defendant. The witness DW-4 Govind Lal Vora and DW-5 Sushila Namdev were examined to prove the attempted compromise. The learned trial Court after examination of the facts in its entirety, decreed the suit. Hence this appeal.

8. Learned counsel for the appellants would submit that the allotment of the plot from the Cooperative Society was initially in the year 1961 and the money was paid by father Dr. Dhaniram Chaudhary which is evident from Ex.D/1 and Ex.D./2, which would show that the amount of Rs.1000/- and Rs.1250/- was paid by Dr. Dhaniram Chaudhary in the name of his son Dr. Ramkumar Chaudhary (the plaintiff). He would submit that the formal allotment of plot was issued in the year 1964 and subsequent thereto permission to raise the construction was in April 1964 and finally on 25/05/1995 since the allotment of the plot was in the name



of Ramkumar Chaudhary, the sale-deed was executed in his favour. He would submit that the document i.e. the article the diary would show that entire expenses were borne out even for construction of the house. He would further submit that the conduct of the parties would show that after construction, Dr. Ramkumar Chaudhary never resided in such house, as he was residing in an allotted quarter by the Municipal Corporation at a different place till his retirement from the service in the year 1992.

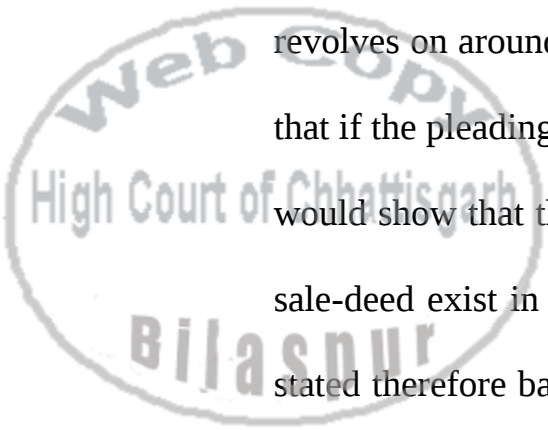
9. Referring to Ex. D/3, Ex. D/5 and Ex. D/11 counsel would submit that the those demand letters in lieu demand of tax by the Municipal Corporation were issued in the name of Dr. Dhaniram Chaudhary to show it was in common knowledge that ownership of house belonged to Dr. Dhaniram Chaudhary. It is further stated that no plausible explanation has been shown by plaintiff against it and this issue is missed out by the learned trial Court. It is stated the effect of Ex.D/1 and Ex.D/2 would show that the cheque was paid by Dr. Dhaniram Chaudhary to the Cooperative Society for the allotment which was of September, 1961. Further reference is made to the certain entries made in the diary marked as Article A to demonstrate that the amount for construction of house was paid from time to time and the defendant Shiv Kumar Chaudhary also contributed in such construction of the house. He further submits that oral and documentary evidence therefore would lead to show that the property in question was purchased by father of plaintiff





though it was in the name of plaintiff Dr. Ramkumar Chaudhary. He would further submit that the suit was filed in the year 2005 and the defence to this fact of benami transaction had already been taken, therefore that defence would be saved and reliance is placed in the matter of **G. Mahalingappa vs. G.M. Savitha** reported in **(2005) 6 SCC 441** to say that the section 4(3) of the Benami Transaction (Prohibition) Act 1988 came into operation on 01/11/2016.

10. Per contra, learned counsel Shri B.P. Sharma assisted by Shri Nikhil Parakh appearing for the respondents would submit that the case revolves on around the title so the claim for ejection. He would submit that if the pleading of the parties are gone into along with the evidence, it would show that the subject property was purchased by plaintiff and the sale-deed exist in the name of plaintiff late Ramkumar Chaudhary. It is stated therefore based on the title the ejection is sought for. He further submits that after Shiv Kumar Chaudhary though tried to explain the expenses were incurred by him for construction of the house and allotment of the property was procured by the father by payment to the Cooperative Society by Ex.D/1 and Ex.D/2 but those documents cannot be relied upon as it do not disclose the particular of such allotment and the defendants were also allotted the plot in the same vicinity of the Cooperative Society separately. He would further submit that one of the brother namely Devendra Kumar was examined as DW-3 and another suit was filed by Devendra Kumar the other brother to support the



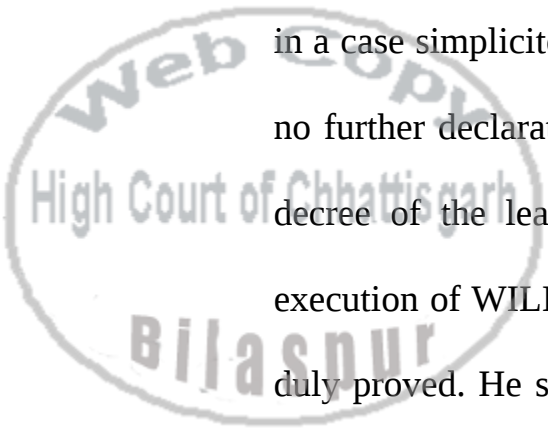


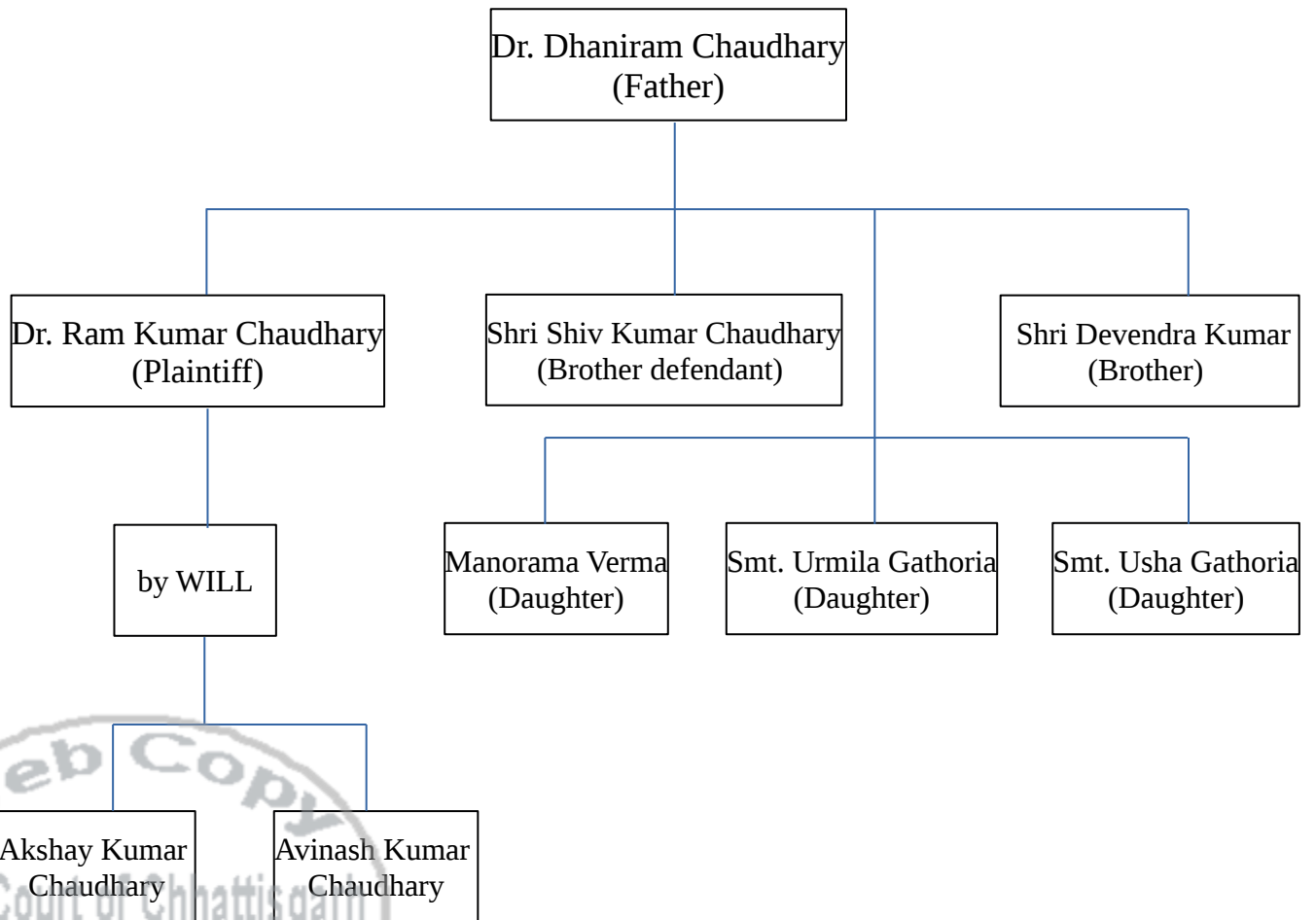
contention of the defendant but the same suit was dismissed.

11. He would further submit that the plaintiff was a practicing doctor and out of his own income, he got the plot allotted in his favour while he started practice and subsequently went into the service. Therefore, the land having been allotted in favour of plaintiff Dr. Ramkumar Chaudhary it cannot be stated that the money was paid by father Dr. Dhaniram Chaudhary. The learned counsel places reliance in the matter of **Muddasani Venkata Narsaiah (dead) through Legal Representatives vs. Muddasani Sarojana** reported in **(2016) 12 SCC 288** to submit that in a case simplicitor claiming possession when the title is not in dispute, no further declaratory decree would be required and the judgement and decree of the learned Court below is well merited inasmuch as the execution of WILL subsequently by Dr. Ramkumar Chaudhary was also duly proved. He submits that in facts of the case, the appeal is without merit and deserves to be dismissed.

12. We have heard the learned counsel for the parties and perused the documents.

13. Voluminous documents have been filed by both the parties. In order to appreciate the rival claim in between the parties, it would be necessary to draw genealogical tree based on the facts and evidence given by the parties, which is as follows :-



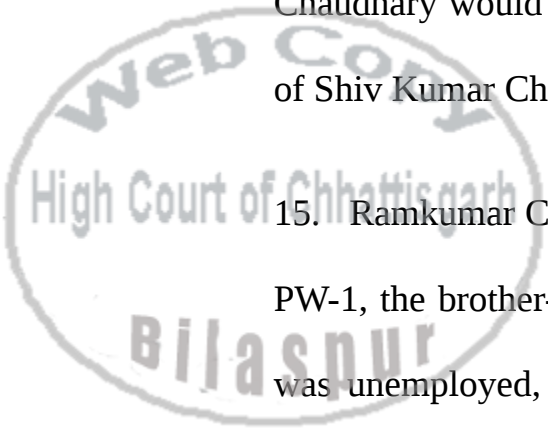


14. The suit was filed by Dr. Ramkumar Chaudhary against his brother Shiv Kumar Chaudhary for ejection in the year 2005. The suit was based simplicitor on the ground that since plaintiff was the owner of the suit property prayer is made for ejection of the defendant who was brother. During the course of trial, both the original plaintiff Dr. Ramkumar Chaudhary and defendant died. On behalf of the plaintiff, his wife Smt. Vimal Chaudhary was examined. According to the deposition, Dr. Ramkumar Chaudhary was a member of Housing Society and being so, he purchased a plot wherein her husband raised superstructure. She stated that the plot was purchased in the year 1964 and subsequently the house was constructed. She further deposed that the property was



recorded in the name of her husband Ramkumar Chaudhary in the Municipal record. According to this witness, she was married to Dr. Ramkumar Chaudhary in the year 1958 and at the time of marriage, the husband was practicing doctor and had a roaring practice by which, in turn he used to earn Rs.3000 – 4000 per month. There is no dispute to this fact that date of birth of Shiv Kumar Chaudhary, the defendant is on 25th May 1938 and as per the statement of DW-1. It is also not disputed that Ramkumar Chaudhary was elder brother. Therefore by deposition of PW-1 it would show that approximately the age of late Ramkumar Chaudhary would have been near 25 – 26 years as compared to the age of Shiv Kumar Chaudhary at the time of purchase of suit land.

15. Ramkumar Chaudhary got into the service in 1967 and according to PW-1, the brother-in-law (devar) Shiv Kumar Chaudhary, the defendant was unemployed, therefore, he was allowed to stay in the house. The document Ex.P/49 is a sale-deed by the Cooperative Society in favour of Ramkumar Chaudhary in respect of the suit house. The respective municipal receipts and the receipts of certain Cooperative Society which are distinctly marked shows that it was in the name of Dr. Ramkumar Chaudhary. The municipal permission to raise the construction of the house over the plot of April 1964 was issued in the name of Dr. Ramkumar Chaudhary which is a part of Ex.P/49. Another application for solvency which is of 27/02/1967 Ex.P/35 wherein Dr. Ramkumar Chaudhary applied for issuance of solvency certificate. The certificate

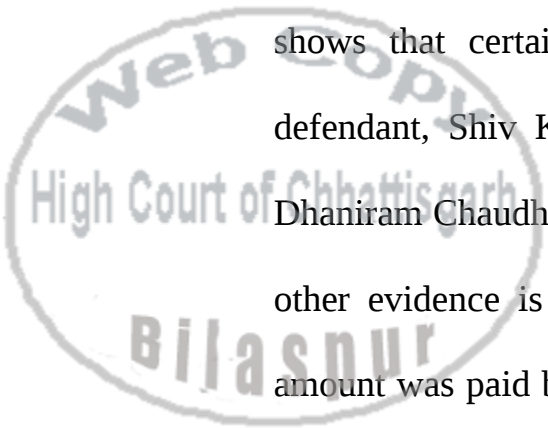




was issued by Ex.P/37 which was accompanied and supported by a declaration of the sister Smt. Urmila Gathoriya Ex.P/38 shows that the solvency was issued describing Ramkumar Chaudhary is the sole and exclusive owner.

16. The defendant has produced two receipts of Raipur Cooperative Housing Society of 23/07/1961 and 26/09/1961 to say that the money was paid by cheque by Dr. Dhaniram Chaudhary. No witnesses were examined from Raipur Cooperative Housing Society to prove the authenticity of the same. Apart from it, perusal of such Ex.D/1 and D/2 shows that certain amount was paid by cheque. According to the defendant, Shiv Kumar Chaudhary, the same was paid by father Dr. Dhaniram Chaudhary. Except such statement and Ex.D/1 and Ex. D/2 no other evidence is placed on record to corroborate the fact that those amount was paid by Dr. Dhaniram Chaudhary that too was in respect of the same plot which is subject of dispute. No confrontation was made to the plaintiff witness with those documents. The other probability which looms large that the defendant was in hold of the said receipts which purports to have been issued by the Cooperative Society in lieu of the cheque paid by the father then actually the account was in name of the father could have been proved by any corroborative evidence.

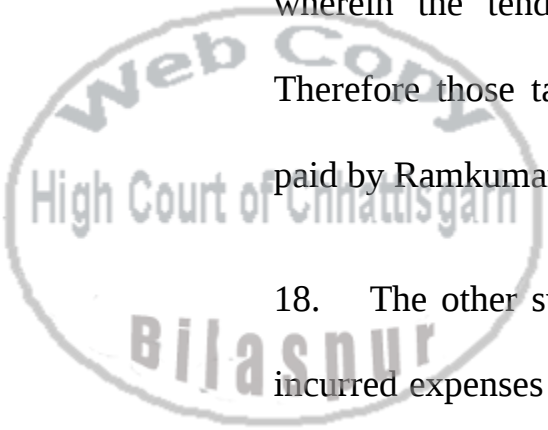
17. The municipal demand and receipts which are produced by the defendants from Ex.D/3 to Ex.D/12 includes both names, few of the receipts contains name of D.R. Chaudhary, the father and few of the





receipts contains name of Dr. Ramkumar Chaudhary. In the receipts which are in the name of D.R. Chaudhary i.e. Ex.D/5 it is not clear as to by whom it was paid as municipal receipt Ex.D/6 which is by D.R. Chaudhary the payment is said to be made by Dr. D.R. Chaudhary on 02/03/1978. The statement of Shiv Kumar Chaudhary would show that D.R. Chaudhary died on 09/01/1972, therefore the authenticity of the document Ex.D/6 municipal receipts becomes doubtful which came to fore after his death and instead the receipts produced by the defendant shows the name of Dr. Ramkumar Chaudhary in the municipal receipts, wherein the tenderer is shown as self Dr. Ramkumar Chaudhary. Therefore those tax receipt which are issued with endorsement of tax paid by Ramkumar Chaudhary will have more value of probability.

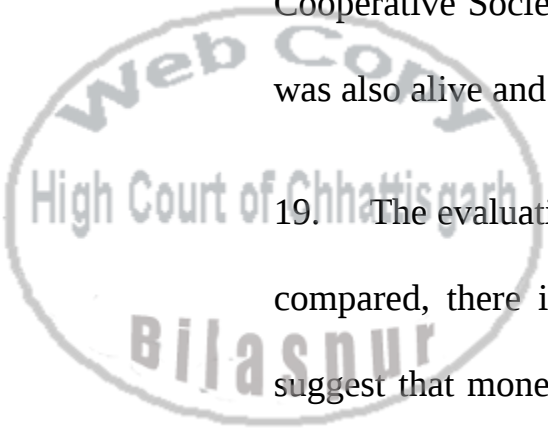
18. The other submission of the defendant/appellant was that he had incurred expenses and the income was maintained in the usual course of maintenance of account. Perusal of the diary article D/1 and register D/2 which is said to have recorded the expenses for construction of house do not connect by clear evidence on what head actually the expenses were incurred. According to the statement of DW-1, the receipts and voucher which were the basis of entry were destroyed. When the entry of the Article D/1 was specially confronted to the defendant No.1, by way of specific omission it was admitted that name of father to show he has paid such amount was not recorded. The sale-deed in respect of the suit property Ex.P/49 when was executed by the Cooperative Society, the





defendant Shiv Kumar Chaudhary was working in the Cooperative Society. It is admitted at para 77 of the cross-examination of DW-1 that in the Society register the suit property was recorded in the name of Dr. Ramkumar Chaudhary. He further admits the fact when the sale-deed was executed in favour of Ramkumar Chaudhary he never objected to it. Para 83 of the cross-examination further corroborate the fact when Ex.P/37 which fortifies the fact that property was owned by Ramkumar Chaudhary was issued by the Cooperative Society no objection was raised and on the date of such issuance of no objection by the Cooperative Society i.e. 27/02/1967 Dr. Dhaniram Chaudhary the father was also alive and no objection was made by father too.

19. The evaluation of the rival statements and the documents when are compared, there is nothing on record by way of evidence is there to suggest that money for allotment of the house was actually paid by Dr. Dhaniram Chaudhary. When the defendant was sanguine of the fact and came out with a voucher to say that it is a purported document of receipt of such allotment, it could have been established by other cogent corroborative evidence. The receipt do not show any plot number. The plaintiff having not accepted the fact that by those receipt only allotment of suit property was made no inference can be drawn on probabilities against a registered sale-deed, which has presumptive value of correctness. In order to bridge the defence with the evidence more authentic plausible documents should have been placed on record. The





submission of the respondents gets an edge to bring the lens back on the sale-deed and the different document of receipts to hold the sway in favour of plaintiff to hold that the property in question was purchased by late Dr. Ramkumar Chaudhary from his own earning. The deposition of the wife that Dr. Ramkumar Chaudhary had a roaring private practice till he got into the job remains unrebutted.

20. Since the ownership of the subject suit property was in question and has been held in favour of the respondent by affirmation of the finding of the learned trial Court, no submission is made questioning the existence of WILL. In view of that no separate finding on WILL is called for, for want of dispute. Therefore, after overall assessment of evidence we are of the view that the finding recorded by the learned trial Court do not require any interference. Accordingly, the appeal sans merit and it is dismissed.

21. A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Sachin Singh Rajput)
Judge