



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 660 of 2018

- Tularam Patel S/o Late Dhajaram Patel, Aged About 36 Years R/o Village Khaira (Gjanan), Tahsil & District Bilaspur Chhattisgarh

---- Appellant

Versus

1. Budheshwar Nayak S/o Meharchand Nayak, Aged About 50 Years R/o Village Khaira (Gjanan), Tahsil And District Bilaspur Chhattisgarh
2. Smt. Gayatri Nayak W/o Bharatlal Nayak, Aged About 37 Years
3. Ku. Sanjana Nayak, D/o Late Bharatlal Nayak, Aged About 14 Years
4. Ankit Nayak, S/o Late Bharatlal Nayak, Aged About 11 Years

Respondents No.3 & 4 are Minor, both are Represented Through their Mother

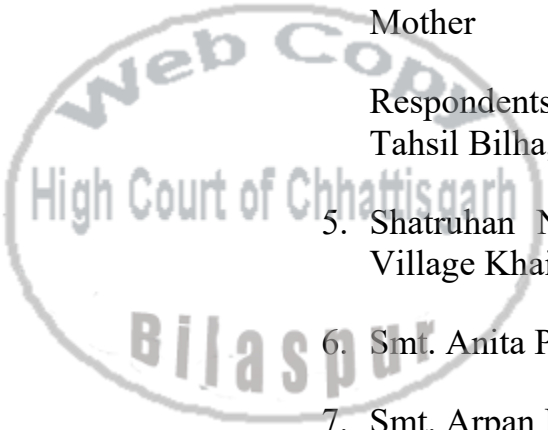
Respondents No.2 to 4 are Residing At Village Udgun, Post Dagouri Tahsil Bilha, District Bilaspur Chhattisgarh

5. Shatruhan Nayak, S/o Dileshwar Nayak, Aged About 22 Years R/o Village Khaira (Gjanan), Tahsil And District Bilaspur Chhattisgarh
6. Smt. Anita Patel, W/o Lakshminarayan Patel, Aged About 26 Years
7. Smt. Arpan Patel, W/o Dolanarayan Patel, Aged About 24 Years

Respondents No.6 & 7 both are R/o Village Near Bhararee Village Malhar, Tahsil Masturi, District Bilaspur Chhattisgarh

8. Smt. Triveni Patel, W/o Paitram Patel, Aged About 47 Years R/o Village Kirari, Tahsil Masturi, District Bilaspur Chhattisgarh
9. Smt. Bundkunwar Patel, W/o Akshay Kumar Patel, Aged About 44 Years R/o Village Tonda, Near Village Sohagpur, Tahsil And District Korba Chhattisgarh
10. Smt. Anusuyaa Patel, W/o Nandkishor Patel, Aged About 41 Years R/o Village Pandaripani, Near Village Nandeli, Tahsil Kharsia, District Raigarh Chhattisgarh

---- Respondents





FA No. 6 of 2019

- Tularam Patel, S/o Late Dhajaram Patel Aged About 36 Years R/o Village Khaira, Pndhi, Tahsil And District- Bilaspur, Chhattisgarh.....(Plaitiff),

---- Appellant

Versus

1. Budheshwar Nayak S/o Meharchand Nayak Aged About 50 Years
2. (Died And Deleted) Smt. Jambowati As Per Hon'ble Court Order Dated 27-02-2023.
3. Smt. Gayatri Nayak W/o Bharatlal Nayak Aged About 37 Years
4. Ku. Sanjana Nayak D/o Late Bharatlal Nayak Aged About 14 Years
5. Ankit Nayak S/o Late Bharatlal Nayak Aged About 11 Years

Respondents No.4 & 5 are Minor, both are represented Through their Mother Smt. Gayatri Nayak,

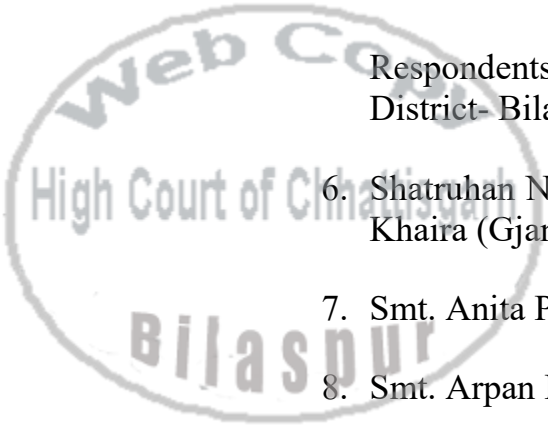
Respondents No.1 to 4 R/o Village Udgun, Post Dagouri, Tahsil- Bilha, District- Bilaspur, Chhattisgarh

6. Shatruhan Nayak S/o Dileshwar Nayak Aged About 22 Years R/o Village Khaira (Gjanan), Tahsil And District- Bilaspur, Chhattisgarh
7. Smt. Anita Patel W/o Lakshminarayan Patel Aged About 26 Years
8. Smt. Arpan Patel W/o Dolanarayan Patel Aged About 24 Years

Respondents No.7 & 8 both are R/o Near Village Bhararee Village Malhar, Tahsil Masturi, District- Bilaspur, Chhattisgarh

9. Smt. Triveni Patel W/o Paitram Patel Aged About 47 Years R/o Village Kirari, Tahsil- Masturi, District- Bilaspur, Chhattisgarh
10. Smt. Bundkunwar Patel W/o Akshay Kumar Patel Aged About 44 Years R/o Village Tonda, Near Village Sohagpur, Tahsil And District- Korba, Chhattisgarh
11. Smt. Anusuyaa Patel W/o Nandkishor Patel Aged About 41 Years R/o Village Pandaripani, Near Village Nandeli, Tahsil Kharsia, District : Raigarh, Chhattisgarh

---- Respondents





For Appellant : Shri Neeraj Choubey, Advocate
For Respondents : Shri Sourabh Sharma, Advocate with
Shri Sourabh Gupta, Advocate

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Smt. Justice Rajani Dubey

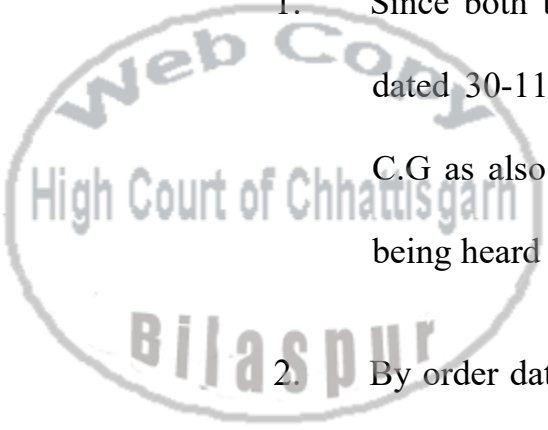
Judgment on Board

Per Goutam Bhaduri, J

05/07/2024

Heard.

1. Since both the appeals are arising out of common judgment and decree dated 30-11-2018 passed by the 7th Additional District Judge, Bilaspur, C.G as also common facts and issue involved in these appeals, they are being heard together and decided by this common judgment.
2. By order dated 5-10-2018 civil suit Nos.325-A/2012 and 74-A/2018 were consolidated and decided by the trial Court vide common impugned judgment and decree as stated *supra*.
3. Civil Suit No.325A/2012 filed by the plaintiffs (Budheshwar Nayak & Ors.)/respondents herein was allowed and against which FA No.660 of 2018 has been filed by the appellant/defendant No.1 whereas civil suit No.74A/2018 filed by the plaintiff (Tularam Patel)/appellant herein was dismissed and against the same FA No.6 of 2019 was filed by the appellant/plaintiff.
4. The brief facts of the case are that:-





(A). Tularam Patel had filed a suit (civil suit No.74-A/2018) for permanent injunction and Budheshwar Nayak & others filed a suit (civil suit No.325-A/2012) for declaration and cancellation of sale deed and possession. Since the property *inter se* was one and the same, therefore, by a common judgment and decree both the suits were decided.

(B) Budheshwar Nayak & others filed a suit, which was bearing Civil Suit No.325A/2012 before the Additional District Judge, Bilaspur with the averments that a sale deed which is executed by Meharchand Nayak (father of Budheshwar) in favour of Tularam Patel, is null and void and is out come of fraud and Meharchand Nayak did not have exclusive right to execute the sale deed. Whereas Tularam Patel, who was the purchaser of the suit land filed the suit No.74-A/2018 for injunction that by a registered sale deed he purchased the suit land, therefore, the seller or their heirs be enjoined to interfere with the peaceful possession. To prove their respective case both the parties apart from their pleadings in counter adduced evidence and examined all the witnesses.

(C). Budheshwar Nayak & Ors. stated that Tularam Patel, who was the counsel of Meharchand Nayak, who was septuagenarian at the relevant time, on a promise that certain bail bond to be furnished took him to the Registrar Office and committed fraud in lieu of furnishing the bail bond got the sale deed executed without any payment of amount. On the contrary, Tularam Patel, the counsel denied the same.

(D) After both the civil suits were consolidated by order dated 5-10-2018, the learned Additional District Judge decreed the suit in favour of Budheshwar Nayak, who was claiming through Meharchand and others.



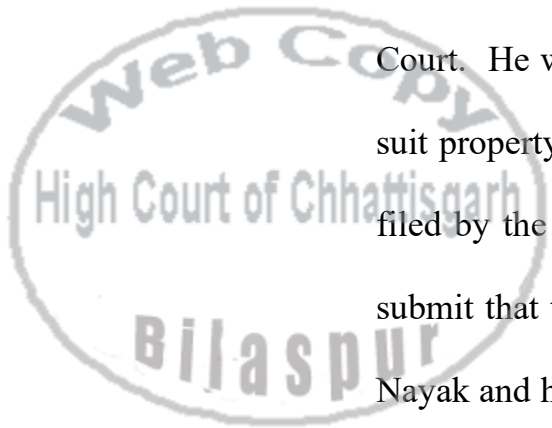


No cross-objection has been filed. Simultaneously, the suit filed by Tularam Patel was dismissed claiming injunction. Hence, Tularam Patel, the purchaser of the suit property, has filed both these appeals.

5. For the sake of convenience, Tularam Patel & Budheshwar Nayak & Others would be hereinafter referred to as “the appellant & the respondents”, respectively.

6. (a) Learned counsel for the appellant would submit that in order to prove a registered sale deed to be an out come of fraud, the respondents failed to adduce evidence and it is only on the basis of certain copy of the sale deed, the expert opinion was obtained, which was produced before the Court. He would further submit that Meharchand Nayak, the seller of the suit property, was not examined and original sale deed though which was filed by the appellant was never sent for examination. He would further submit that the property, in fact, was got divided in between Meharchand Nayak and his legal heirs, which is evident from the Ex. D/22, wherein the part of the suit property was subject of sale by the respondents and that too was during the life time of Meharchand Nayak.

(b) Learned counsel would further submit that the complaint was made in name of Meharchand Nayak and Budheshwar Nayak and in his cross-examination at para 17 he admitted that he made those complaints that raises a doubt about his conduct. He would further submit that the witnesses examined i.e. the Sub-Registrar Subhash Kumar Mule (DW-4) and the attesting witness to the sale deed namely Sitaram Kenvat (DW-3) would show that the sale deed was actually executed on 23/03/2011. He would further submit that the statement of Arjun Singh Maravi (DW-5),

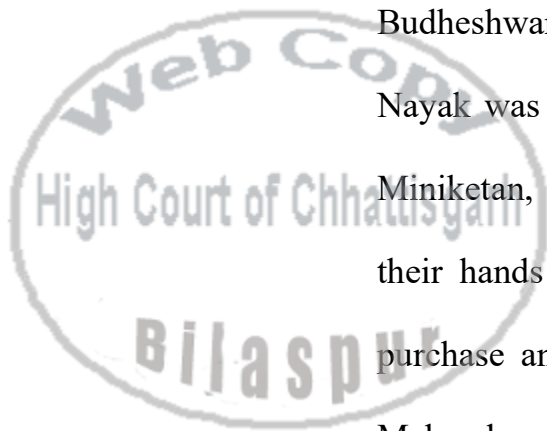




who is the peon of the Sub-Registrar, before whom the sale deed was executed, he got the signature and thumb impression on sale deed, therefore, the presumption of Section 114 of the the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act') would follow and the sale deed cannot be turned down that it is out come of fraud. He would further submit that the learned trial Court has completely failed to appreciate those issues and came to a wrong finding, which is liable to be interfered by this Court.

7. (A) Learned counsel for the respondents, *ex adverso*, in whose favour the decree of cancellation of sale deed and possession has been passed i.e. Budheshwar Nayak & others, would submit that not only Meharchand Nayak was not exclusive owner and he got the property from his father Miniketan, therefore, the property would be a co-parcenary property in their hands and there is no dispute about the fact as the document of purchase and partition consequently in the year 1975 would show that Meharchand Nayak has not acquired the property from his self earning and it would not be a self acquired property.

(B) Learned counsel would further submit that being so Meharchand Nayak has no authority to alienate the property by executing the sale deed. He would further submit that even the sale deed (Ex. P/5) which was alleged to have been executed is out come of fraud. He refers to the statement of Sub-Registrar Subhash Kumar Mule (DW-4) and his peon Arjun Singh Maravi (DW-5) to submit that their statements are contradictory as the material contradictions are on the face of the document exists because the sale deed is said to be executed on

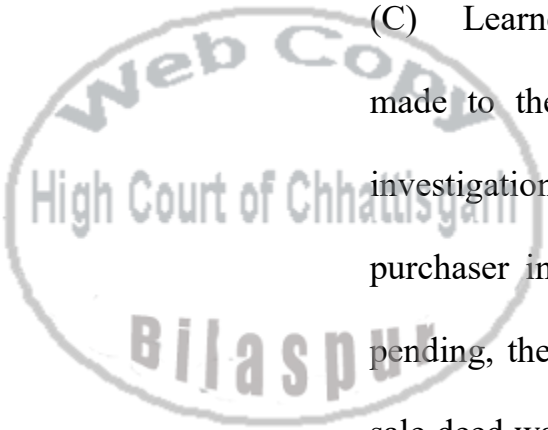


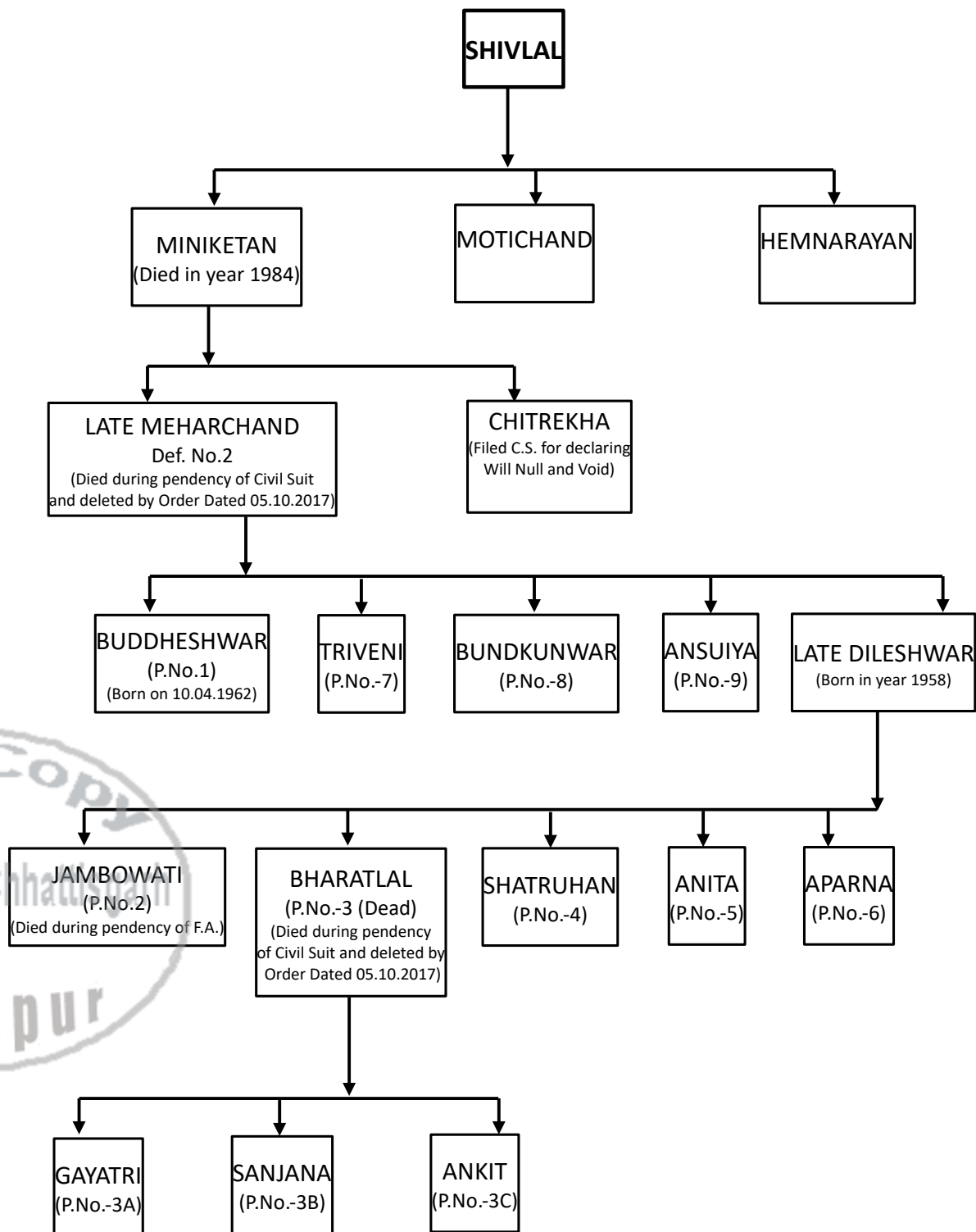


23/03/2011 but the endorsement in the register which is a statutory under Section 32 of the Registration Act shows that the sale deed actually was executed on 29th of March, 2011 whereas on 29th of March, 2011 the seller never visited the office of Sub-Registrar. He would further submit that the finding of the trial Court that the sale deed is out come of fraud is proved by the statement of the purchaser Tularam Patel (DW-1) who was a counsel of the seller Meharchand Nayak in the name of furnishing the bail bond he was brought from the village to the office of the Sub-Registrar where certain signatures were obtained and subsequently by committing fraud the sale deed was executed.

(C) Learned counsel would also submit that the reports having been made to the various authorities including the police, the police after investigation found the allegation to be proved and convicted the purchaser including the witnesses and against said conviction appeal is pending, therefore, *prima facie*, the plaintiffs were able to prove that the sale deed was out come of fraud. Consequently, the finding of the learned District Judge, Bilaspur is well merited do not require any interference. He would also submit that the handwriting expert Rajesh Kumar Alma (PW-2) also supported the fact that the signatures were not that of Meharchand Nayak.

8. We have heard learned counsel for the parties and perused the record and the evidence.
9. In order to appreciate the genealogy and the nucleus of the title, the genealogical family tree would be necessary which is reproduced hereinbelow:-





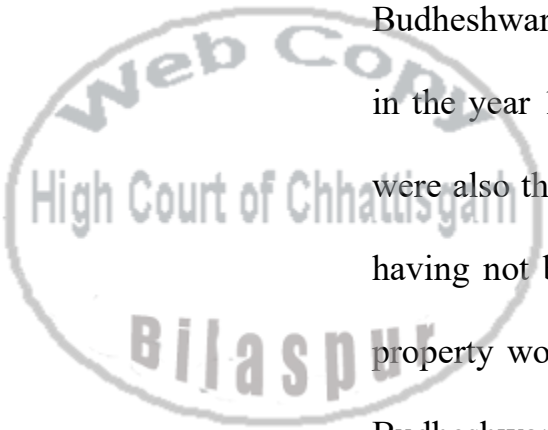
10. The sale deed Ex. P/5 was executed on 23/03/2011. The certified copy of the sale deed is also placed on record. The deed was executed by Meharchand Nayak, who was shown to be 72 years old, in favour of Tularam Patel for a consideration of Rs.15,64,700/-. In order to trace out the history of nucleus of title, the document Ex. D/1, which is a sale deed dated 05/03/1960 is perused, which shows that the purchase of the suit property along with others was made by Miniketana, Motichand and



Hemnarayan, who are brothers, from one Kanhaiyalal Pathak. Total land comprised of 55 Acres at village Khaira. Out of this land, the suit land bears Khasra No.8, 9, 10, 165, 808 & 809. Subsequently, on 01/11/1975 vide Ex. P/4 & P/10 which are the revenue entries, the property in between the joint holders got partitioned and the suit land was further numbered as Khasra Nos. 8/3, 8/4, 9/2, 10/2, 165/17, 165/18, 805/5, 808/6, 808/7 & 809. By such execution of the partition deed all the three brothers got their property partitioned and made meets & bounds.

11. Admittedly, Miniketan died on 24/12/1984 by the time his grandson Budheshwar Nayak & Dileshwar Nayak who were already in existence as Budheshwar Nayak was born in the year 1962 and Dileshwar Nayak born in the year 1958. Apart from Budheshwar & Dileshwar, three daughters were also there namely Triveni, Bundkunwar and Anusuiya. The property having not been acquired by Meharchand from his self earning, the suit property would be a co-parcenary property in the hands of Meharchand, Budheshwar, Dileshwar & sisters.

12. Mitakshara co-parcenary property has a definite conception. It is a body of individuals having been created by law unlike a joint family which can be constituted by agreement of parties. A Mitakashara co-parcenary since create of law by birth grand son and grand children they would step in as coparcener. The right of the sisters cannot be shelved as till the date of sale in the year 2011 we do not find any partition or sale prior to that by others except the intervening subject suit land was sold by Meharchand Naik in the year 2011. Section 6 of the Hindu Succession Act which was amended in the year 2005 the interest of other and other co-coparcener





would merge into the surviving all co-parceners and the factum of such acquisition by birth the share of surviving co-parceners may undergo a change till the actual partition takes place, but if the partition has not been proved to have taken place, the daughters too would get the right when were arrayed as plaintiff in the suit.

13. The Supreme Court in case of *Hardeo Rai v. Sakuntala Devi and others (2008) 7 SCC 46 (para 19)* has reiterated the principles laid down in *S.B.I. v Ghamandi Ram (1969) 2 SCC 33* which reads as under :

“5. According to Mitakshara School of Hindu Law all the property of Hindu joint family is held in collective ownership by all the coparceners in a quasi- corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for joint family members then living and thereafter to be born (see Mitakshara, Chapter I, pp. 1-27). The incidents of coparcenership under the Mitakshara Law are :

first, the lineal male descendants of a person upto the third generation, acquire on birth ownership in the ancestral properties of such person;

secondly, that such descendants can at any time work out their rights by asking for partition;

thirdly, that till partition each member has got ownership extending over the entire property conjointly with the rest;

fourthly, that as a result of such co- wnership the possession and enjoyment of the properties is common;

fifthly, that no alienation of the property is possible unless it be for necessity, without the concurrence of the coparceners, and

sixthly, that the interest of a deceased member lapses on his death to the survivors. A





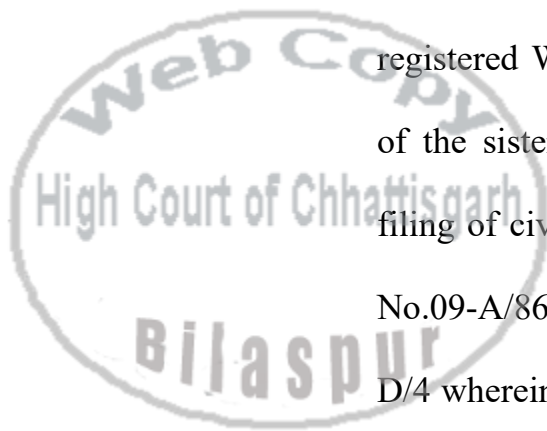
coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except insofar that on adoption the adopted son becomes a coparcener with his adoptive father as regards the ancestral properties of the latter.”

14. The proposition of amendment to Section 6 of the Hindu Succession Act, 1956 was interpreted by the Supreme Court in the matter of *Vineeta Sharma Vs. Rakesh Sharma & others* {(2020) 9 SCC 1} wherein at para 137.1 it explains the same, which is reproduced hereinunder:-

137.1 The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

15. The another fact which cropped is that Miniketan, who executed a registered WILL (Ex. D/9) in favour of Meharchand on 20/12/1984, one of the sisters of Meharchand namely Chitrekhya excluded, which led to filing of civil suit vide Ex. D/3 and she claimed 1½ share. The civil suit No.09-A/86 which was allowed by judgment dated 28/08/1990 vide Ex. D/4 wherein it was held that the registered WILL dated 24/12/1984 is null and void. Therefore, the status of the property in the hand of Meharchand was restored to be a co-parcenary in nature along with the plaintiff Budheshwar and others. Though the plaintiff has produced a document Ex. P/31 dated 30/04/1998 to show that Chitrekhya has relinquished her right to acknowledge the fact that even by the said agreement, the right of Budheshwar and others cannot be extinguished and the status / nature of the property cannot be changed from that of co-coparcener to self acquired.

16. The Supreme Court further in the case of *Ramdas Vs. Sitabai & Ors.* {AIR 2009 Supreme Court 2735} reiterated the view laid down in the case of





Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh & Ors.

{AIR 1953 SC 487} and held that vendee purchased undivided interest of coparcener in the joint property, he will not acquire any title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work out his rights only by a suit for partition. The Supreme Court further in the judgment laid down relied on the principle that the co-sharer cannot put a vendee in possession. For sake of brevity para 15 of the judgment is reproduced herein below:-

17. 15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470], wherein this Court stated as follows:

"Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the coparcener whose share he had purchased."

Therefore, the barrier which comes for the plaintiff to cross remains about putting the vendee into exclusive possession of the property which is confined to share of Meharchand Naik alone.

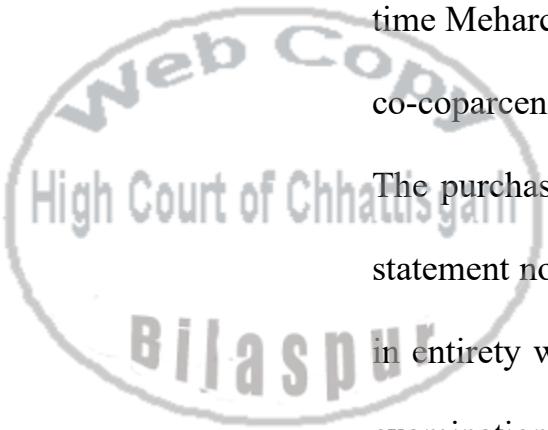
18. Apart from this fact the serious allegation of fraud has been made by the Respondents/plaintiffs. In the pleading and the evidence, it has been stated that Tularam Patel, the purchaser of the suit property, was one of his counsel, defending Meharchand Naik before a revenue Court.





Vakalatnama filed in such revenue case which is styled as *Meharchand Vs. Radheshyam* in respect of one land bearing Khasra No.8/3 vide Ex. P/7 & P/8. The order-sheet of the said case would show that the dispute was in respect of one of the lands which is under the same khasra bearing No.8/3 and the order-sheets up till 23/08/2011 are on record. The order-sheet would show that on 28/03/2011 it was disclosed by the counsel that the property has been sold, however, it do not mark the appearance of the seller Meharchand. Thereafter, the sale deed which Ex. P/5 dated 23/03/2011 is on record.

19. The evidence was recorded in the instant civil suit in the year 2018 by the time Meharchand has already died on 05/02/2016. Budheshwar one of the co-coparcener stated that by playing fraud, the sale deed was executed. The purchaser Tularam Patel was examined as DW-1. According to his statement no advance was given to Meharchand, the seller and the amount in entirety was paid on 23/03/2011. The purchaser Tularam in his cross-examination on a specific suggestion says that he stayed back on 23/03/2011 along with Meharchand at Sub-Registrar Office and at para 24 of the cross-examination he again specifies the date of 23/03/2011 to be the date of sale on that date the seller was present along with him in the office of Sub-Registrar. The seller has produced a document Ex. D/23 which is the register of the Sub-Registrar Office, wherein in the bottom the name of Tularam Patel is shown and date of 23/03/2011 & 29/03/2011 have been endorsed.
20. Subhash Kumar Mule (DW-4) has narrated the procedure of execution of sale deed and he stated that the thumb impression and the sign is being

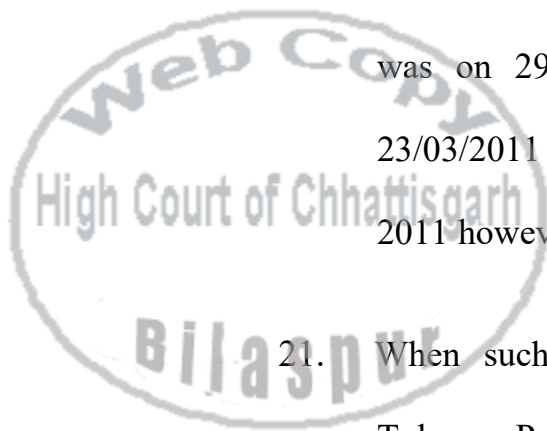




executed by the peon of the office. He stated that the sign on Ex. P/5 was obtained by Arjun Singh Maravi, therefore, he is not the person, who is the primary witness. He further admits that he do not know personally the seller and stated that the sale deed was produced on 23/03/2011 at 3.11 pm and volunteered that Meharchand had produced. This statement contradicts his own words that when the Sub-Registrar was not in know of the person who is Meharchand, how such identification could have been made. He further stated that the signature on Ex. P/5 i.e. the sale deed was obtained by Arjun Singh Maravi and Meharchand was identified by the witnesses alone. When he was confronted with the document Ex. D/23 he states that on 23/03/2011 the document was produced and the execution was on 29/03/2011. He stated that inadvertently the date of sale 23/03/2011 was put in the Register actually it was done on 29th of March, 2011 however he could not assign the reasons.

21. When such statement is compared with the statement of purchaser Tularam Patel it shows that he confined the entire transaction only to 23/03/2011 which raises a doubt. Arjun Singh Maravi (DW-5), who was the peon to Sub-Registrar, has stated that the document Ex. P/5 the sale deed was presented before him, thereafter the signatures were obtained. Explaining the document Ex. D/23 wherein two dates appear i.e. 23/03/2011 & 29/03/2011, he stated that the document was not registered on 29/03/2011. The sale deed which is before us bears the signature of seller Meharchand.

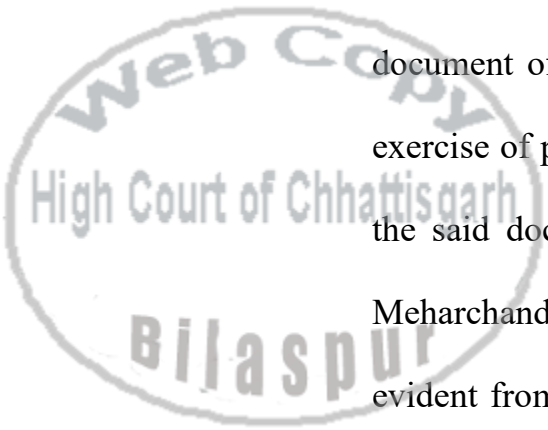
22. It has been stated by the seller that those signatures were out come of fraud and certain signatures were obtained in lieu of furnishing bail bond. When





the documents are compared with the vakalatnama Ex. P/8 the signature of Meharchand on the said sale deed and the Vakalatnama which was prior to the sale deed appears to be different on the bare reading. The submission of the appellant that while the expert opinion was obtained, the original was not sent, therefore, the submission of Rajesh Kumar Alma (PW-2) cannot be given a preference for the reason that the Court in exercise of power under Section 73 of the Evidence Act examined the documents. If the bare signature on the face of it do not appear to be the same, which is also corroborated by the statement of Rajesh Kumar Alma (PW-2) the correctness of the fact that the finding arrived at by the learned Additional District Judge that the signature of Meharchand was not existing on the document of sale appears to be a correct finding of fact. We are also in exercise of power under Section 73 of the Evidence Act, while examining the said document i.e. the sale deed, of the view that the signature of Meharchand in the Vakalatnama and the sale deed do not match and is evident from open eye which leads to only conclusion that the sale deed was out come of fraud.

23. Another aspect which looms large that the sale consideration of Rs.15,64,700/- was said to have been paid by cash there is no document to appreciate as to how the said massive amount was transacted. The purchaser has not placed any document on record to show that wherefrom the amount was withdrawn or any income tax receipt to show that the amount of Rs.15,64,700/- was cash in hand and was available with him. We also cannot forget the fact that the complaints were made to the Bar Council as also the Police by the seller about the execution of the sale deed by fraud. The police on investigation filed a charge-sheet and after





entire trial the purchaser and the witnesses were convicted, against which an appeal is pending which is also admitted by the witness Sitaram Kenvat (DW-3), who was the attesting witness to the sale deed. Consequently, we are of the view that the finding arrived at by the learned Additional District Judge after meticulous examination of the evidence and thus has reached to a conclusion that the sale deed was outcome of fraud accordingly the suit was decreed and the sale deed was annulled. The finding of the learned trial Court is just and proper warranting on interference of this Court.

24. In the result, both the appeals sans merit are liable to be and are hereby dismissed. However, there shall be no order as to cost(s).

25. Decree be drawn accordingly.

26. Before we part with the entirety of the examination of the facts & evidence shows that it is a breach of faith by a practicing advocate with his client as he got the sale deed executed in his favour in name of furnishing bail bond. Therefore, it would be appropriate to send a copy of this order to the C.G. State Bar Council for their deliberation. It is ordered accordingly.

SD/-

(Goutam Bhaduri)
Judge

SD/-

(Rajani Dubey)
Judge



Head note

The amended Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

हिन्दू उत्तराधिकार अधिनियम, 1956 की संशोधित धारा 6 के अंतर्गत संशोधन से पूर्व या पश्चात जन्में पुत्री को सहदायिक का दर्जा दिया गया है, तथा उसे पुत्र के समान ही अधिकार एवं दायित्व प्राप्त है।

