

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6524 OF 2021
(Arising out of SLP (Civil) No.24886 of 2019)**

BADRILAL

..... APPELLANT

v.

SURESH & ORS

..... RESPONDENTS

J U D G M E N T

ABHAY S. OKA, J.

Leave granted.

1. The appellant Badrilal who is the third defendant has taken an exception to the Judgment and Order dated 3rd May 2019 passed by the learned Single Judge in Second Appeal preferred by him. The first respondent Suresh is the original plaintiff, the second respondent Ramkanya is the original first defendant and the third respondent State of Madhya Pradesh is the original second defendant.

2. Mangilal and Bhuwan Ji were real brothers. Ramkanyabai is the daughter of Mangilal. The first respondent Suresh along with Prakash and Dilip are the sons of Bhuwan Ji. Mangilal was the owner of the lands bearing Survey Nos. 37/03 and 109/01 admeasuring 1.30 Hectare and 0.130 Hectare respectively at village Jalod, Ratlam, Madhya Pradesh. The total area of the lands held by Mangilal was 1.430 Hectare i.e. 6 Bigha and 10 Biswa. According to the case of first respondent Suresh, Mangilal executed Will dated 6th May 2009. Mangilal died on 26th June 2009. Under the said Will, a bequest was made by the said Mangilal of an area of 3 Bigha and 10 Biswa to Ramkanya. The first defendant Suresh and his two brothers Dilip and Prakash were granted lands admeasuring 1 Bigha each under the said Will. Suresh and Ramkanya entered into a compromise deed/ agreement which recorded that Ramkanya will be entitled to 5 Bigha of land held by Mangilal and Suresh will be entitled 2 Bigha and 3 Biswa of land held by Mangilal. The said agreement was entered into on 12th May 2009. On 22nd February 2011, Ramkanya executed a sale deed by which she sold a land measuring 5 Bigha to appellant Badrilal.

3. Suresh filed a suit claiming that he was in possession of land admeasuring 2 Bigha and 3 Biswa out of land bearing Survey No. 37/03. Therefore, Suresh claimed perpetual injunction restraining the

appellant - third defendant from interfering with his possession. A sale deed was executed by Ramkanya by which she sold land admeasuring 1.30 Hectare bearing Survey No.37/03 to the appellant Badrilal. Apart from claiming perpetual injunction, Suresh also prayed for a declaration that the sale deed dated 21st February 2011 is null and void as against him. The prayer regarding declaration in respect of the sale deed was added during the pendency of the suit as the sale deed dated 21st February 2011 was executed 7 days after the institution of the suit.

4. After a contest, the suit was decreed by the learned Trial Judge. He held that the Will dated 6th May 2009 executed by Mangilal was duly proved and was enforceable. The learned Trial Judge held that the agreement dated 12th May 2009 was illegal. He held that Ramkanyabai had no authority to sell the land admeasuring 2 Bigha and 3 Biswa out of the land bearing Survey No.37/03.

5. The learned Trial Judge declared Suresh as the owner of the land measuring 1 Bigha pursuant to the Will dated 6th May 2009. He held that the sale deed dated 21st February 2011 is void and not binding on Suresh. An appeal preferred by petitioner to the District Court against the said decree was dismissed. However, while dismissing the appeal, the District Court modified the decree by holding that as the Will dated

6th May 2009 was binding, Ramkanya was not entitled to sell her share to appellant Badrilal without getting her share separated by effecting a partition. The District Court held that the sale deed dated 21st February 2011 was void in respect of the right and title of Suresh. The District Court restrained the appellant Badrilal from interfering with the use and possession of Suresh over the part of land bearing Survey No. 37/03 possessed by him.

6. Second Appeal preferred by the appellant has been dismissed by the impugned Judgment and Order of the learned Single Judge of Madhya Pradesh High Court.

7. The learned Senior Counsel Shri N. K. Mody appearing for the appellant submitted that the Trial Court granted relief to Suresh which was not claimed by him. He submitted that the District Court after dismissing the appeal preferred by the appellant Badrilal, modified the decree of the Trial Court which is contrary to law. He submitted that by the agreement dated 12th May 2009, the Will dated 6th May 2009 was revoked as the said agreement also bears a thumb impression of Mangilal. He submitted that Ramkanya, being the only daughter of Mangilal, inherited the entire property of Mangilal being Class I heir as a consequence of revocation of the Will dated 6th May 2009.

Therefore, Suresh will not be entitled to any share in the property of Mangilal. He submitted that in any event, the sale deed dated 21st February 2011 will be valid to the extent of the land allotted to Ramkanya under the Will dated 6th May 2009.

8. The learned counsel Shri D.K. Thakur appearing for the first respondent Suresh submitted that the Will dated 6th May 2009 has not been revoked by Mangilal in accordance with law. He submitted that there is a concurrent finding that the Will dated 6th May 2009 has been duly proved and, therefore, no interference is called for.

9. We have given careful consideration to the submissions. A specific issue was framed by the learned Trial Judge on the proof of Will dated 6th May 2009. The learned Trial Judge considered the evidence of PW-4 Ishwarlal and PW-6 Saroj Soni, who were witnesses to the Will. PW-6 Saroj Soni who was a notary also deposed regarding entry of the Will in her register. Even the District Court, while deciding the appeal preferred by the appellant, has considered the evidence of the attesting witnesses and has come to the conclusion that the Will was duly executed by Mangilal. This finding has been specifically affirmed in the impugned Judgment by the High Court. Therefore,

there is no reason to interfere with the said finding of fact recorded by three Courts.

10. The agreement dated 12th May 2009 has been executed during the lifetime of Mangilal. Only Suresh and Ramkanya are the parties to the said agreement. Though, clause no.8 of the said agreement recites that the Will earlier executed by Mangilal stands cancelled, Mangilal is not shown as a party to the agreement but his thumb impression appears on the third page of the said document in the left margin. The question is whether the said agreement will amount to the revocation of the Will dated 6th May 2009. Section 70 of the Indian Succession Act, 1925 deals with revocation of unprivileged Will which reads thus :-

“70. Revocation of unprivileged Will or codicil.—No unprivileged Will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged Will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. Illustrations:-

- (i) A has made an unprivileged Will. Afterwards, A makes another unprivileged Will which purports to revoke the first. This is a revocation.
- (ii) A has made an unprivileged Will. Afterwards, A being entitled to make a privileged Will makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation”.

In view of Section 70, revocation can be made only by following modes :—

- (a) By Execution of another Will or codicil.
- (b) A writing executed by the testator declaring an intention to revoke the Will and executed in the manner in which an unprivileged Will is required to be executed.
- (c) By burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

11. Even going by the case of the appellant, the Will was purportedly revoked by the testator Mangilal by the agreement dated 12th May 2009. As noted earlier, only Suresh and Ramkanya are shown as the parties to the said agreement. They have been described therein as Party Nos. 2 and 1 respectively. Thumb impression of Mangilal appears in the left margin on the third page of the said document. Though, the first two pages bear signatures of Suresh and Ramkanya, the thumb impression of Mangilal appears in the margin of only the third page. It is not the case of the appellant or any party that the thumb impression of Mangilal on the agreement dated 12th May 2009 has been attested by two witnesses as required by clause (c) of

Section 63 of the Indian Succession Act, 1925. No such evidence has been adduced by the appellant. It is not the case of the appellant that the Will dated 6th May 2009 was revoked by Mangilal by executing a new Will or a codicil. It is not his case that the Will was either destroyed or burnt by Mangilal or by someone else as per his express instructions. Therefore, the Will dated 6th May 2009 was not revoked during the lifetime of Mangilal.

12. The agreement dated 12th May 2009 purports to record that Ramkanya will be the owner of 5 Bigha of land after the death of Mangilal and Suresh will become owner of 2 Bigha and 3 Biswa of land after the demise of Mangilal. The said agreement is not registered. It is not a sale deed executed by Mangilal. The agreement purports to record how the property of Mangilal will devolve after his death. Therefore, the agreement will not have the effect of transferring the property to Suresh and Ramkanya.

13. The sale deed dated 21st February 2011 was purportedly executed by Ramkanya by which she purported to sell the entire Survey No. 37/03 to the appellant Badrilal on the footing that she had become the owner thereof under the aforesaid agreement. It is not the case of any of the parties that the property of Mangilal was partitioned.

As his Will is held to be valid, Ramkanya will be entitled to area of 3 Bigha and 10 Biswa out of the total land held by Mangilal. It is not mentioned that Ramkanya will get area of 3 Bigha and 10 Biswa out of a particular Survey Number out of the two Survey numbers. Therefore, on demise of Mangilal, Ramkanya became the owner of undivided area of 3 Bigha and 10 Biswa, Suresh became the owner of undivided area of 1 Bigha and his brothers Dilip and Prakash also became the owners of undivided arrear of 1 acre each.

14. Careful perusal of the operative part of the judgment of the District Court shows that as per clause (c), it is declared the sale deed dated 21st February 2011 is void regarding the right and title of plaintiff Suresh and is not binding on him. The sale deed was executed after death of Mangilal. Therefore, the sale deed executed by Ramkanya on 21st February 2011 will be valid only to the extent of the area which she acquired under the Will of Mangilal. As the land held by Mangilal was not partitioned, either the appellant Badrilal or first respondent Suresh will have to file a suit for partition. Therefore, the decree passed by the District Court needs modification to that extent.

15. We, therefore, clarify that the sale deed dated 21st February 2011 executed by Ramkanya in favour of appellant - Badrilal, will be valid

only to the extent of the land which was bequeathed to Ramkanya under the Will dated 6th May 2009 executed by Mangilal. Subject to this above modification, the decree passed by the District Court on 6th December 2018 in Regular Civil Appeal No.86-A/16 is confirmed. It will be open for the parties to file a suit for partition of lands allotted to them as per the Will dated 6th May 2009.

16. The appeal is disposed of accordingly. There will be no order as to costs.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

New Delhi;
October 28 , 2021.