



IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PAVAN KUMAR DWIVEDI

ON THE 15<sup>th</sup> OF JUNE, 2026

FIRST APPEAL No. 497 of 2008

*RAJENDRA KUMAR & ANORS. AND OTHERS*

*Versus*

*DINDAYAL KHATIK AND OTHERS*

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Appearance:

*Shri Dilip Kumar Chaudhari - Advocate for the appellants.*

*Shri Sameer Anant Athawale - Advocate for the respondents.*

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Heard on : 16.02.2026

Pronounced on : 15.06.2026

.....

JUDGMENT

This is an appeal by the defendants against the judgment and decree dated 31.03.2008 passed in civil suit No. 8A/2005 whereby the trial Court declared the title and possession of the plaintiffs/respondents with respect to the suit property and consequently declared the sale deed dated 15.10.1998 as null and void executed by the defendant No. 2 in favour of defendant No.1 (appellants herein).

Brief facts of the case are as under :

2. The appellants/plaintiffs No.1 to 4 and defendant No. 2 are real brothers and plaintiff No. 5 is their mother. All the plaintiffs and defendants, except plaintiff No.5 are sons of Radhakishan. Plaintiff No. 5 is his wife. Radhakishan died about 10 years ago from the date of filing of suit before



the trial Court and after few months of his death, father of Radhakishan namely Kashiram also died. Kashiram was the owner of properties described in detail in paragraph No. 3 of the plaint admeasuring 1.543 hectares, out of which land of Survey No. 160 situated in village Badawda, Tehsil Jaora, District Ratlam is the disputed property. For the sake of clarity, it is also put on record that all the other properties are also adjacent to the disputed property.

3. Plaintiffs described the disputed property in paragraph No. 4 of the plaint in as much as providing that on the land comprised in Survey No.160, a well and a house made of bricks are situated. A customary passage is also situated wherefrom the plaintiffs go to their fields on other survey numbers along with their equipment for cultivation and bullock cart, etc. The description of the suit property was further given by mentioning that the said passage goes from the disputed property to the north of village Badawda from the west side towards the land of plaintiffs situated in Survey No. 158, 159 and 692/2 and adjacent to this passage there is a drainage (*nala*) of the village flowing through an old culvert. This passage then goes towards Jaora-Ujjain road on the south side of the land. On the north side, land of defendant No.2 in Survey No. 160 except the land of plaintiffs as explained in paragraph No. 3 is situated. It is further described by pointing out that on the east side, there is drainage (*nala*) of the village and on the west side agricultural field of Shekhawat Khan is situated. As such, a detailed description of the suit land is provided in para 4 of the plaint. It was further averred in the plaint that the defendant No. 2 was constantly trying to



interfere in the possession and ownership of the plaintiffs and was trying to take exclusive possession of the well situated on the suit property as also intending to remove the customary passage so as to secure his exclusive possession on the suit property. When he failed to do so, he executed a sale deed on 15.10.1998 for the land of Survey No. 160 of an area of 0.105 aare for a sale consideration of Rs. 45,000/- to the defendant No.1. It was mentioned in the said sale deed that the land in question is unirrigated land. It was also mentioned that possession of the suit property was delivered to defendant No.1 by the defendant No. 2. It was further averred in the plaint that in fact defendant No. 2 had already moved to Ratlam and is no more living in the village Badawda and before going to Ratlam, he had already got the entire agricultural land which the plaintiffs and defendant No.2 inherited from Kashiram by agreeing for partition on 15.03.1990. At the time of said partition, the suit property was also given in the share of plaintiffs. Accordingly, their names were mutated in the revenue record.

4. After the aforesaid sale of disputed land by the defendant No. 2 to defendant No.1, the defendant No. 1 started interfering in the peaceful possession of the plaintiffs and that entailed filing of the suit before the trial Court.

5. The defendants filed their written statement denying all the pleadings of the plaint. It was stated in the written statement that there was no family partition on 15.02.1990 and no possession was delivered to the plaintiffs on 15.03.1990. It was also denied that mutation of the names of the plaintiffs was carried out pursuant to the partition. On the contrary it was



mentioned in the written statement that on 15.03.1990, an agreement was drawn with respect to properties of late Kashiram including the suit property however, that agreement was void for the reason that there was no sale consideration for the proposed sale of the properties mentioned therein. However, the defendant No. 2 considering that the plaintiffs No. 1 to 4 and plaintiff No. 5 are his brothers and mother, respectively executed a registered sale deed in their favour. However, by the said registered sale deed no land from Survey No. 160 was sold to the plaintiffs.

6. The defendants in special objection in the written statement stated that the plaintiffs have no title or ownership on the land of Survey No. 160 and that in fact the entire land was given by late Kashiram to the defendant No. 2 by executing a will dated 21.11.1983. Thereafter, he died on 11.10.1988. As such, after the death of Kashiram, defendant No. 2 became the owner and title holder of all the properties of Kashiram.

7. The trial Court based on the respective pleadings framed as many as six issues. All the issues were decided in favour of the plaintiffs/respondents. The trial Court found that the suit property is in possession of the respondents/plaintiffs and also that the appellants failed to prove execution of will in absence of examination of any of the attesting witness. As such, the trial Court held that defendant No. 2 did not have title of the suit property in his favour on the date on which he executed the sale deed in favour of defendant No.1. As such, the sale deed (Exhibit D/1) was declared null and void and the plaintiffs were declared as title holders of the suit property vide judgment and decree dated 31.03.2008. As a corollary, the



defendants were permanently enjoined from interfering with the possession of the plaintiffs.

8. Being aggrieved by this judgment and decree, the present appeal has been filed.

9. Learned counsel for the appellants laid great emphasis on the fact that although the entire basis of the suit filed by the respondents was so called partition effected between the plaintiffs and defendant No. 2, however, no such partition has been placed on record. The partition has not been proved at all. Thus, the same is a mere assertion without substantiation. Hence, the entire suit collapses in absence of proving the very basis of the suit. He further submits in the description, four boundaries of the suit property are completely missing and in absence of a clear description of the boundaries of the suit property, the same cannot be identified and consequently, no relief could have been granted to the respondents/plaintiffs.

10. Learned counsel for the appellants submits that Exhibit P/1 is the sale deed in which the four boundaries are clearly mentioned. Exhibit P/3 is the map which would show that there are two other survey numbers i.e. Survey No. 165/1 and 165/2. It is not clear that the plaintiffs filed their suit for which survey number because in the written statement, it has clearly been stated by the appellants/defendants that the suit property is not situated where it has been alleged in the plaint.

11. Learned counsel further submits that the trial Court erred in recording findings regarding partition as it has found the partition proved



only for the reason that the appellants were able to prove the will in their favour. He submits that this could not have been a basis for holding that the partition was found proved. He then refers to the findings recorded by the trial Court with respect to absence of sale consideration in the sale deed (Exhibit D/3) whereby the properties which were bequeathed in favour of defendant No.2 by his grandfather Kashiram was sold to the plaintiffs. He submits that the trial Court has wrongly mentioned that there was no sale consideration in the said sale deed hence, the same is void. He submits that a perusal of the sale deed would show that the sale consideration was duly paid. He submits that in fact the Court mistook the averments made in the written statement in which it was mentioned that in agreement there was no sale consideration whereas, the agreement and sale deed are two different things.

12. Learned counsel for the appellant further submits that the will which was executed in favour of defendant No. 2 and based on such will the sale deed (Exhibit D/3) was executed. Thus, the plaintiffs are now estopped from disputing existence of will. Apart from this, learned counsel also refers to the Commissioner's report (Exhibit D/10) and submits that even this report would show that the disputed property of Survey No. 160 is far from the road. Thus, the description of the property was not at all identifiable. Thus, the trial Court erred in decreeing the suit as the disputed property and the property which was sold to the plaintiffs by the defendant No. 2 are two different properties.

13. In support of his contentions, learned counsel for the



appellants/defendants has placed reliance on the following judgments :

- (i) *Laxman Singh vs. Jagannath, 2000(1) MPLJ 79.*
- (ii) *Shivnarayan vs. Laxminarayan and Others, 2003 RN 259 (HC).*
- (iii) *Union of India & Others vs. Vasavi Co-operative Housing Society Ltd. & Others, 2014 (2) M.P.L.J. 486 (SC).*
- (iv) *Kamaldas vs. State of M.P.& Ors., 2003 RN 396 (HC).*
- (v) *Kashinath vs. Jagannath, 2004 (1) MPWN 95 (SC).*

14. Per contra, learned counsel for the respondents/plaintiffs herein would support the findings of the trial Court. He submits that as far as the question of identity of the land is concerned, the challenge was to the sale deed (Exhibit P/1). In the said sale deed, there is proper description of the property. Thus, by no stretch of imagination can it be said that the suit property is not identifiable. He further submits that a close scrutiny of paragraph No. 4 would show that a detailed description of the suit property is given. He thus submits that the contention of learned counsel for the appellants in this behalf is without any basis.

15. Learned counsel for the respondents further submits that in fact in the written statement also, the respondents have not raised any dispute regarding identity of the disputed property. In fact the case of the appellant in their written statement was that while executing sale deed (Exhibit D/3), the disputed property was not sold to the plaintiffs and their mutation was on the basis of the said sale deed and not partition. Hence, they are not entitled for the relief as claimed by them. He submits that in fact the identity of the suit property has never been disputed and no new case can be made out at the



appellate stage.

16. Learned counsel submits that the entire case of the defendants rests on the registered will (Exhibit D/1). He submits that this will was considered by the trial Court and it was found that the same has not been proved by the defendants. The Court found that not even the original will was placed on record and only a certified copy was filed and then no attesting witness was called for proving the said will. He thus submits that once the basis of claiming title i.e. the Will goes out of equation, there remains nothing with the defendants to fight for. He submits that even if for the sake of arguments, it is assumed that there was no partition at all, then also the natural succession will fall on the plaintiffs & the defendant No. 2 and in that way also, all of them will become title holders in equal shares in the entire property of Kashiram including the disputed land. He thus submits that neither the issue of estoppel will come in the way of plaintiffs nor the identity of land can be a defence for the relief as prayed for. He thus submits that the appeal has no merits and deserves to be dismissed.

*Heard learned counsel for the parties. Perused the record.*

17. From perusal of the record and the submissions of the learned counsel for the parties, the issues which emerge for consideration are :

- (i) Whether the description of the disputed property is such that it can be identified?
- (ii) Whether the possession of the plaintiffs on the suit property was correctly found by the trial Court or the findings recorded by the trial Court are perverse?
- (iii) Whether the defendant No. 2 was the exclusive owner of the suit property based on will?



(iv) Whether execution of the sale deed (Exhibit P/1) by defendant No. 2 in favour of defendant No.1 was valid ?

**(i) Identity of the Suit Property**

18. The plaintiffs in paragraph No. 4 of the plaint have given a detailed and elaborate description of the suit property. After detailing the entire property inherited by the plaintiffs and defendant no.2 in paragraph No. 3 of the plaint, a separate description of the disputed property is given in paragraph No. 4 of the plaint. It starts with reference to land of Survey No. 160 which is the suit property and refers to a well which is situated on the suit property as also a brick house. It then goes on to describe a customary passage and the sides from where this passage goes and then it concludes by referring adjoining lands of other persons. This description in the plaint was responded by the defendants by stating that the well is situated on the land of Survey No. 160 but it is of the possession of defendant No.2. It then says that the house is situated on which lock has been put by the defendant No.2. It then says that though passage is there however, the passage is for the defendant No.2 to go to his fields and then it says that out of this Survey No. 160, a sale deed for an area of 0.105 aare has been executed by the defendant No. 2 in favour of defendant No.1. Thus the reply in written statement by the appellants in itself not only ascertains the identity of the land but it specifically admits the existence of well and *kachha* house on the suit property, in other words, the description of property as given in para 4 of the plaint has been admitted by the defendant, thus it is clear that the identity of the land has clearly been established.



19. In view of the above facts, the trial Court has correctly not framed any issue on the identity of the disputed land because it was never in dispute before the trial Court. As such, the arguments raised by the learned counsel for the appellant regarding identity of the land at the appellate stage are not sustainable and the same are hereby discarded.

**(ii) Possession in respect of the suit property**

20. The learned counsel for the appellants while referring to Exhibit P/3 submits that in Exhibit P/3 also name of defendant No.2 Bagdiram is mentioned against Survey No. 160/1. However, the statements as recorded by the defendant No. 2 and consideration of it by the trial Court would show that the possession was conclusively recorded in favour of the plaintiffs and the reasons as assigned by the trial Court regarding possession are mentioned in paragraphs No. 11 to 21. The trial Court while considering the statement of Bagdiram has recorded finding that on putting specific question regarding electricity connection of the well on the disputed land, the defendant No. 2/Bagdiram (DW-2) stated that electricity connection is there however, it is in his name and he pays the electricity charges for each month. He denied the suggestion that the electricity connection was in the name of Deendayal/plaintiff No.1 for the last 10 years and he is depositing the bill. However, after his refusal to this suggestion, he was confronted with the electricity bill for the month of September 2007 (Exhibit P/11) on which he pleaded ignorance. This Court has gone through the statement of defendant No. 2/Bagdiram and also perused (Exhibit P/11) the electricity bill and found that the same is in the name of Deendayal. Thus, in the considered view of



this Court, the trial Court has correctly recorded this finding in paragraph No.17. In paragraph No. 18, the witness of defendants i.e. Gulam Nabi (DW-3) stated in his examination-in-chief that the possession on the disputed property is of defendant No.1/Rajendra Kumar. However, in his cross-examination, he was not able to explain that how much area of Survey No. 160 is in possession of defendant No.1. Thus, he admitted in paragraph No. 8 of his cross-examination the existence of well and house on the disputed land with roof on the house. This statement of DW-3 was examined by the trial Court with the statement of Bagdiram (DW-2) who stated that although a house was situated on the disputed property but its roof has collapsed and now only walls are present and then the trial Court referred to the averments made by the defendants in page No.3 of the written statement wherein it was specifically mentioned by the defendants that on the said house, lock of defendant No. 2 is there. Thus, the trial Court found that on one hand, the defendants are saying that a house is present on which lock was put by defendant No.2 however, on the other hand they have stated that the roof of the house has collapsed and only walls are standing. It is thus found that the statement of the witnesses of the defendants are not trustworthy. This Court has also gone through the statements of DW-3 and the averments in written statement and is of the considered view that the trial Court has rightly disbelieved the averments of the defendants regarding possession.

21. Apart from this, the trial Court also considered the statements of Deendayal (PW-1), Mohanlal (PW-3) and Tej Kumar Joshi (PW-4) regarding possession. The admission of Bagdiram that he is now living at



Ratlam was also taken into consideration. For all these reasons, this Court of the considered view that the trial Court has correctly recorded findings regarding possession of the defendants on the disputed land and no interference in this regard is warranted.

**(iii) Title based on will**

22. The case of the plaintiffs in the plaint was that late Kashiram was the original owner of the suit property including other properties. Kashiram is the grandfather of plaintiffs and defendant No.2 and father-in-law of plaintiff No.5. The plaintiffs No.1 to 4 and defendant No.2 are the sons of Radhikishan who died before Kashiram. As such, on the death of Kashiram, by way of natural succession, his entire property would devolve to the plaintiffs and defendants No. 2. However, this natural course of succession can be diverted by way of execution of a valid will. The defence raised by the appellants in their written statement was that Kashiram died on 11.10.1998 and before his death, he executed a registered will on 21.11.1983 in favour of defendant No.2/Bagdiram. As such, the entire basis of the title of the defendant No. 2 rests upon the will.

23. The learned counsel for the appellants while arguing on this issue submitted that the appellants were not required to prove the will before the trial Court and the reason assigned for the same is that the plaintiffs purchased part of the properties of Kashiram through registered sale deed dated 21.12.1993 (Exhibit D/3). Thus, they submitted that the existence of will was very much admitted by the plaintiffs while purchasing the land from defendant No.2 otherwise if they would not have admitted the will then the



property would have automatically been inherited to them and there would not have been any occasion for purchase of land through registered sale deed from defendant No.2. This argument of the learned counsel for the appellants rests on an assumption that the plea raised by the defendants in written statement regarding mutation on the strength of registered sale deed (Exhibit D/3) is correct. However, even this plea has not been substantiated by the defendants by placing on record any document so as to demonstrate that the mutation of the plaintiffs for the ancestral land inherited from Kashiram was done on the basis of the said sale deed (Exhibit D/3). In absence of any such document, there cannot be any presumption of existence of a will particularly when the case of the plaintiffs was that they got the land in inheritance from their grandfather Kashiram and there was a partition between the plaintiffs and defendant No. 2 in the year of 1990. As such, if for the sake of argument, the factum of partition is completely ignored then also it has to be held that the entire property of Kashiram including suit property would fall into equal share of the plaintiffs and defendant No.2 and for this reason, it becomes essential for the defendants to establish execution of the will. It is settled position of law that a will has the effect of diverting normal and natural course of succession. Thus, heavy burden lies on the party setting it up against such normal course.

24. The Hon'ble Apex Court in the case of *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao*, (2006) 13 SCC 433 considered this aspect in the following words :

*33. The burden of proof that the will has been validly executed and is a genuine document is on the propounder. The propounder is*



*also required to prove that the testator has signed the will and that he had put his signature out of his own free will having a sound disposition of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. (See *Madhukar D. Shende v. Tarabai Aba Shedage* [(2002) 2 SCC 85] and *Sridevi v. Jayaraja Shetty* [(2005) 2 SCC 784] .) Subject to above, proof of a will does not ordinarily differ from that of proving any other document.*

*34. There are several circumstances which would have been held to be described by this Court as suspicious circumstances:*

*(i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;*

*(ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;*

*(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit. (See *H. Venkatachala Iyengar v. B.N. Thimmajamma* [AIR 1959 SC 443] and *Management Committee, T.K. Ghosh's Academy v. T.C. Palit* [(1974) 2 SCC 354 : AIR 1974 SC 1495] .)*

*35. We may not delve deep into the decisions cited at the Bar as the question has recently been considered by this Court in *B. Venkatamuni v. C.J. Ayodhya Ram Singh* [(2006) 13 SCC 449 : (2006) 11 Scale 148] , wherein this Court has held that the court must satisfy its conscience as regards due execution of the will by the testator and the court would not refuse to probe deeper into the matter only because the signature of the propounder on the will is otherwise proved.*

*36. The proof of a will is required not as a ground of reading the document but to afford the Judge reasonable assurance of it as being what it purports to be.*

25. The trial Court in paragraph No. 28 considered the statement of defendant No. 2/Bagdiram (DW-2) regarding will who stated in his Court statement that he is not aware as to who were the attesting witnesses of the will. He also stated that he was not present when the will was executed. The trial Court has then recorded in paragraph No. 29 that a will has to be proved by at least one of the attesting witnesses and then went on to observe that



there is no explanation for not examining any of the attesting witnesses of the will. This Court has also perused the statements of Bagdiram on this aspect and has not found any explanation as to why the attesting witnesses of the will have not been examined for proving the will. It is defendants who set up their defence based on will. Thus, it was a burden upon them to establish the proper execution of the will. As per Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act, the defendants were required to prove the will. However, they did not even place on record the original will and a certified copy of the will has been placed on record that too without even any explanation as to why they were not able to place on record the original will of Kashiram. In this view of the matter, in the considered opinion of this Court, the learned trial Court has correctly disbelieved the execution of the will.

**(iv) Validity of the sale deed**

26. Once this Court has reached to a conclusion that execution of the will was not found proved, the second limb of argument of the learned counsel for the appellant regarding execution of the sale deed pales into insignificance for the reason that the defendants in their written statement, admits that there was execution of agreement and that too without sale consideration. However, the appellant derived his title on the suit property based on Will but the same was not found proved, thus there remains no title with the appellant and once it is established that he has no exclusive title on the suit property, the significance of the sale deed becomes pales into oblivion. Thus, merely for the reason that a sale deed was executed by the



defendant No. 2 in favour of defendant no. 1, the title will not travel to him.

As such, even on this issue, this Court does not find any merits in the arguments advanced by the learned counsel for the appellants.

27. The reliance as placed by the learned counsel for the appellant on the judgment of *Laxman Singh (supra)* is misplaced for the reason that in the said case this Court held that it is duty of the party to give description sufficient to identify the property in dispute. In the present case, the plaintiffs have given an elaborate description of the property in dispute which in fact has been repeated by the defendants at page No. 3 of their written statement. Thus, there is no question of lack of identity of the subject matter of the dispute in the present case.

28. As far as the judgment in the case of *Shivnarayan (supra)*, the same will also not be of any help to the appellant for the reason that in the present case even if existence of partition is ignored, then also the property falls into equal share of the plaintiffs and defendant No.2 and the defendant No. 2 executed sale deed (Exhibit D/1) in favour of defendant No.1 for a specific part in the entire property without consent of other title holders who have equal share in the property. Thus, even if partition is not believed, this judgment is not going to help the appellants for the reason that in the said case, the facts were different. The exclusive title of the suit property was based on partition which is not essentially required for adjudication of the present dispute.

29. Similarly, in case of *Vasavi Cooperative Housing Society (supra)*, the Hon'ble Apex Court held that if the title set up by the defendants



is found against them in absence of establishment of plaintiffs own title, the plaintiff must be non-suited. However, the said case will also not apply in the facts of the present case for the reason that in the said case, the plaintiffs claimed their title on the strength of alleged purchase effected by them. Thus, the Court said that irrespective of the failure of the defendants in establishing their title, plaintiffs have to prove their title. In the present case, there is no dispute at all about the natural succession of the plaintiffs on the death of Kashiram. On the contrary, case as set up by the defendants is that natural course of succession is stopped by way of execution of Will in favour of defendant No.2 and this could not be proved and thus, the situation reverts to natural succession and hence all the plaintiffs and defendant No. 2 are title holders in equal share. Thus, the ratio of the said case will also not apply.

30. As regards the case of *Kamaldas (supra)*, for the reasons as mentioned above, this case will also not apply.

31. The judgment in case of *Kashinath (supra)* will also not apply as in the said case the Hon'ble Apex Court held by considering the provisions of Order 6 Rule 2 of the Code of Civil Procedure that evidence not in line with pleadings and at variance with it will have no value. However, in the present case, the case of the plaintiffs was found proved based on their natural succession and title of the defendant No. 2 was not found proved in absence of proving his Will which was the only basis of his exclusive title over the suit property. Thus, the facts of the present case are totally different.

32. For the aforesaid reasons and analysis, the appeal is bereft of merits and the same is dismissed. The findings recorded by the trial Court



are hereby affirmed.

Record of the Court below be sent back.

**(PAVAN KUMAR DWIVEDI)**  
**JUDGE**

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