



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(s). OF 2026

(Arising out of SLP(C) No(s).9449 of 2020)

SHAKUNTALA & ORS.

...APPELLANT(S)

VERSUS

ROBERT ANTHONY & ORS.

... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

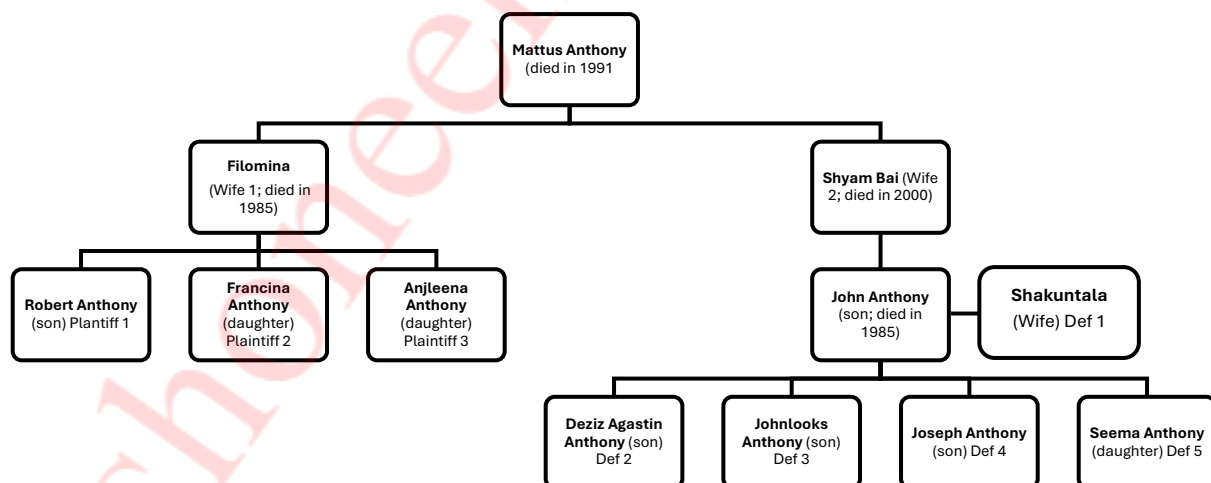
1. Leave Granted.
2. The original defendant challenges the judgment dated 7th February 2020 passed by the High Court of Chhattisgarh at Bilaspur in Second Appeal No.290 of 2009. All the three courts have taken differing views.
3. The plaintiffs' suit being Civil Suit No.51-A/2007 before the 5th Civil Judge, Class I, Bilaspur¹, was decreed and the sale deed executed by the defendants was held to be invalid. The plaintiffs were held entitled for 1/4th share of Khasra No.690/7. Defendants were entitled to vacant possession of a specified

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¹ Civil Court

portion. The 1st Additional District Judge, Bilaspur² in the First Appeal filed by the original defendants, set aside the decree of the Civil Court and held that both plaintiffs and defendants collectively are entitled to half share each from their respective mother. However, since defendants 1 to 5 had sold their share to Defendant 6 the sale was held to be valid. The High Court, in terms of the impugned judgment, held the two widows of Mattus Anthony³ namely Filomina and Shyam Bai, together entitled to 1/3rd of the property, and the children of Filomina (plaintiffs) being the lineal descendants of MA, entitled to 2/3rd of the property.

4. The plaintiffs and defendants are step siblings and their successive generations. Family chart depicting the same is as follows:



² First Appellate Court

³ MA

5. MA had two wives, Filomina and Shyam Bai. Filomina had three children. Shyam Bai had one son. The parties are undisputedly Christian by faith. There is no dispute regarding the marriages performed by MA and the paternity of the children so begotten. The facts in which the present dispute arises are that MA, in the year 1959, bought the portion of land for consideration of INR 300, in the name of his two wives. Filomina died in 1985. MA died in 1991 and Shyam Bai died in 2000, with her son John Antony predeceasing her in 1985. The defendants, on 19 August 2002, sold their share i.e., half out of the total 1776ft² i.e., 888 ft² to defendant No. 6, namely Marium Anthony, leading the Plaintiffs to file the suit in question. The issues framed by the Civil Court and the corresponding findings, and the points of consideration as also their findings, are encapsulated below:

TRIAL COURT		
	Issues	Findings
1.	Whether the suit land being joint property of the Plaintiffs and Defendant no. 1 to 6, the sale deed dated 19.08.02 executed by the Defendant Nos. 1 to 5 in favour of Defendant No. 6 being illegal and void is not binding on plaintiffs?	Mutual partition never took place between them so the suit land is joint ancestral property of the legal heirs of Late Filomina and legal heirs of Late Shyama Bai. Any sale without permission or consent of co-owner is not legal. Since no consent of plaintiffs was obtained before sale, the sale deed is not valid and since the said sale deed is illegal, the mutation proceeding carried out in favour of defendant No.6 on the basis of said sale deed by itself is void.
2.	Can it be proper to grant possession of 'a, b, c, d' parts of suit land to the plaintiffs from the Defendant No. 6?	Since the sale deed has been found to be illegal, the statutory right of Defendant No. 6 ends. The plaintiffs along with the defendant Nos.1 to 5 are entitled to vacant possession of the disputed land from Defendant No.6.
3.	Whether the plaintiffs are entitled to get permanent injunction restraining defendant No. 6 from interfering with 'a, b, c, d' part of the suit land?	The plaintiffs neither pleaded nor adduced evidence showing any interference or intermeddling by Defendant No.6, hence, not entitled to get permanent injunction.
4.	Whether the plaintiffs are entitled to get damages of Rs. 500/- from June,	No fraud by Defendant 6 is proved. Sale deed found illegal, defendant No.6 is free to recover the sale

	2003 from Defendant No. 6 and a sum of Rs. 500/- with interest till receipt of vacant possession of the suit land & house?	amount from defendant Nos.1 to 5 upon delivering vacant possession.
5.	Whether the plaintiffs have affixed court fee after valuing their claim properly?	It appears that the plaintiffs have properly valued their claim and paid the court fee.
6.	Reliefs & Costs?	Sale deed dated 19.8.2002 & consequent mutation in favour of defendant No.6 are ineffective. Plaintiffs entitled to one-fourth each. Defendant No.6 to hand over vacant possession to Defendant Nos.1 to 5 and free to recover the sale amount from Defendant Nos.1 to 5.

FIRST APPELLATE COURT		
	Issues	Findings
1.	Whether the appellants/ defendants No.1 to 5 have half share in the disputed house and land bearing Khasra No.690/17, area 0.04 acre?	Since Maitus Antony purchased the land from his own income in the name of both wives, property not ancestral property of Filomina Bai and Shyama Bai but of their legal heirs. Even though no partition took place between Filomina Bai and Shyama Bai, each was entitled to a half share, as admitted in cross examination by Robert Anthony. Mere joint recording of names does not by itself entitle plaintiffs to a one-fourth share; rather they are entitled only to the share of their mother Filomina Bai. Defendants being the legal heirs of John Antony are entitled to Shyama Bai's half share in the disputed property. The defendants sold the property which they could have received in their share, hence the sale deed dated 19.08.2002 cannot be said to be illegal and void.
2.	If yes, whether the judgment and decree of the learned Court below dated 29/9/2008 is liable to be set aside being contrary to law and facts?	The judgment and decree of the trial Court dated 29.09.2008 is set aside.

6. The High Court posed a question as to whether for the purpose of succession, one or both the wives of MA be considered entitled or not. With reference to a judgement of the High Court of Judicature at Allahabad [*Shephali*

*Chatterjee & Ors. v. Kamla Banerjee & Ors*⁴], however, it was concluded that the term widow as it appears in Section 33 ISA, would cover both widows. On the aspect of lineal descendant, it was observed, with reference to a judgment of the Calcutta High Court [*In the Goods of Sarah Ezra, deceased*⁵] that a lineal descendant can only be that person who is an offspring of a lawful marriage. Since John Anthony did not qualify as such, only the Plaintiffs were held to be lineal descendants of MA.

7. Heard. The main ground pressed into service by the appellants is whether the High Court, has correctly applied the provisions of the Indian Succession Act, 1925⁶ to the present dispute. That is the question we must consider.

8. The provisions referred to, and applied by the High Court, are reproduced below for reference:

“25. Lineal consanguinity. -(1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.

(2) Every generation constitutes a degree, either ascending or descending. (3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.”

“33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred. -Where the intestate has left a widow-- (a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained; (b) save as provided by section 33A, if he has left no lineal

⁴ 1972 SCC OnLine All 303

⁵ 1930 SCC OnLine Cal 278

⁶ ISA

descendant, but has left persons who are of kindred to him, one-half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, in the order and according to the rules hereinafter contained; (c) if he has left none who are of kindred to him, the whole of his property shall belong to his widow.”

(emphasis supplied)

9. For the application of Section 33, as it appears from the plain text of the section, it is essential that the deceased person regarding whom the succession dispute is, is a male. It provides for 3 situations when a male has died intestate and details the portions in which his widow and others, either kindred or descendants lineal in nature, would inherit the property. Each of the scenarios provided therein, need not be explained by us.

10. The documents appended to the record of this case show that when MA bought the property, he did so, squarely in the names of his 2 wives. There is no dispute on that point. Consequently, the application of Section 33 appears misplaced for the reason that, by its application, what the High Court implies is that the property that was legally bought in the name of the 2 wives of MA is, in fact, in the eyes of the law, his property, whereas that is not the case. Since the property is in the name of the 2 wives of MA, it is their property. Now, since Filomena predeceased MA, by virtue of the application of Section 35 of the ISA, MA would possess the same rights on Filomena’s property as she would have in the scenario that MA would have predeceased her. The section runs thus:

“35. Rights of widower. -A husband surviving his wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.”

The effect thereof would be that with respect to the part of the property in the name of Filomena, one third would rest with MA and the remaining two thirds would go to her successors in interest, that is the Plaintiffs. There would be no application of Section 33 on the entirety of the property since never did the whole property rest in the name of MA. Therefore, there was never the case that MA had died intestate and left behind a widow and further descendants. The property always rested (owned) with the 2 wives of MA. The application of section 33 *via* section 35, would only limit to the one half of the property that belonged to Filomena.

11. The one third of Filomena's property received by MA upon her death, would then devolve upon the children of MA through Filomena and Shyam Bai i.e., the Plaintiffs and John Anthony. In other words, the one-third share would be divided amongst the four children of MA and Shyam Bai. The defendants i.e. the children of John Anthony would receive portions out of only the 1/5th share that fell in the share of John Anthony. The one fifth share received by Shyam Bai through MA, would assimilate into her property and the division of said property upon her death would include this share.

12. In regard to the half of the property in the name of Shyam Bai, the same would be distributed only amongst her children. There is no concept of joint family property as under Hindu law, applicable here. When property is inherited, it is done so as tenants-in-common. It is not the case that Shyam Bai had willed

her portion to anyone. She too had died intestate. Section 38 would govern the scenario. It provides:

“38. Where intestate has left no child, but grandchild or grandchildren. Where the intestate has not left surviving him any child but has left a grandchild or grandchildren and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild if there is one, or shall be equally divided among all his surviving grandchildren.”

13. Two issues, which we need not deal in detail, are the issue of *benami* transactions and the validity of the second marriage performed by MA. Both these issues were not pressed by any party.

13.1 Still, in respect of *benami*, we take note of the submission of Mr. Gaurav Agrawal, senior counsel, that *Valliammal v. Subramaniam*⁷, which holds that, ‘*intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami.*’ would cover the present scenario where it has been unequivocally stated that MA bought the property for the benefit of his two wives out of love and affection.

13.2 The status of Shyam Bai as wife of and later widow of MA is not in dispute; the parties are *ad idem* that the dispute was limited to the extent of the inheritance rights of the parties and not the existence of such a right itself.

⁷ (2004) 7 SCC 233

14. Having arrived at that conclusion, we hold that the judgment of the Courts below is set aside. All consequences to follow. The appeal is allowed.

Pending application(s), if any, shall stand disposed of. No costs.

.....J.
(SANJAY KAROL)

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

**New Delhi;
July 30, 2026**