

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 271 of 2015

1. Setram S/o Shri Rampal, aged about 57 years, R/o Village : Lodhajhar, Tahsil Kharsia, Civil & Revenue District Raigarh, Chhattisgarh

---- Appellant

Versus

1. Amritlal S/o Laxminarayan Patel, aged about 54 years, R/o Navapara Post Kachhar, Tahsil Kharsia, District Raigarh, Chhattisgarh
2. Kanhaiyyalal S/o Salikram, aged about 52 years, through legal heirs:-
 - 1) Smt. Jaghodai Wd/o Kanhaiyyalal, aged about 56 years,
 - 2) Permenschwar S/o Kanhaiyyalal, aged about 41 years,
 - 3) Netranand S/o Kanhaiyyalal, aged about 37 years,
 - 4) Gaur S/o Kanhaiyyalal, aged about 31 years,

All R/o Village : Lodhajhar, Tahsil Kharsia, District Raigarh, Chhattisgarh

3. Sumat Lal S/o Guladhar, aged about 57 years,
4. Toplal S/o Digreelal, aged about 39 years,
5. Chhotu S/o Salikram, aged about 61 years,
6. Premlal S/o late Gopichand, aged about 41 years,
7. Roopchand S/o late Gopichand, aged about 39 years,
8. Keshav S/o Gopiram, aged about 37 years,
9. Ghanshyam S/o Salikram, aged about 56 years,
10. Hetram S/o Salikram, aged about 56 years,
11. Setram S/o Gularam, aged about 62 years,
12. Netram S/o Gularam, aged about 60 years,
13. Neelkanth S/o Gularam, aged about 57 years,
14. Shatrughan S/o Kunjram, aged about 42 years,
15. Manulal S/o Gularam, aged about 55 years,

Respondent Nos.3 to 15 are R/o Village Lodhajhar, Tahsil Kharsia, District Raigarh, Chhattisgarh

---- Respondents

For Appellant – Shri Ram Kumar Tiwari, Advocate.
For respondents – respondents not noticed.

Judgment on Board

16-07-2015

1. Heard on admission.
2. The instant second appeal filed under Section 100 of the CPC is directed against the judgment and decree dated 12-02-2015 passed by IIIrd Additional District Judge, Raigarh, C.G., in Civil Appeal No. 132/2010 whereby and whereunder the plaintiff's/appellant's appeal has been dismissed affirming the judgment and decree dated 30-04-2010 passed by Civil Judge Class II, Kharsia, District Raigarh, C.G., in Civil Suit No.34A/2009.
3. Facts in brief necessary for disposal of this appeal are that the appellant/plaintiff filed a civil suit before the trial Court for declaring him as a owner of suit land also for a relief that impugned sale deed dated 29-11-2001 is not binding executed by defendants 2 and 3 in favour of defendant No.1. The trial Court on close scrutiny of evidence led, submissions made and material placed on record, dismissed the suit vide its judgment and decree dated 30-04-2010 and held that the plaintiff failed to prove that he is owner of the land in dispute. Further held that the impugned sale deed is binding to the plaintiff.
4. Against the said judgment and decree passed by the trial Court, the plaintiff preferred first appeal. The first appellate Court after re-appreciating the entire evidence available on record, dismissed the appeal and affirmed the findings recorded by the trial Court.
5. Against the said judgment and decree passed by the first appellate Court, the plaintiff has preferred this second appeal inter alia on the ground that both the courts below erred in holding that despite there was no division, the impugned sale deed was binding on plaintiff. The defendants 2 and 3 cannot sale the land belonging to the appellant. Hence, the impugned sale deed is not binding. Appreciation by both the courts that defendants are in the possession of suit land is not correct. Even after the evidence adduced before the trial Court,

the trial court not appreciated and avoided the facts and the law as well. Consequently, it is prayed that as the impugned sale deed is bad in law when there is no partition, there was no exclusive possession of defendants 2 and 3, judgment of both the courts below are perverse and illegal and the issues were decided wrongfully. By filing the instant second appeal, it is prayed that by allowing the appeal, judgment and decree passed by the courts below be set aside and the suit filed by the appellant be allowed with cost.

6. I have heard the counsel appearing for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of the courts below.

7. Learned counsel appearing for the appellant supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with admission of the appeal. He would further submit that as the substantial question of law is involved as mentioned in the memo of appeal, the appeal may be admitted for hearing and be disposed of accordingly.

8. After perusal of the entire facts, it goes to show that land in question was recorded jointly. The plaintiff failed to prove that there was division and he was exclusive owner of the suit land, partition also not proved as pleaded by the plaintiff before the trial Court. So far as executed registered sale deed dated 29-11-2001 is concerned, no any evidence led by the plaintiff to prove that defendants 2 and 3 sold the land more than their entitlement; also it was agreed by the parties that defendants 2 and 3 not sold land in question beyond their entitlement. Also as the plaintiff failed to demonstrate that he is the owner, title holder and in possession of 0.60 acre of land, a part of Khasra No.363 about 12 acre, in which portion plaintiff is the owner and in possession; as the plaintiff failed to demonstrate the area of which he is in possession and title, by appreciating the entire facts and evidence, the trial Court dismissed the suit which was duly affirmed by the first appellate Court.

9. Before this Court, on admission also the appellant failed to demonstrate any substantial question of law to be formulated after admission of this appeal.

10. This Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Existence of substantial question of law is the *sine-qua-non* for the exercise of the jurisdiction under the amended Section 100 of the Code. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.

11. In view of above, since no substantial question of law arises for determination in the instant case, this is not a fit case for admission. Consequently, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC.

12. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
Judge