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CF 306

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(CHHATTISGARH)

S.A. No. 114/2003

SECOND APPEAL U/S. 100 OF C.P.C.

**APPELLANT/
DEFENDANT**

Khiru Sai, aged 58 years
S/o. Kabilash, Caste Majhwar
R/o. Khajurpara Ambikapur, P.S. &
Tah. Ambikapur, Distt. Sarguja (C.G.)

VERSUS

Case No. 114/2003
**RESPONDENTS
PLAINTIFF**

1. Muralidhar Gupta, aged about 68 years
S/o. Ramjatan Shao Gupta,
R/o. Brahma Road, Ambikapur
Tah. Ambikapur, Distt. Sarguja (C.G.)

DEFENDANT

2. Roop Sai, aged 70 years
S/o. Kabilash, R/o. Khajurpara
Ambikapur, P.S. & Ambikapur,
Distt. Sarguja (C.G.)

Attested by
12.01.2003
P.R. No. 108/03
Presented by Shri. S.K. Beniwal
dated 16.02.03

AGAINST THE JUDGMENT AND DECREE DATED
25.01.2003 PASSED BY THE FOURTH ADDITIONAL
DISTRICT JUDGE AMBIKAPUR DISTT. SARGUJA
IN CIVIL APPEAL NO. 19-A/2002

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SECOND APPEAL U/S. 100 OF C.P.C.

APPELLANT/

DEFENDANT

Khiru Sai, aged 58 years

S/o. Kabilash, Caste Majhwar

Smt. Sarojni Bai aged about 26 years W/o Son Sai R/o Village
Puputara, Tah & Distt. Ambikapur (C.G.)

VERSUS

RESPONDENTS

PLAINTIFF

1. Muralidhar Gupta, aged about 68 years

S/o. Ramjatan Shao Gupta,

R/o. Brahma Road, Ambikapur

Tah. Ambikapur, Distt. Surguja (C.G.)

DEFENDANT

Roop Sai aged 70 years

2A. Smt. Sonapati Bai aged About 60 years, Wd/o Rup Sal,

2B Sukh Sal Mithoo, aged about 21 years S/o Rup Sal, Khajurpara,
Brahma Road Ambikapur, Distt. Surguja (C.G.)

AGAINST THE JUDGMENT AND DECREE DATED
25.01.2003 PASSED BY THE FOURTH ADDITIONAL
DISTRICT JUDGE AMBIKAPUR DISTT. SARGUJA
IN CIVIL APPEAL NO. 19-A/2002

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 114 of 2003

Appellants : Khiru Sai (Died)
Through L.R.s Smt. Sarojni Bai

VERSUS

Respondents : Murlidhar Gupta and others

SECOND APPEAL U/S. 100 OF THE CODE OF CIVIL PROCEDURE

SB: Hon'ble Shri Goutam Bhaduri, J.

Present:

Mr. R.K. Tiwari, Counsel for the Appellant.

Mr. Sunil Tripathi with Mr. Sushil Dubey, Counsel for respondents.

J U D G M E N T

(Passed on 10th day of March, 2015)

1. This is an appeal against the judgment and decree dated 25.01.2003, passed by the 4th Additional District Judge, Ambikapur, in Civil Appeal No. 19-A/2002, whereby the judgment and decree dated 16.05.1996, passed in Civil Suit No.339-A/94, by 2nd Civil Judge Class-II, Ambikapur, was affirmed.
2. Briefly stated facts of this case was that a suit was filed by one Murlidhar Gupta on 26.07.1977. It was the case of the plaintiff that the suit land bearing Kh.No.3064 admeasuring 0.03 acres, situated at Khajurpara, Tahsil Ambikapur, which earlier belonged to defendant, Rupsai and others was purchased by the uncle of the plaintiff, namely Ram Prasad, S/o. Nanku Sao by registered sale deed dated 21.09.1955. It was further case of the plaintiff that after such purchase, the said land was thrown to the stock of the joint family property, which was subject of partition on 22.07.1958. After such partition, the suit land bearing Kh.No.3064 admeasuring 0.03 acres fell into share of the

plaintiff, Murlidhar Gupta. It was further case of the plaintiff that he is in possession of the subject land, being the owner thereof. It was further pleaded that over the part of the land admeasuring 264 sq.ft., the defendants Rupsai had encroached upon and raised his super structure, when it was objected, the plaintiff was threatened and the defendant Rup Sai claimed the land to be of his own. It was further pleaded that the defendant having sold the property, he do not have any right or interest over the said land and by such encroachment, the plaintiff was deprived of his lawful enjoyment of the property. It was stated that the cause of action arose in the month of May, 1977, when the construction started by the defendants. The plaintiff, therefore, prayed for possession of land for part of encroachment and further prayed for permanent injunction against the defendant not to disturb the rest part of the land of the plaintiff, wherein he is in possession. The means profit was also claimed by the plaintiff on the ground that he was deprived of the property to enjoy the same.

3. The defendants in their written statements, denied the ownership of the plaintiff over land bearing Kh.No.3064. It was contended by the defendants that on 17.05.1950, the property was initially sold to one Jauharimal Agrawal and after him the land was held by Mohan Ram Gupta. It was further pleaded that subject land in question is in actual possession of one Jawahar Lal Gupta, who is the brother-in-law of Jauharimal Agrawal, to whom the land was sold by the defendants. It was stated that the subject land was never sold to Ram Prasad Gupta at any point of time. The defendants further pleaded that the land having been sold earlier, there was no question of further sale. The defendants Rup Sai and Khiru, who were the appellant before the Court below further stated that the said sale having been made by Rup Sai

including the share of Khiru, the sale even if executed will not pass the title as the Rup Sai did not have the right to sale the entire land. The sale was further stated to be out come of fraud as Khiru on the date of sale was minor and land was sold without obtaining any permission from any Court.

4. In the suit, Khiru also filed his written statement separately and denied the averments of the plaint. It was submitted that the land having been sold by Rup Sai wherein he has also vested right and the sale can not pass the title to the plaintiff.

5. On the basis of the pleadings and the evidence, the learned Trial Court, decreed the suit in favour of the plaintiff, which was subject of appeal, wherein the Appellate Court too by its judgment and decree dated 25.01.2003, affirmed the finding of the Trial Court. Hence this appeal.

6. This second appeal was admitted by this Court on 17.11.2014 on the following substantial question of law:

“(i). Whether the two Courts have committed an error of law in not appreciating the fact whether the suit of the plaintiff was barred by limitation or not?

7. Learned counsel for the appellant would submit that Khiru was not a party to the sale. He would further submit that the sale deed, Ex.P/1, reading it alongwith the statement of PW-1, Murlidhar Prasad Gupta, the plaintiff, no where it has been stated that the possession of the land was given and therefore, the contention of the appellant/defendants that the appellant/defendants were in possession should have been accepted by the Court below. He would further submit that the so called sale deed dated 21.09.1955 was not executed by Khiru. He would further submit that the suit, which was filed in the year 1977 was further

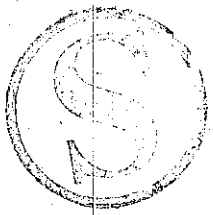
barred under the law of limitation as it was brought after 12 years. Therefore, the finding of both the Courts below are perverse.

8. Per contra, learned counsel appearing on behalf of the respondents would submit that initially the sale deed was executed by Rup Sai for himself and as a guardian of Khiru, wherein subject property bearing Kh.No.3064, admeasuring 0.03 acres was sold in favour of Ram Prasad Gupta. He would further submit that the said sale deed was not challenged at any point of time and no counter claim was even made. It was further submitted that the sale deed dated 21.09.1955 was well within the knowledge of the Khiru, who elected not to challenge the same even after attaining the age of majority, therefore, it would not be open for him to challenge the same subsequently. It is contended that the finding of the both the Courts below is well merited which do not call for any interference.
9. I have heard the learned counsel for the parties at length and perused the documents and evidence on record.
10. The sale deed is on record, which is marked as Ex.P/1. Perusal of the sale deed would go to show that seller were Rup Sai and Khiru. Khiru was minor and therefore, Rup Sai had acted as a guardian of Khiru. The sale was in respect of two khasra numbers bearing 3059 and 3064, total admeasuring 0.09 acres. The suit property is bearing Kh.No. 3064, admeasuring 0.03 acres. The sale deed contains a statement that at the time of execution, the possession of the property was also handed over to the purchaser i.e. Ram Prasad Gupta. The sale deed at the back of it also contains a statement of Nazul Officer, wherein permission was accorded to sale the land to Ram Prasad Gupta for a consideration of Rs.250/-. The document marked as Ex.P/2 is the deed

of partition is also a registered instrument, which shows that the property purchased by Ram Prasad on behalf of joint family were subject of partition alongwith other properties, wherein the Kh.No.3064 admeasuring 0.03 acres fell to the share of Murlidhar Gupta. This is also corroborated by the oral statement of the plaintiff that he acquired the title over the land by virtue of such partition, Ex.P/2. The evidence to this effect is unrebutted and further there is no occasion to disbelieve such document, which purports that the land in question devolved on Murlidhar by virtue of such partition. Though the defendant has stated that the land in question was sold to one Jauharimal Agrawal, but reading the written statement of Jawahar Gupta, who was party, before the Trial Court such pleadings has not been made. Therefore, the pleading of defendant contradicts the defence itself taken by the defendants. No evidence was further adduced on their behalf so as to prove such contention that suit property was sold to Jauharimal Agrawal.

11. Copy of the revenue record is also placed on record, which is marked as Ex.P/5, which shows that in the year 1955-56, in respect of land bearing Kh.No.3064, kitchen garden (Badi) is recorded. Subsequently, Panchshala Khasra of year 1966, which is marked as Ex.P/4, records the name of Ram Prasad Gupta in respect of the said land bearing Kh.No.3064 alongwith land of Kh.No. 3059. Therefore, reading such documents alongwith the sale deed Ex.P/1, which contains that the possession of the land was given to the purchaser, Ram Prasad Gupta, the arguments advanced by the appellant, is difficult to sustained. Further more such oral statement as against the registered instrument would be difficult to entertain.

12. Admittedly, the suit land was sold by Rup Sai acting for him and on behalf of the minor, Khiru, who was said to be of 10 years of age on the date of sale. According to the sale deed, if the age of Khiru was 10 years on the date of sale i.e. on 21.09.1955, he attained the majority some time in the year 1963. The sale deed contains that, the permission was granted in revenue case, however, the fact remains that even after attaining the majority, Khiru did not choose to challenge the same within further period of 3 years according to Article 60 of the Indian Limitation Act, 1963. Further more, perusal of the case file would show that Khiru also filed his written statement in the year 1992. He was arrayed as a party to the proceeding some time in year 1979 by the time he was major. Despite that he choose not to challenge the same in time further till the appeal was finally adjudicated. Further the amendment made in para 7 (A) of plaint, which pleads that Khiru had all the knowledge of sale deed dated 21.09.1995 is not denied by the defendants appellants. The evidence with respect to contents of Ex.P/6, which purports that Khiru had also received Rs.66/- from plaintiff in lieu of sale is also established with the conjoint reading of the statement of plaintiff and defendant Khiru and Rup Sai too. Therefore, the finding arrived at by the learned Court below that the land was sold for the benefit of minor also and who consented it by further Ex.P/6 to such sale, the sale can not be questioned subsequently.
13. The suit was filed on 26.07.1977, the plaint allegations contains that the cause of action arose in the month of May, 1977, when the defendants started encroachments over the land. The plaintiff, PW-1 in the cross-examination at para-11, was suggested that the encroachment was made in the year 1977, thereby the time of cause of action was affirmed by the suggestion of the defendant himself. Further the plaintiff witness,



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PW-3, Raj Kumar Singh had also stated that dispute over the land started 12 years back. His statement was recorded on 19.06.1992, thereby it approximately comes to 1980, such statement also stands un rebutted by the defendants. The witness DW-1, Rup Sai, in the cross-examination at para-5 had stated that at the time of emergency, he started the construction over the land. DW-2, Khiru, at para-11, had stated that the plaintiff wanted to take over the possession of the land for which he filed complaint, before the Tahsildar as his possession was disturbed. The witness has further stated that from the date of statement i.e. 1996, 17 to 18 years back, the dispute started, when he started construction over the suit property. Meaning thereby, the construction roughly started around 1978-79, which fortifies the pleading about time of cause of action.

14. So reading the entire evidence together and survey thereof would lead to show that when the defendants started encroachment over the land, it was objected some time in the year 1977, the civil suit was filed. Consequently, the question of law which is framed is answered in favour of respondent/plaintiff and is held that the two Courts have correctly held that the suit was within limitation.
15. In view of the forgoing discussions, the second appeal is dismissed as no other substantial question of law arises for consideration.

Sd/-
Goutam Bhaduri
Judge

Balram