

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.400 of 2015**

Manoj Kumar S/o Late Shri Deep Narayan Sahu Aged About 41 Years R/o Village Kumhari, Patwari Halka No. 33, Rajaswa Nirikshak Mandal Lawan, Tahsil Baloda Bazar, Distt. Baloda Bazar Bhathapara Chhattisgarh Present Address : Sanjay Colony, Ward No. -5, Baloda Bazar, Distt. Baloda Bazar Bhathapara Chhattisgarh

---- Appellant**Versus**

1. Kamal Prasad S/o Late Shri Mangal Prasad Aged About 51 Years R/o Village Kumhari, Patwari Halka No. 33, Rajaswa Nirikshak Mandal Lawan, Tahsil Baloda Bazar, Distt.- Baloda Bazar Bhathapara Chhattisgarh Present Address Mandi Road, Baloda Bazar, Distt. Baloda Bazar Bhathapara Chhattisgarh
2. Saroj Bai D/o Late Shri Mangal Prasad Aged About 52 Years R/o Village Kumhari, Patwari Halka No. 33, Rajaswa Nirikshak Mandal Lawan, Tahsil Baloda Bazar, Distt.- Baloda Bazar Bhathapara Chhattisgarh Present Address Mandi Road, Baloda Bazar, Distt. Baloda Bazar Bhathapara Chhattisgarh
3. State Of Chhattisgarh Through The Collector, Distt. Baloda Bazar Bhathapara Chhattisgarh

---- Respondents

Shri Rishi Rahul Soni, counsel for the appellant.
 Shri Pawan Kesharwani, Advocate for respondents 1 & 2 on caveat.
 Shri Roshan Dubey, Panel Lawyer for the State/respondent No.3.

Judgment On Board**08/9/2015**

Heard on admission

2. The instant second appeal, under Section 100 of the Code of Civil Procedure, 1908, has been filed against judgment and decree dated 25.3.2015 passed by Second Additional District Judge, Baloda Bazar in Civil Appeal No.34A/13 whereby and whereunder the plaintiff's appeal has been dismissed affirming the judgment and decree passed by the Civil Judge Class-II, Baloda Bazar, in Civil Suit No.52-A/10.
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 owner of the suit land and also for possession and permanent injunction. The trial Court on close scrutiny of the submission and material placed on record, dismissed the suit vide judgment dated 18.10.2012 and held that the plaintiff failed to prove the documents regarding acquisition of title and thereby failed to prove the origin of the title hence, he cannot benefit by any of the weakness of the other defendants. It is further held that the plaintiff is not entitled for possession of the suit land and also for permanent injunction.

4. Against the said judgment and decree passed by the trial Court, the plaintiff preferred an appeal. The First Appellate Court after reappraisal of the entire facts and evidence, 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 preferred the instant second appeal inter alia on the ground that to prove the title in the present matter, registered sale deed was not essential to adduce before the trial Court as evidence. The plaintiff proved his case by filing revenue records wherein the suit property was recorded in the name of his mother and maternal aunt for the suit land shown in Schedule B. The suit land as shown in Schedule A was recorded in the name of his mother. There was no dispute for the suit land recorded in the name of his mother as shown in Schedule A and suit land recorded in the name of his mother and maternal aunt as in Schedule B. The trial Court erred in holding that the land purchased by the maternal grandfather of the plaintiff was in the name of his widowed daughter Smt. Saraswati Bai. It held that the suit land fall under the nature of joint family property as Smt. Saraswati was not a co-parcener. Even the suit land recorded as above mentioned in the revenue records, the trial Court ought to held

that the plaintiff is the owner and title holder of the suit land. On behalf of the appellant, it is submitted that substantial questions of law proposed and mentioned in the memo of appeal as A to G and are required to be formulated and the appeal may be admitted on the basis of proposed substantial question of law as exist and may be heard. Further prayed that the appeal may be allowed and the judgment and decree of both the Courts below may be set aside.

6. I have heard learned counsel appearing for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC. Perused the judgment and decree including the records of both the Courts below.

7. Learned counsel for the appellant supported the ground taken in the second appeal and submitted that substantial question of law need to be formulated along with admission of the appeal. He would further submitted 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. Learned counsel for the appellant would further submits that the suit filed by the appellant was dismissed only on the ground that he has not filed registered sale deed dated 11.8.99 and 19.5.2000 before the trial Court. Even after non filing of the registered sale deed, declaration of the title may be held though there was no reason till date for non adducing registered sale deed in evidence. Learned counsel for the appellant further submits that there was dispute only on source of money, hence, non filing of the copy of the registered sale deed is not important. Section 91 of the Evidence Act is not attracted because recording the of the name of the mother of the plaintiff in the suit land

was shown. Learned counsel further submits that if the father of his mother purchased property from his earnings in the name of his widowed daughter even then it will come under the category of gift and maternal uncle of the plaintiff may not be in a position to show their title on the suit land.

9. After perusal of the entire facts goes to show that the registered sale deed dated 11.8.99 and 19.5.2000 were not adduced in evidence by the plaintiff before the trial Court but the same were filed before the First Appellate Court under the provisions of Order 41 Rule 27 of the CPC. After due consideration, the First Appellate Court dismissed the prayer on a detailed discussion as in the para 9, 10, 11, 12, 13 and 14 of its judgment. On the face of it looking to the connected facts and circumstances, I do not see any reason to interfere with the findings given by the First Appellate Court regarding dismissal of the application under Order 41 Rule 27 of the CPC.

10. As the registered sale deed was not been adduced in evidence before the trial Court for no reason, the provisions of Section 91 of the Evidence Act is applicable and the documentary evidence is required to prove the facts of lineage of title.

11. On behalf of the appellant all the proposed question of law formulated for the consideration is for the substantial question on facts and not for the any error of law or the question of law attracted in the instant second appeal. The question of facts widely discussed and appreciated and in the considered view of this Court, no any other appreciation can be held as by the both the courts below.

12. Upon perusal of the entire evidence and other materials there is no any substantial question of law needs to be formulated of hearing the instant second appeal.

13. 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 of the CPC. Learned counsel 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 laws arises for determination of this Court, this Court has no option but to dismiss the appeal.

14. In view of the 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. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE