

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.1002 of 1998**

1. Bhotan S/o. Mada, aged 40 years, R/o. Village Chalgali, Tahsil Samari, Ditt. Surguja (CG)
2. Motaki, D/o. Mada, W/o. Late Musna, R/o Village Karmi, Tahsil Samari, Distt. Surguja (CG)
3. Sundarmaniya, D/o. Mada, W/o. Shanker Ram, aged about 28 years, R/o Village Bada, Tasil Samri, Distt. Surguja (CG)

---- Appellants**Versus**

- 1.a Amin Sai S/o Late Suja Ram, aged about 70 years, R/o Village Jashwantpur, Post-Furgapur, Tahsil – Sankargarh, District Balrampur – Ramanujganj (CG)
- 1.b Dr. Tohal Sai S/o Late Suja Ram, Aged about 58 years, R/o Kusmi, Tahsil – Sankargarh, District Balrampur – Ramanujganj (CG)
- 1.c Smt. Lukhiyar W/o Kundan Ram, D/o Suja Ram, R/o Village and Post – Durgapur, Tahsil – Shankargarh, District Balrampur – Ramanujganj (CG)

---- Respondents

For Appellants	:	Mr.A.K.Prasad, Advocate
For Respondent No.1(a) to 1(c):	:	Ms Priyanka Mehta, Advocate
For Respondent No.2	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****12/11/2018**

1. The substantial question of law involved, formulated and to be answered by this Court in this appellants'/plaintiffs' second appeal is as under:-

“Whether the lower appellate court was justified in reaching to the conclusion that plainitff – Mohan Ram was mentally fit enough to execute the sale deed dated 4.3.80 (Ex.D/1) particularly in the light of the evidence of DW-1 which prima

facie establishes that he was of unsound mind ?

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) Original plaintiffs-Khunti Mada and Mohan Ram filed a suit for declaration of title and for declaration that sale deed dated 4.3.80 (Ex.D/1) executed by plaintiff No.2-Mohan Ram in favour of defendant No.1 be declared null and void and decree for possession along with *mesne* profit be granted in their favour. It is the case of the plaintiffs that the suit land shown in Schedule 'क' were self-acquired property of one Paharu Kunwar, he was having one son namely Handu and one daughter Khunti, his son pre-deceased leaving behind minor son Mohan Ram and daughter Khunti was married as Gharjiha daughter according to the caste prevailing in that area and in that community Gharjiha succeed like a son and got interest in the property of her father. It was further pleaded that sale deed dated 4.3.80 (Ex.D/1) was executed by plaintiff No.2 in favour of defendant No.1 by playing fraud and taking undue advantage of mentally weak condition of plaintiff No.2 as plaintiff No.2 was having undivided $\frac{1}{2}$ share in that property.

(2.2) Defendant No.1 filed his written statement denying the averments made in the plaint stating inter-alia that after death of original owner Paharu Kunwar, his son plaintiff No.2 succeeded the entire suit land and validly executed sale deed in his favour.

(2.3) The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 26.2.1991 decreed the suit in favour of the plaintiff by holding that plaintiff No.1 was Gharjiha daughter having right and interest like a son over the suit property. It was also held that sale deed was executed by playing fraud upon plaintiff No.2.

(2.4) On appeal being preferred by defendant No.1, the First Appellate Court reversed the judgment and decree of the trial Court and dismissed the suit.

(2.5) Being aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.

3. Mr.A.K.Prasad, learned counsel for the appellants/plaintiffs, would submit that the First Appellate Court is absolutely unjustified in reaching to the conclusion that plaintiff No.2 Mohan Ram was mentally fit enough to execute sale deed 4.3.80 (Ex.D/1) as there is clinching evidence available on record to hold that plaintiff No.2 was of unsound mind on the date of execution of sale deed in favour of defendant No.1, as such, the judgment

and decree passed by the First Appellate Court deserves to be set aside and that of the trial Court be restored.

4. Ms Priyanka Mehta, learned counsel for respondents No.1 (a) to 1(c), would submit that it is not the case of the plaintiffs that at the point of time right from the plaint plaintiff No.2 was of unsound mind and therefore, he was not competent to execute sale deed dated 4.3.80 (Ex.D/1) in favour of defendant No.1. It is only the case of the plaintiffs that plaintiff No.2 was deaf and dumb and therefore, the appellants cannot take a new plea before this Court that plaintiff No.2 was of unsound mind on the date of execution of sale deed, as such, the First Appellate Court is absolutely justified in reversing the finding of fact recorded by the trial Court, which deserves to be affirmed by this Court.

5 I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

6. Undisputedly, plaintiff No.2-Mohan Ram had executed sale deed dated 4.3.80 (Ex.D/1) in favour of defendant No.1 for cash consideration of ₹ 6000/- and delivered peaceful possession to him. The suit for declaration of title and for delivery of possession was filed on 4.12.84. At the time of filing of the plaint, it has simply been stated in paragraphs 3 and 8 that plaintiff No.2 is deaf and dumb person and is mentally weak person.

7. A careful perusal of the plaint would show that it has not been pleaded that plaintiff No.2 apart from deaf and dumb was a person of

unsound mind at any point of time. Defendant No.1 has filed an application under Order 32 Rule 2 of the CPC on 19.9.90 before the trial Court stating inter-alia that since suit has been filed without seeking appointment of next friend, therefore, the suit is liable to be rejected. In reply to the said application, it was clearly pleaded on behalf of the plaintiffs that plaintiff No.2 is not a person of unsound mind. The trial Court rejected the application on 3.1.91 holding that there is no evidence on record to hold that plaintiff No.2 was incompetent and a person of unsound mind. That order was not challenged by the plaintiffs in appeal and that order has attained finality. It is not the case of the plaintiffs that plaintiff No.2 was of unsound mind on the date of execution of sale deed dated 4.3.80 (Ex.D/1) in favour of defendant No.1.

8. Before the trial Court, on behalf of the plaintiffs, plaintiff No.1 has been examined as PW-2. She has simply stated that plaintiff No.2 is deaf and dumb from his childhood and he acts as per direction, but she did not state that plaintiff No.2 is a person of unsound mind or he was of unsound mind on the date of execution of sale deed. Plaintiff No.2-Mohan Ram has been examined as PW-3. It appears from his statement that he is deaf and dumb person. Apart from this, defendant No.1-Saja has also been examined in which strong reliance has been placed by Mr.Prasad, learned counsel for the appellants, but it appears that it has been stated that plaintiff No.2 is deaf and dumb person, as such, there is neither any pleading nor any evidence available on record to hold that plaintiff No.2 was a person of unsound mind on the date when sale deed dated 4.3.80

(Ex.D/1) was executed in favour of defendant No.1. Therefore, the First Appellate Court is absolutely justified in reversing the judgment and decree granted by the trial Court and dismissing the suit. I do not find any perversity or illegality in the said finding.

9. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

10. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-