

HIGH COURT OF CHHATTISGARH, BILASPUR**SECOND APPEAL No. 222 of 2003**

1. Sohagabai W/o Anjori Satnami, aged about 60 years, Occupation-
Agriculturist, R/o Village – Limtara, Tahsil – Balodabazar, District
Raipur (C.G.) ---- **Appellant/Plaintiff**

Versus

1. Kamalnarayan, S/o Shri Ram, aged about 31 years, Occupation –
Agriculturist, R/o Village – Magarghat, P.S. Nandghat, Tahsil
Nawagarh, District Durg (C.G.)
2. Kharbahrin Bai, aged about 60 years, W/o Sakharam, Occupation
– Agriculturist, R/o Village – Magarghat, P.S. Nandghat, Tahsil
Nawagarh, District Durg (C.G.)
3. Netram Thethram, aged about 45 years, Occupation – Agriculturist,
R/o Village – Magarghat, P.S. Nandghat, Tahsil Nawagarh, District
Durg (C.G.)
4. Guhari Kostha, aged about 40 years, R/o Village Magarghat, Tahsil
Nawagarh, District Durg (C.G.)
5. Kohlsohra Satnami, aged about 65 years, Occupation-
Agriculturist, R/o Village Sivani, Tahsil Nawagarh, District Durg
(C.G.)
6. The State of Chhattisgarh, through the District Collector, District
Durg (C.G.) --- **Respondents**

For Petitioners	:	Mr. Arvind Dubey, Advocate.
For Respondent No.6/State	:	Mr. Arun Sao, Dy. A. G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/12/18**

1. This is plaintiff's second appeal under Section 100 of CPC whereby the First Appellate Court has reversed the judgment and decree of the trial Court dismissing the suit of plaintiff.

2. Mr. Arvind Dubey, learned counsel appearing for the appellant/plaintiff would submit that the first appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court by recording a perverse finding.

3. I have heard learned counsel for the appellant, considered his submissions and went through the records with utmost circumspection.

4. The plaintiff Sohagabai filed a suit for declaration that the judgment and decree passed in Civil Suit No.72-A/1969 (*Kamalnarayan vs. Smt. Sohagabai*) is not binding upon her and she is entitled for half of the share in the suit property and possession be given to her that was decreed by the trial Court and reversed by the First Appellate Court only on the ground of limitation holding that suit for declaration is barred by law.

5. The Civil Suit No.72-A/69 between *Kamalnarayan vs. Sohagabai* was decreed on the basis of compromise on 30.08.1969 holding that the plaintiff Sohagdabai in this suit will remain the owner of 5.75 acre of land. That compromise decree between the parties was sought to be challenged by plaintiff Sohagabai on the ground of fraud in a suit filed on 24.08.1988. The First Appellate Court has clearly held that the trial Court while passing the compromise decree on 30.08.1969 recorded the statement of the plaintiff Sohagabai and after having satisfied about willingness of parties to enter into

compromise granted decree in favour of Kamalnarayan on the basis of statement of the parties. The compromise decree was drawn on 30.08.1969 and the civil suit was filed on 24.08.1988 which was held to be beyond the period of limitation as prescribed in Section 59 of the Limitation Act, 1963.

6. Admittedly, Sohagabai was party defendant in the Civil Suit No. 72-A/1969 in which compromise decree was drawn by the trial Court on 30.08.1969 after recording the statement of Sohagabai and thereafter, compromise decree was challenged by Sohagabai by filing civil suit on 24.08.1988 seeking declaration that Civil Suit No. 72-A/69 dated 30.08.1969 is not binding upon her which the First Appellate Court has rightly held that plaintiff ought to have challenged it within a period of three years from the date of compromise decree. In fact, declaration sought was that plaintiff Sohagabai is entitled for half of the share in the suit property. The plaintiff did not sought for setting aside the judgment and decree dated 30.8.1969 which the plaintiff ought to have sought for as the plaintiff Sohagabai was party defendant in the earlier civil suit and which the plaintiff did not pray for in this suit and claimed for declaration that she is entitled for half of the share in the suit property. According to Article 58 of the Limitation Act, to obtain declaration, three year period is prescribed from the date when the right to sue accrues. In this instant case, since the plaintiff Sohagabai was party defendant in earlier suit, therefore, if she was aggrieved with compromise decree dated 30.08.1969, she ought to

have filed civil suit for declaring the suit decree null and void within three years from the date of compromise decree. As such, the suit filed on 24.08.1988 was apparently barred by limitation. The finding recorded by the First Appellate Court is strictly in accordance with law in which I do not find any perversity or illegality.

6. Accordingly, the second appeal deserves to be and is hereby dismissed with no order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge