

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.271 of 2004

1. Prem (Dead) Through LRs

1-A. Jay Singh, S/o Jholang Ram, aged about 40 years,

1-B. Gore Lal, S/o Rupchand, aged about 42 years,

Both are R/o Village Gumgara Kala, PS Lakhanpur, District Surguja (C.G.)

2. Sithu (Dead) Through LRs

2-A. Indar Kunwar, D/o Sithu, aged about 42 years,

2-B. Jag Jeevan, S/o Lt. Mithu, aged about 47 years,

2-C. Jaswindar, S/o Lt. Jagat Ram, aged about 30 years,

All are R/o Village Gumgara Kala, PS Lakhanpur, Distt. Surguja (C.G.)
(Defendants)
---- AppellantsVersus

1. Lalobai, Wd/o late Amirsai, aged about 72 years.

2. Gharbharan, S/o late Amirsai, aged about 52 years

3. Ramgopal, S/o late Amirsai, aged about 45 years

4. Jagbaran, S/o late Amirsai, aged about 42 years

5. Heeralal, S/o late Amirsai, aged about 40 years

6. Fulbai, W/o late Jitanram, aged about 47 years

7. Nanhram, S/o late Devsai, aged about 62 years

(All are by Caste Gond, Occupation Agriculturist, R/o Village Gumgra Kala, Police Station Lakhanpur, District Surguja – C.G.)

(Plaintiffs)

8. State of Chhattisgarh, through the Collector, Ambikapur, Distt. Surguja (C.G.)

(Defendant)

---- Respondents

For Appellants: Ms. Neha Verma, Advocate.

For Respondents No.1 to 7: -

None present.

For Respondent No.8 / State: -

Mr. Sumit Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

13/03/2019

1. The substantial question of law involved, formulated and to be answered in the defendants' second appeal is as under: -

“Whether, the appellate Court was justified in reversing the judgment and decree dated 31.7.2002 of the trial Court and holding that appellant No.1 herein by committing fraud and introducing third person in place of Late Shri Amirsai got the sale deed dated 7.5.1969 executed?”

(Parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The suit property was originally held by one Amirsai. Plaintiff No.1 is widow, plaintiffs No.2 to 5 are sons and plaintiffs No.6 & 7 are daughters of Amirsai. Defendants No.1 & 2 are also relatives of Amirsai, but they are said to have purchased the suit property from Amirsai by registered sale deed dated 7-5-1969. The present plaintiffs brought an action seeking declaration that the sale deed executed on 7-5-1969 qua the suit land in favour of defendant No.1 was obtained by introducing third person in place of their predecessor-in-title Amirsai, therefore that sale deed is void and inoperative and they are entitled for possession of the suit land in which defendants No.1 & 2 have set up a plea that they have purchased the suit property from Amirsai by registered sale deed and obtained possession and continuing in possession for last 50 years and therefore the suit deserves to be dismissed. It has also been pleaded by the defendants that the plaintiffs had given the land in *adhbatai* to defendants No.1 & 2.
3. The trial Court appreciating oral and documentary evidence on record negated the plea of *adhbatai* and clearly came to the conclusion that

the plaintiffs have failed to prove that the sale deed was got executed by defendant No.1 fraudulently by introducing third person in place of Amirsai.

4. In the first appeal preferred by the plaintiffs, the first appellate Court reversed the judgment & decree of the trial Court and decreed the suit of the plaintiffs against which this second appeal under Section 100 of the CPC has been preferred by the defendants and substantial question of law has been formulated which has been catalogued in the opening paragraph of this judgment.
5. Ms. Neha Verma, learned counsel appearing for the defendants / appellants, would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiffs ignoring the fact that the plaintiffs are claiming through Amirsai and admittedly, they have not sought cancellation of sale deed and even did not file copy of the sale deed and there is no evidence on record to hold that the sale deed was got executed fraudulently by Amirsai, therefore, judgment & decree of the first appellate Court deserve to be set-aside and the second appeal be allowed.
6. None present for the plaintiffs / respondents No.1 to 7 herein.
7. I have heard learned counsel for the appellants / defendants and perused the record with utmost circumspection.
8. As already held, the suit property was originally held by Amirsai and he has sold the suit property on 7-5-1969 by registered sale deed to defendant No.1. The instant suit was filed on 7-7-2000 claiming that the suit land was given to defendant No.1 on *adhbatai* to obtain agriculture produce of $\frac{3}{4}$ to Amirsai and $\frac{1}{4}$ to defendant No.1, but after death of Amirsai in 1996, defendant No.1 stopped giving the

agriculture produce in lieu of *adhbatai* since June, 2000 and started claiming the suit land in their own right. The plaintiffs enquired and came to know that sale deed was got executed by defendant No.1 on 7-5-1969 fraudulently by introducing some person as Amirsai and they prayed that it be declared null and void and possession be also restored to the plaintiffs which the trial Court did not find favour with holding that the fact of giving the suit land on *adhbatai* by Amirsai to defendant No.1 is not proved and further, execution of sale deed dated 7-5-1969 by impersonating some other person in place of Amirsai in favour of defendant No.1 is also not proved. But the first appellate Court reversed the finding of the trial Court on the ground that Amirsai had no exclusive right to sell the suit land in favour of defendant No.1 as parties are aboriginal by tribe and being the ancestral property, he had no exclusive right and title to alienate the suit property in favour of defendant No.1.

9. Rightly or wrongly, it is admitted position on record as per the statement of Lalobai (PW-2) – plaintiff No.1 and wife of Amirsai, before the Court that her husband Amirsai had executed sale deed in favour of defendants No.1 & 2 on 7-5-1969. Therefore, the plaintiffs being legal representatives of late Amirsai were required to seek cancellation of sale deed as they are claiming through Amirsai and Amirsai had executed sale deed in favour of defendants No.1 & 2 way back on 7-5-1969. Apart from this, the plaintiffs questioning the sale deed dated 7-5-1969, as per Order 7 Rule 14 of the CPC, were required to produce the questioned sale deed before the Court to prove that it was not executed by Amirsai and defendants No.1 & 2 got it executed fraudulently introducing some third person in place of Amirsai. Neither the sale deed was produced nor any Registry officer

was examined being the registered document to say that Amirsai had not executed the sale deed and it was got executed fraudulently by defendants No.1 & 2. Heavy burden lies on the plaintiff in the light of Section 101 of the Indian Evidence Act, 1872 to prove the fact of execution of sale deed by third person in the name of Amirsai which the plaintiff has miserably failed to prove. Non-production of document which the plaintiff claimed to be the inoperative document and that too by serious allegation of impersonation is fatal to the plaintiff and the plaintiff was duty bound to produce, mark and exhibit it to prove the fact of non-execution of the same by Amirsai which the plaintiff failed to do. On the other hand, Lalobai – plaintiff No.1, wife of Amirsai examined as PW-2, has clearly admitted the execution of sale deed by her husband Amirsai in favour of defendants No.1 & 2 and relying upon the said admission, the trial Court dismissed the suit in favour of the defendants. But the first appellate Court made out a new ground to interfere with the said finding that the plaintiffs are aboriginals by caste and the present plaintiffs No.2 to 7 had also share in the suit property, therefore, Amirsai had no right to alienate the suit property in favour of defendants No.1 & 2 which is not the case brought before the Court by the plaintiffs in the plaint to be adjudicated upon.

10. Therefore, in the considered opinion of this Court, the finding recorded by the first appellate Court that Amirsai had no right to alienate the suit land in favour of defendant No.1, is perverse and contrary to record, particularly in view of the fact that the plaintiffs failed to seek setting aside of the sale deed and they failed to produce the copy of the sale deed and further failed to establish that defendant No.1 committed fraud by introducing third person in place of Amirsai and got the sale

deed dated 7-5-1969 executed.

11. In view of the aforesaid legal analysis, judgment and decree of the first appellate Court is hereby set aside and that of the trial Court, by which the plaintiff's suit was dismissed, is restored. The substantial question of law is answered accordingly and the appeal is allowed to the extent indicated herein-above. No order as to cost(s).

12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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