

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 156 of 2004**

Manbodh, aged about 55 years, son of Shri Nathugond, Resident of
Sendurai, Tah. Sakti, Distt. Janjgir -Champa (C.G.) ...Defendant

---- Appellant

Versus

1. Anandram, son of Shri Huthari Gond, aged about 60 years, resident
of Tendusar, Tah. Sakti, Distt. Janjgir-Champa (C.G.) Respondent/plaintiff

---- Respondent/plaintiff

2. The State of Chhattisgarh : Through “ District Collector, Janjgir-
Champa (C.G.)

---- Respondent/defendant

For Appellant/Defendant : Mr. Vivek Bhakta, Advocate
For Respondent No. 1 : Mr. Vishnu Koshta, Advocate
For Respondent No. 2/State : Mr. Arun Shukla, Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment On Board**

29/07/2019

(1) The substantial question of law involved, formulated and to be answered in this
defendant's second appeal states as under:

“Whether the lower appellate Court committed an error of
law by not considering the plea of Benami transaction
raised in the written statement in view of the provisions of
Section 170-B of M.P.L.R. Code ?

(For the sake of convenience, parties would be referred hereinafter
as per their status shown and ranking given in the suit before the
trial Court).

(2) Respondent No.1 /plaintiff filed a suit for declaration of title and recovery of
possession stating inter alia that he has purchased the suit land from one Dhoom vide

registered sale deed dated 18.03.1980 (Ex.P-1) and came into possession of the suit land, in which he had sown the crops, which was harvested by defendant No. 1 on 24.11.1997 leading to filing of civil suit for declaration of title, recovery of possession and damages.

(3) Defendant No. 1 by filing written statement denied the plaint allegations stating inter alia that defendant No. 1 is member of Scheduled Tribe and he has mortgaged the suit land in favour of Bahadur Sahu, but Bahadur Sahu being non-aboriginal tribe, got the sale deed executed in favour of Dhoom @ Panchu Gond and thereafter transferred it to the plaintiff namely Anandram, thus, defendant No. 1 has got possession over the suit land by way of proceeding under Section 170-B of the Code, as such, the plaintiff has no right or title over the suit land.

(4) The trial Court, by its judgment and decree dated 6.11.2000, dismissed the suit holding that the plaintiff has failed to prove that at the time of purchase by registered sale deed dated 18.03.1980 (Ex.P-1), Dhoom was in possession over the suit land and he has obtained possession over the suit land in accordance with law. On an appeal being preferred, the first appellate court reversed the judgment and decree of the trial Court and decreed the suit holding that the plaintiff has purchased the suit land vide Ex.P-1 and came in possession of the suit land and it has duly been proved, against which this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

(5) Learned counsel appearing for the appellant/defendant would submit that the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiff by recording a finding, which is perverse and contrary to record.

(6) Per contra, counsel for respondent No. 1/ plaintiff would support the impugned judgment and decree.

(7) I have heard learned counsel appearing for the parties, and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(8) Plaintiff has purchased the suit land by registered sale deed (Ex.P-1) from one Dhoom S/o Panchu Gond and came into possession of the suit land. The first appellate Court has held that sale deed has been proved by examining witness of the sale deed namely Bahadur (PW-3) and reached to a conclusion that he is title holder of the suit land and therefore entitled for possession over the suit land.

(9) Learned counsel for the defendant would submit that plea of benami, which the defendant has taken, has not been considered by the first appellate Court. Though, it appears from the written statement, paragraph 10, that defendant has taken a plea that suit property was held by Manbodh, who was the member of Scheduled Tribe and he has mortgaged the land in favour of Bahadur Sahu, who was member of non-aboriginal tribe, but he got sale deed executed in favour of Dhoom @ Panchu Ram and, thereafter, sold it to plaintiff Anand Ram. It appears from the record that defendant No. 1 has not pressed the said plea before the trial Court as no specific issue was framed. The defendant has claimed that the sale deed in favour of Dhoom was the nominal sale deed and he has returned the money and the proceeding under Section 170-B of the Code, 1959 was also initiated but no document evidencing the commencement and termination of the proceeding under Section 170-B of the Code, 1959 in his favour has been filed but admittedly, the sale deed was executed by Manbodh in favour of Dhoom, S/o Panchu Gond and the said Dhoom transferred the suit land in favour of plaintiff vide

Ex.P-1 and, therefore, defendant ought to have brought evidence on record to establish that sale deed (Ex.P-1) is not an outright sale that it was mortgage deed, which he failed to establish even before the first appellate and no such cross-appeal/ cross-objection was filed by the defendant.

(10) In view of above, I am of the opinion that the first appellate Court has not committed any error of law in not considering the plea of written statement as it was not pressed before the trial Court and no such specific issue was framed. The substantial question of law is answered in favour of plaintiff and against the defendant.

(11) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

(12) Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

