

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.45 of 2006**

1. Swikrit Das, Aged about 64 years, S/o. Kartik Das Manikpuri,
2. Manohar Das, Aged about 30 years, S/o. Kartik Das Manikpuri,

Both R/o Village Salonikala, P.S. Bilaigarh, Tahsil Bilaigarh, District Raipur (CG)

---- Appellants/Defendants

Versus

1. Lakhandas, Aged about 30 years, S/o. Aktidas Manikpuri,
2. Sarhi Bai, Aged about 24 years, D/o. Aktidas Manikpuri,
3. Lakheshwari, Aged about 20 years, D/o. Aktidas Manikpuri

All r/o. Village Darra, P.S. and Tahsil Bilaigarh, Distt. Raipur (CG)

---- Respondents/Plaintiffs

4. State of Chhattisgarh Through Collector, Raipur, District Raipur (CG)

---- Respondent

For Appellants/Defendants	: Mr.Manoj Paranjape, Advocate
For Respondents No.1 to 3/Plaintiffs	: Mr.H.V.Sharma, Advocate
For Respondent No.4/State	: Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

18/07/2019

1. The substantial questions of law involved, formulated and to be answered by this Court in this defendants' second appeal are as under:-

“1. Whether the finding of the Lower Appellate Court that the two sale-deeds – Ex.D-1 and Ex.D-2 executed in favour of the appellants does not confer any title to them are perverse and based on no material on record ?

(2) Whether the Lower Appellate Court erred in law in reversing the judgment of the trial Court and decreeing the suit, especially, when none of the grounds raised by the plaintiffs were held to be proved ? ”

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

2. Original plaintiff-Aktidas filed a suit for declaration of title and permanent injunction that he be declared title-holder of the suit land on the basis of adverse possession and also pleaded that he being adopted son of Jhuniya Bai and the suit property was owned to Jhuniya Bai, therefore, he is entitled for declaration of title and permanent injunction. He also claimed by way of amendment dated 8.8.96 that sale deeds dated 30.8.74 (Ex.D-1 and Ex.D-2) executed by Jhuniya Bai in favour of defendants No.1 and 2 be declared null and void, which he omitted from the plaint by order dated 6.2.2001 and ultimately, the suit was dismissed by the trial Court after full trial and appeal preferred by legal representatives of original plaintiff was also dismissed by the first appellate Court, however, the first appellate Court while dismissing the appeal has also held that Ex.D-1 and Ex.D-2, which are sale deeds executed by Jhuniya Bai in favour of defendants No.1 and 2 on 30.8.74, does not confer any title to defendants No.1 and 2 and therefore, the plaintiff is entitled for possession of suit land. Against the said decree, the appellants/defendants preferred this second appeal under Section 100 of the CPC, in which substantial questions of law have been

framed by this Court, which have been set-out in the opening paragraph of this judgment.

5. Mr.Manoj Paranjape, learned counsel appearing for the appellants/defendants, would submit that the plaintiff did question the sale-deeds dated 30.8.74 (Exs.D-1 and D-2) executed by Jhuniya Bai in favour of defendants No.1 and 2 by amendment dated 8.8.96, thereafter he sought permission to withdraw the challenge from the plaint, which he was permitted to withdraw by order dated 6.2.2001 and therefore, the first appellate Court has no jurisdiction to grant relief, which has already been deleted from the plaint and parties did not went into trial so far as the validity of sale deeds dated 30.8.74 (Ex.D-1 and Ex.D-2) executed by Jhuniya Bai in favour of defendants No.1 and 2 are concerned. Therefore, the finding recorded by the first appellate Court deserves to be set aside.

6. Mr.H.V.Sharma, learned counsel appearing for respondents No.1 to 3/plaintiffs, would support the finding recorded by the first appellate Court in para-24 of the impugned judgment and decree.

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

8. Very recently, the Supreme Court in the matter of **Murugan and others v. Kesava Gounder (Dead) Thr. Lrs. and others**¹ has

¹ 2019 SCC OnLine SC 270

held that the alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.

9. It is not in dispute that validity of Ex.D-1 and Ex.D-2 was questioned by the plaintiffs by seeking relief in the plaint, but it was withdrawn by order dated 6.2.2001, as such, validity of sale deeds dated 30.8.74 (Exs.D-1 & Ex.D-2) was not questioned before the trial Court or in appeal before the first appellate Court. Therefore, the first appellate Court is absolutely unjustified in embarking upon the validity of sale deeds (Exs.D-1 and D-2) and declaring them null and void, which was not under consideration before the said Court.

10. In view of above, the finding recorded by the first appellate Court in para-24 of the impugned judgment and decree that sale deeds dated 30.8.74 (Ex.D-1 & Ex.D-2) executed by Jhuniya in favour of defendants No.1 and 2, does not confer any title to them, is set aside and consequently, the decree of possession granted in para-29.1 of the impugned judgment and decree is also set aside. The substantial questions of law are answered in favour of the defendants and against the plaintiff.

11. The second appeal is partly allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

12. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-