

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on : 02.07.2019Judgment delivered on : 26.07.2019Second Appeal No.170 of 2004

1. Ramdev s/o Arjun, age 60 years,
2. Radha d/o Arjun, age 48 years,
3. Banshi s/o Arjun, age 52 years,
4. Moti Lal s/o Arjun, age 57 years
All r/o village Jarhadih, P.S. Balrampur, Tehsil Pal, village Sendur, District Surguja C.G.
5. Hardayal Singh @ Haura s/o Rikhi, age 45 years, r/o Village Paharganj Tola, Budhakona, Tehsil Pal, P.S. Balrampur, District Surguja C.G.
6. Sikrma s/o Ghinhua @ Ramprasad, age 32 years, r/o village Purandih, (Sarnadih) Tehsil Pal, P.S. Balrampur, Distt. Surguja C.G.
7. Surjan s/o Ghinhua @ Ramprasad, age 15 years, through natural guardian Sikrana s/o Ghinhua, r/o village Manaura, Tehsil Pal, Balrampur, Distt. Surguja C.G.
8. Butan s/o Ghinhua @ Ramprasad, age 8 years, through natural guardian Sikrana s/o Ghinhua, r/o village Jatri, Tehsil Pal, Balrampur, Distt. Surguja C.G.
9. Gituwa Singh s/o Murari, age 16 years (presently 18 yrs)
10. Jageshwar Singh @ Latuwa s/o Karina, age 55 years,
No.9 and 10 r/o village Tahdi, P.S. Bhandariya, Tehsil Garwah, Bihar,
11. Ghunesra s/o Kariba, age 60 years, r/o village Bhanaura, Tehsil Pal, Distt. Surguja C.G.
12. Goliya d/o Amir Mar wd/o Shyam Kunwar, age 75 years (Dead) thorough Lrs-
12-A. Ayodhya Prasad s/o Shyam Sunder, age 50 years.
B. Shayugham Prasad s/o Shyam Sundar, age 48 years.
C. Pawan Kumar s/o Shyam Sundar, age 46 years.
D. Rajkumar s/o Late Shyam Sundar, age 44 years.
E. Champa Devi d/o Late Shyam Sundar, age 55 years.
F Brinda Devi d/o Late Shyam Sundar, age 53 years.
G. Dev Kumari d/o Late Shyam Sundar, age 51 years.
H. Rampati d/o Late Shyam Sundar, age 42 years.
All r/o village Sendur, Tehsil Pal, District Surguja C.G.

(Defendants)
---- Appellants

Versus

1. Sita Ram s/o Nanhuk Mar, age 40 years,
2. Narayan s/o Nanhuk Mar, age 35 years,

Both r/o village Bhaisamunda, Tehsil Pal, Distt. Surguja C.G.
3. The State of Chhattisgarh, through Collector, Surguja, Ambikapur

---- Respondents

For Appellants/Plaintiffs	: Mr.A.K.Prasad, Advocate
For Res.No.1 &2/Plaintiffs	: Mr.Ravindra Sharma, Advocate
For Respondent No.3/State	: Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the plaintiffs are as under:-

“1. Whether both the courts below were justified in holding that on the basis of unregistered gift deed Ex.D-5 dated 27.03.1973, the title is conferred to defendant No. 2 ?

2. Whether both the courts below in holding that defendant No.2 has acquired title by way of adverse possession by recording finding which is perverse to the record ?”

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

2. The suit property was originally held by Rambriksh. He allegedly executed unregistered gift deed dated 27.3.73 (Ex.D/5) in favour of defendants No.1 and 2. During his lifetime, Rambriksh had filed a suit bearing Civil Suit No.30A/77 (Ex.D/6) against defendants No.1 and 2 that gift deed dated 27.3.73 (Ex.D/5) is void and inoperative. In that suit, the defendants were noticed and ultimately on 18.11.77 (Ex.D/7) suit was dismissed in default. Thereafter, legal representatives of Rambriksh filed the present suit on 6.10.77 claiming title through Rambriksh that gift deed dated 27.3.73 (Ex.D/5) executed by Rambriksh in favour of defendants No.1 and 2 be declared void and inoperative and also prayed for decree of possession.

3. Defendants No.1 and 2 set-up a plea that suit filed by original holder Rambriksh has already been dismissed under Order 9 Rule 8 of the CPC on 18.11.77 (Ex.D/7) and that order has attained finality and therefore, the present suit is barred by Order 9 Rule 9 of the CPC. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 29.3.2000, dismissed the suit holding that suit is barred by Order 9 Rule 9 of the CPC and other ancillary findings were also recorded against the plaintiffs including that gift deed dated 27.3.73 (Ex.D/5) is not void and inoperative. On appeal being preferred by the plaintiffs, the first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal, against which, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which substantial questions of law have been formulated and set-out in the opening paragraph of the judgment.
4. Mr.A.K.Prasad, learned counsel appearing for the appellants/ plaintiffs, would submit that both the Courts below erred in holding that on the basis of unregistered gift deed dated 27.3.73 (Ex.D/5), title has been conferred to defendants No.1 & 2 and further erred in holding that defendants No.1 and 2 have acquired title by way of adverse possession, therefore, the judgment and decree of both the Courts below deserve to be set aside.
5. On the other hand, Mr.Ravindra Sharma, learned counsel for respondents No.1 and 2/defendants, would submit that this appeal does not involve the question of law so formulated.
6. I have heard learned counsel for the parties herein and considered their

rival submissions made herein-above and also went through the record with utmost circumspection.

7. The suit property was originally held by Rambriksh and Rambriksh has allegedly executed unregistered gift deed dated 27.3.73 (Ex.D/5) in favour of defendants No.1 and 2. Original holder Rambriksh during his life-time filed a suit on 06.10.77 for declaration of title and permanent injunction that gift deed dated 27.3.73 (Ex.D/5) allegedly executed by him in favour of defendants No.1 and 2 is void, which was dismissed for want of prosecution on 18.11.1977. The trial Court has also dismissed the present suit on the ground that suit is barred by limitation and hit by the provisions contained in Order 9 Rule 9 of the CPC and that finding has not been questioned by the appellants/plaintiffs in this second appeal, as such, that finding is not open to question by the parties.
8. The plaintiffs, who are successor-in-interest of Rambriksh, have filed the present suit on 23.4.99 stating that Rambriksh was a man of unsound mind and unregistered gift deed is forged and fabricated document as Rambriksh has never executed gift deed dated 27.3.73 (Ex.D/5) in favour of defendants No.1 and 2 and therefore, it be cancelled and be declared non-existent. Both the Courts below did not find favour with the plea and held that it has not been proved that Rambriksh was a man of unsound mind and had not executed unregistered gift deed in favour of defendants No.1 and 2, which has been affirmed by the first appellate Court .
9. Now the question is whether on the basis of unregistered gift deed

dated 27.3.73 (Ex.D/5), title is conferred to defendants No.1 and 2 ?

10. The trial Court has clearly recorded a finding that gift deed is unregistered and it will not confer any title, but it can be used for collateral purpose as provided in Section 49 of the Registration Act, 1908. Admittedly, unregistered gift deed was not produced by the plaintiffs before the trial Court though its cancellation/declaration as void was sought. The plaintiffs were required to place on record the original or certified copy of the said gift deed, but for the reasons best known to them, it was not brought on record, however, it was brought on record by the defendants vide Ex.D/5 (certified copy). Admittedly, unregistered document will not confer any title to defendants No.1 and 2, but unregistered document is admissible as evidence of nature and character of person's possession. (Bhaiya Ramanuj Pratap Deo v. Lalu Maheshanuj pratap Deo and others¹ and Hamda Ammal v. Avadiappa Pathar and 3 others²), as such, an unregistered document is not only admissible to prove the fact of possession but also the date of transferee's entry into possession.

11. Since, defendants No.1 and 2 are in possession of the suit property pursuant to unregistered gift deed dated 27.3.73 (Ex.D/5) and mutation in their name is done with effect from 31.3.77, the suit was filed on 23.4.99 and the plaintiffs are admittedly out of possession, the finding recorded by the trial Court that the suit is barred by limitation as the defendants are in possession of the suit land peacefully for last 27 years is the finding based on evidence

1 AIR 1981 SC 1937

2 (1991) 1 SCC 715

available on record, which has been affirmed by the first appellate Court. The concurrent finding recorded by the two Courts below that the plaintiffs' suit is barred by limitation and the plaintiffs have failed to prove their title over the suit land is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Even otherwise, though both the Courts below have dismissed the suit as barred by limitation, that finding has not been questioned by the appellants/plaintiffs in this second appeal and that has become final. I do not find any illegality or perversity in the said finding. The substantial questions of law are answered in favour of the defendants and against the plaintiffs.

12. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
13. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-