

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 584 of 2004**Judgment Reserved on : 05.07.2019Judgment Delivered on : 26.07.2019

Smt.Kamala Devi, W/o. Keshav Lal Kushwaha, Aged About 51 Years, R/o. Wadronagar, Tahsil Wadronagar, District Surguja, Chhattisgarh

----Appellant
Plaintiff

Versus

1. Mahabir, S/o. Late Madho Koir, Aged About 49 Years,
 2. Smt. Videshwari, W/o. Late Ram Lal, Aged About 50 Years,
 3. Brijesh, S/o. Late Ram Lal, Aged About 32 Years,
 4. Rakesh, S/o. Late Ram Lal, Aged About 29 Years,
 5. Indirajeet, S/o. Late Madho Koir, Aged About 41 Years,
- All are R/o. Wadraf Nagar, tahsil and P.S. Wadraf Nagar, District Balrampur-Ramanujganj, Chhattisgarh
6. State of Chhattisgarh Through- The Collector, Ambikapur, District Surguja, Chhattisgarh

---- Respondents

For Appellant/ Plaintiff	:	Mr. V.K. Pandey, Advocate
For Respondents No. 1 to 5	:	Mr. D.N. Prajapati, Advocate
For State/ Respondent No. 6	:	Mr. I. Lakra, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This plaintiff's/ appellant's second appeal was admitted for hearing on the following substantial questions of law:-

“(i). Whether the lower appellate Court was justified in reversing a well reasoned finding recorded by the trial Court on issue No. 1 & 2?

(ii). Whether the finding recorded by the lower appellate Court that the suit was beyond the pecuniary jurisdiction of the trial Court, is correct?”

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

2. Madho Koir had three sons namely Mahbir, Ramlal & Indirajeet. The plaintiff herein is the daughter-in-law of Madho Koir whereas defendants No. 1 to 3 are sons of Madho Koir. Plaintiff Kamala Devi filed a suit for declaration of title and permanent injunction stating that she has purchased the suit land by registered sale deed (Exhibit P-1) on 14.03.1980 from one Chandrika Prasad and came in possession of the suit land, in which the defendants got their name mutated in the revenue records which led to the filing of suit for declaration of title and permanent injunction. The trial Court decreed the suit holding that the plaintiff is owner of the suit land by purchasing the same by registered sale deed dated 14.03.1980 (Exhibit P-1) and is in possession and she has also constructed a well and courtyard on the said land and the defendants have illegally got their name mutated in the revenue records. On appeal being preferred by defendants No. 1 to 3, the first appellate Court has reversed the decree and held that the original plaintiff did not have any purchase money and her father-in-law gave money to her for purchasing the suit land.

3. Learned counsel for the appellant/ plaintiff would submit that the first appellate Court is absolutely unjustified in dismissing the

suit by setting aside the well reasoned finding recorded by the trial Court on issue Nos. 1 & 2. He would further submit that though objection with regard to the jurisdiction of the trial Court was raised in the written statement filed by the defendants, but it was not pressed into service and as such it is barred by Section 21 of the Code of Civil Procedure. As such, the judgment and decree of the first appellate Court has to be set-aside and that of the trial Court be restored. He also submits that the first appellate Court is absolutely unjustified in setting aside the decree passed by the trial Court as the purchase money or the consideration amount was given by the defendants' father and the suit land has rightly been recorded in the name of defendants also and the plaintiff herself has admitted that the suit property was purchased by her father-in-law.

4. Mr. D.N. Prajapati, learned counsel for the defendants/ respondents would support the impugned judgment and decree of the first appellate Court. He would submit that the first appellate Court has rightly concluded that the trial Court had no pecuniary jurisdiction to try the suit and further rightly held that the plaintiff is not exclusive title-holder of the suit land, as such, the Second Appeal deserves to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

Answer to substantial question of law No. 1 :-

6. The trial Court while answering issue Nos. 1 & 2 clearly recorded a finding that the plaintiff purchased the suit land by registered sale deed dated 14.03.1980 on a cash consideration of ₹1000/- and came into possession of the suit land since then. On appeal preferred by the defendants, the above-stated finding was reversed by the learned first appellate Court and learned first appellate Court dismissed the suit by setting-aside the decree of the trial Court.
7. The plaintiff filed the suit stating inter-alia that she has purchased the suit land by registered sale deed (Exhibit P-1) on 14.03.1980 and on the strength of said sale deed, she came in possession of suit land, which the trial Court accepted by appreciating oral and documentary evidence on record as there is evidence on record to hold, whereas, the first appellate Court; reversed the well reasoned and well merited finding of the trial Court relying upon oral evidence that suit land was purchased by her father-in-law (Madho Koir) and it has been established that the suit land was purchased by her father-in-law. Sale deed Ex.P-1 is a written and registered instrument evidencing transfer of title in favour of the plaintiff on 14.03.1980. No oral evidence contrary to terms of Ex.P-1 sale deed is permissible to be adduced in light of the provisions contained in Section 91/92 of the Indian Evidence Act, 1872 contradicting the terms of Ex.P-5. The finding of the first appellate Court is also contrary to the pleading of defendants. It is the case of the defendants that plaintiff's father-in-law and father of

the defendants have paid the purchase money for Ex.P-1 and therefore, alleged admission of the plaintiff that purchase money was paid by the plaintiff's father-in-law and thus, sale deed Ex.P-1 cannot be held to be illegal, particularly when the defendants have not made any counter-claim, seeking any kind of declaration qua sale deed Ex.P-1. In this view of the matter; the first appellate Court is absolutely unjustified in reversing the finding of issue Nos. 1 & 2.

Answer to substantial question of law No. 2 :-

8. The first appellate Court also reversed the decree of the trial Court by recording a finding that the valuation of suit land and house constructed thereupon & well situated, exceeds Rupees Fifty Thousand. Therefore, the trial Court did not have pecuniary jurisdiction to try the suit and decree so passed by the trial Court is ineffective.
9. In order to consider validity and correctness of the said finding, it would be appropriate to notice the provision contained in Section 21(2) of the CPC which states as under:-

“21. Objections to jurisdiction.

(1) xxxx xxxx xxxx xxxx.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement,

and unless there has been a consequent failure of justice.

(3) xxxx xxxx xxxx xxxx.”

Section 21(2) of the CPC was inserted by the CPC (Amendment) Act, 1976 with effect from 01.02.1977 and thereby even lack of pecuniary jurisdiction can now be waived and Appellate and Revisional Court cannot entertain objections as to pecuniary jurisdiction, even if taken at earliest opportunity, if there is no consequent failure of justice.

10. The Supreme Court in the matter of **Harshad Chiman Lal Modi v. DLF Universal Ltd. and Another**¹ has considered Section 21 of the CPC and classified jurisdiction of Court into three categories and held as under:-

“30.We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot

1. (2005) 7 SCC 791

take up the cause or matter. An order passed by a court having no jurisdiction is nullity.”

11. Again Their Lordships of the Supreme Court in the matter of **Subhash Mahadevasa Habib v. Nemasa Ambasa Dharamdas (dead) by LRs and Others**² pointed out distinction between the effect of lack of inherent jurisdiction and lack of territorial or pecuniary jurisdiction by holding as under :-

“33.What is relevant in this context is the legal effect of the so-called finding in O.S. No. 4 of 1972 that the decree in O.S. No. 61 of 1971 was passed by a court which had no pecuniary jurisdiction to pass that decree. The Code of Civil Procedure has made a distinction between lack of inherent jurisdiction and objection to territorial jurisdiction and pecuniary jurisdiction. Whereas, an inherent lack of jurisdiction may make a decree passed by that court one without jurisdiction or void in law, a decree passed by a court lacking territorial jurisdiction or pecuniary jurisdiction does not automatically become void. At best it is voidable in the sense that it could be challenged in appeal therefrom provided the conditions of Section 21 of the Code of Civil Procedure are satisfied.”

12. The principle of law laid down in **Harshad Chiman Lal Modi** (supra) and **Subhash Mahadevasa Habib** (supra) were followed by Their Lordships of the Supreme Court in the matter of **Om Prakash Agarwal since Deceased Thr. LRS v. Vishan Dayal Rajpoot & Another**³ with approval holding that where no objection was taken by tenant to pecuniary jurisdiction of ADJ and to competence of the

2. (2007) 13 SCC 650

3. AIR 2018 SC 5486

Court; and taking chance to obtain judgments in his favour on merits, he cannot be allowed to turn around and contend that Court had no jurisdiction to try Small Cause Suit and judgment is without jurisdiction & nullity.

13. Finally in the matter of **Sneh Lata Goel v. Pushplata and Others⁴**, Their Lordships of the Supreme Court have held that Section 21 of the CPC makes it clear that an objection to the want of territorial jurisdiction does not travel to the root of or to the inherent lack of jurisdiction of a civil Court to entertain the suit following the principle of law laid down in **Harshad Chaman Lal Modi** (supra), **Subhash Mahadevasa Habib** (supra).

14. Reverting to the facts of the present case in light of the provision contained in Section 21(2) of the CPC and principle of law laid down by the Supreme Court in **Harshad Chiman Lal** (supra), **Subhash Mahadevasa Habib** (supra) & **Omprakash Agrawal** (supra), it is quite vivid that the defendants while filing written statement, did not take any specific plea of pecuniary jurisdiction of the trial Court except pleading that plaintiff ought to have valued the suit as Rs. 90,000/- and should have paid court fee on that valuation and allowed the suit to be decided on merits and took a calculated chance to obtain judgment on merits, and finding the judgment against them, they turned around, and took a plea that the trial Court did not have the pecuniary jurisdiction to try the suit. Even the question of valuation was not pressed into service by the

4. (2019) 3 SCC 594

defendants, as no issue was framed on that count before the trial Court and for the first time, the question of pecuniary jurisdiction was raised before the first appellate Court, which was entertained by the first appellate Court without satisfying the requirement of Section 21 of the CPC. No finding of consequent failure of justice has been recorded by the first appellate Court while setting-aside the decree of the trial Court holding that the trial Court did not have pecuniary jurisdiction to try the suit. Consequently, the judgment and decree of the first appellate Court is set-aside being perverse and contrary to law, and that of the trial Court is restored.

15. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).
16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge