

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.231 of 2004

1. Suhani Bai, Wd/o Kunwar Sai, age 42 years.
2. Mandru, S/o Late Fakir, age 35 years, Caste Uraon.
3. Ramlal, S/o Kunwar, age 30 years, Caste Uraon.
4. Shriram, S/o Late Jhakdi, age 35 years, Caste Uraon.
5. Keshwar @ Ali Ram, S/o Late Jhakdi, age 33 years, Caste Uraon.

All R/o Village Gahila, P.S. Batauli, Tehsil Sitapur, Distt. Surguja, C.G.
 (Defendants)
 ---- Appellants

Versus

1. Somar Sai, S/o Devar, age 45 years, Occupation Agriculture.
2. Ramratan, S/o Devar, age 42 years, Occupation Agriculture.
3. Bhodar Ram Nikunj, S/o Devar, age 40 years, Occupation Agriculture.

All by Caste Uraon, R/o Village Silsila, PS. Batauli, Tehsil Lundra,
 Distt. Surguja, C.G.
 (Plaintiffs)

4. The State of Chhattisgarh, through Collector, Surguja.
 (Proforma Dfd. No.6)
 ---- Respondents

For Appellants: Mr. A.K. Prasad, Advocate.
 For Respondents No.1 to 3: -
 None present, though served.
 For Respondent No.4 / State: -
 Miss Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

07/08/2019

1. This defendants' second appeal was admitted for hearing by
 formulating the following substantial question of law for determination:-

“Whether the Courts below have committed an error of law in holding the Gift-Deed dated 24.08.1965 (Ex. P/4) alleged to be executed by Pandu Ram as proved ignoring the admission of PW-2 (Ram Dhani) in para-7 of his statement

that his father Pandu Ram died in the year 1962-63?”

(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 Pandu. He executed a gift deed dated 24-8-1965 (Ex.P-4) in favour of his son Ramdhani and his son, in turn, sold the suit land in favour of the plaintiffs i.e. Somar Sai and two others, by sale deed dated 5-5-1994 (Ex.P-3). Now, Somar Sai, Ramratan & Modar Ram filed suit against other son of Pando – Fakir (defendant No.1), grand-sons of Pando – Kunwar & Mandru (defendants No.2 & 3), great grand-son of Pando being son of Kunwar – Ramlal (defendant No.4) and defendant No.5 who was also son of Pando. It has been averred by the plaintiffs in the plaint that the defendants are interfering with their peaceful possession for which permanent injunction be granted, in which the defendants being the successors-in-interest of Pando, being his legal representatives, claimed that the sale deed was executed by Ramdhani in favour of the plaintiffs, he had no right to execute the sale in favour of the plaintiffs and counter claim was also filed by the defendants for declaration that the sale deed dated 5-5-1994 is null & void and it has been obtained fraudulently and mutation was also claimed to be invalid.
3. The trial Court after appreciating oral and documentary evidence on record held that Ramdhani being owner of the suit land by the strength of gift (Ex.P-4) was empowered to sell the suit property in favour of the plaintiffs and decreed the suit and dismissed the counter-claim filed by the defendants which was affirmed by the first appellate Court in appeal filed by the defendants. Now, this second appeal has been preferred in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

4. Mr. A.K. Prasad, learned counsel appearing for the defendants / appellants, would submit that both the Courts below are absolutely unjustified in holding that the gift deed executed by Pandu in favour of his son Ramdhani is proved. Pandu died in the year 1962-63 and therefore the question of executing gift deed on 24-8-1965 in favour of Ramdhani does not arise and as such, the decree granted by both the Courts below deserves to be set aside.
5. None present for the plaintiffs / respondents No.1 to 3 herein, though served.
6. The suit property was originally held by Pandu. He had three sons namely Ramdhani, Fakir and Jhakdi. He executed gift deed Ex.P-4 on 24-8-1965 in favour of his son Ramdhani and Ramdhani, in turn, sold the suit property to the plaintiffs. In the suit filed by the plaintiffs / purchasers, they sought permanent injunction against the defendants who are sons and grand-sons of Pandu other than Ramdhani. In the said civil suit, the defendants though claimed declaration of sale deed Ex.P-3 to be null & void, but did not question the legality and validity of the gift deed dated 24-8-1965 (Ex.P-4) executed by Pandu in favour of Ramdhani, though counter claim challenging the sale deed executed by Ramdhani in favour of the plaintiffs was sought to be challenged. Validity of the gift deed dated 24-8-1965 executed by Pandu in favour of Ramdhani was never questioned either before the trial Court or before the first appellate Court and it was not an issue before either of the two Courts. It remained unchallenged by the defendants. In absence of any challenge to the gift deed dated 24-8-1965, that has become final.
7. Admittedly, father of defendants No.1 & 5 and grand-father of defendants No.2 to 4 executed a gift deed on 24-8-1965 in favour of

Ramdhani, therefore, the defendants ought to have questioned the gift deed in order to succeed in the suit which they did not question for the reasons best known to them. Challenge ought to have been made directly to the gift deed, as on the strength of the said gift deed, Ramdhani is said to have acquired title and he transferred the title in favour of the plaintiffs, which was not done. It ought to have been questioned and cancellation of the same must have been asked for under Section 31 of the Specific Relief Act. The defendants being sons and grand-sons of Pandu, who is said to have executed gift deed in favour of Ramdhani, ought to have challenged directly the gift deed in order to overcome the sale made by Ramdhani in favour of the plaintiffs which they did not do. Therefore, without questioning the said gift deed by which Ramdhani has got the title, the plaintiffs cannot collaterally challenge the legality and validity of the gift deed Ex.P-4 by taking the other party to surprise. As such, the substantial question of law as framed does not arise for consideration and both the Courts below are absolutely justified in granting permanent injunction in favour of the plaintiffs. I do not find any merit in the second appeal. It is accordingly dismissed. No order as to cost(s).

8. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma