

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on: 07.08.2019Judgment delivered on: 20.08.2019Second Appeal No. 245 of 2004

Indarautin Bai D/o Narottam Sahu, aged about 40 years, R/o Chandkhuri,
Tehsil & Distt. Durg (CG)

----Appellant/Plaintiff

Versus

1. Ashok Bavankar S/o Waman Rao Bavankar, aged 42 years,
resident of Ganjpara, Durg (CG)
2. Shree Agrawal, Re-Rolling Mill Through Partner Rajesh Kumar
Agrawal S/o Laxmichand Agrawal, R/o B. Market Sector-5, Bhilai,
Tah. & Distt. Durg (CG)
3. Samunda Bai (Dead) Widow of Narrotam Sahu, aged 55 years, R/o
Anjora, Tah. & Distt. Rajnandgaon (CG) Through Legal Heir
Chharro First wife of Jagatram Sahu, Village Rankathera, Post
Chikhali, Distt. Rajnandgaon (CG)
4. Patwari, Patwari Halka No.27, village Anjora, Tahsil & Distt.
Rajnandgaon (CG)
5. State of Chhattisgarh Through Collector, Rajnandgaon (CG)

---- Respondents

For Appellant/Plaintiff	: Mr. Praveen Dhurandhar, Advocate
For Res.No.1&2/Defendants No.1&2:	Mr.P.K.C.Tiwari, Senior Advocate with Mr.Ashutosh Trivedi, Advocate
For Respondents No.3 & 4	: None present
For Respondent No.5	: Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Judgment

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

“Whether the lower appellate Court was justified in reversing the findings that the sale-deeds date 19.11.1986 (Ex-P/4 and P/5) were void and inoperative documents as has been held by trial Court ?”

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

2. The suit property was originally held by Narrotam Sahu. He had two wives namely, Suhaga and Samund Bai. The plaintiff is daughter of first wife namely, Suhaga, whereas Samund Bai was second wife of Narrotam Sahu, who is impleaded as defendant No.4 in the suit, who died during pendency of first appeal. Samund Bai sold the part of suit land to defendants No.1 and 2 by registered sale deeds dated 19.11.1986 (Ex.P-4 and P-5) and said to have delivered peaceful possession of the suit land to them. Indarautin Bai filed a suit for declaring the sale deeds dated 19.11.1986 (Ex.P-4 and P-5) executed in favour of defendants No.1 and 2 as null and void and also sought for permanent injunction stating inter-alia that the plaintiff is title-holder of the suit land and defendant No.4 was not entitled to alienate the suit land without her consent and as such, no title has been conferred in favour of defendants No.1 and 2 by sale deeds dated 19.11.1986 (Ex.P-4 and Ex.P-5). Therefore, she is entitled for declaration of title and for permanent injunction restraining defendants No.1 and 2 to interfere with her peaceful possession.
3. Defendants No.1 and 2 filed their written statement stating inter-alia that Samund Bai was legally wedded wife of Narrotam Sahu and they have purchased the suit land from her as she sold the suit property for her maintenance.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 20.12.1994 declared the sale deeds dated 19.11.1986 (Ex.P-4 and Ex.P-5) as null and void and also granted permanent injunction restraining defendants No.1 and 2 from interfering with her peaceful possession. In appeal preferred by defendants No.1 and 2, the first appellate Court allowed the appeal and set aside the judgment and decree of the trial Court dismissing the suit holding that the plaintiff is co-sharer/co-owner in the suit land and Samund Bai has right to alienate her undivided share in the suit property, which she has sold for her maintenance being legally wedded of Narrotam Sahu and the plaintiff is not entitled for declaration of title and permanent injunction. Questioning that judgment and decree, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial question of law has been formulated and set-out in the opening paragraph of this judgment.
5. Mr.Praveen Dhurandhar, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in setting aside the judgment and decree of the trial Court after having held that the plaintiff is co-sharer/co-owner in the suit land, therefore, the first appellate Court ought to have maintained the judgment and decree of the trial Court.
6. Mr.P.K.C.Tiwari, learned Senior Counsel ably assisted by Mr.Ashutosh Trivedi, learned counsel for respondents No.1 and 2/defendants No.1 and 2, would submit that the first appellate Court has rightly held that sale was made by Samund Bai, legally

weeded wife of Narrotam Sahu, for her own maintenance, as such, the first appellate Court is justified in dismissing the suit by granting the appeal.

7. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
8. The trial Court has held that the plaintiff being daughter of Narrotam Sahu with his second wife is co-sharer and co-owner in the suit land and there is no partition between the plaintiff and Samund Bai and admittedly, Samund Bai has transferred her undivided share in the suit property in favour of defendants No.1 and 2 by registered sale deeds dated 19.11.1986 (Ex.P-4 and Ex.P-5) and said to have delivered peaceful possession of the suit land alienated to them.
9. The first appellate Court has though held that the plaintiff is co-owner of the suit property, but sale deeds dated 19.11.1986 (Ex.P-4 and Ex.P-5) executed by co-owner are not invalid and not void. The first appellate Court further held that the plaintiff is co-owner of the suit property, but still affirmed the sale made by Samund Bai in favour of defendants No.1 and 2. Since defendant No.4, who was not in exclusive possession and enjoyment of the suit land, sold the same in their favour, therefore, defendant No.4 could not have placed defendants No.1 and 2 in possession of the suit land, as such, the first appellate Court could not have set aside the judgment and decree of the trial Court in toto by dismissing the plaintiff's suit

and could have allowed the appeal in part holding that sale made by Samund Bai is not binding on the plaintiff and the remedy of the purchasers i.e. defendants No.1 and 2 is to seek partition.

10. Accordingly, the judgment and decree passed by the first appellate Court is partly set aside and it is held that alienation made by defendant No.4 in favour of defendants No.1 and 2 is not binding on the plaintiff. However, defendants No.1 and 2 are at liberty to file suit for appropriate remedy in accordance with law.

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

12. Decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-