

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.542 of 2003**

1. Budha Ram, son of Dilbodh, aged about 53 years,
2. Binod Kumar, son of Budha Ram, aged about 27 years,
3. Pramod Kumar, son of Budha Ram, aged about 24 years,
4. Shailendra Kumar, son of Budha Ram, aged about 19 years,

All resident of Village Lefri, Police Station Chalgali, Tahsil Pal, District Surguja (Chhattisgarh)

5. Amrit Ram, son of Basan Nagesia, aged about 36 years, resident of Village Lafri, Police Station Chalgali, Tahsil Pal, District Surguja (M.P.) (Now C.G.)

---- Appellants

Versus

1. Ram Surat, son of Golwa Khairwar, aged about 35 years,
2. Ram Vriksh, son of Golwa Khairwar, aged about 30 years,
3. Ram Kewal, son of Golwa Khairwar, aged about 25 years,
4. Sudhri, widow of Golwa Khairwar, aged about 60 years,

All resident of Village Dhanwar (Lugri Kala), Police Station Chalgali, Tah. Pal, Distt. Sarguja (M.P.) (Now C.G.)

5. Nohari, Daughter of Golwa Khairwar, aged about 38 years, wife of Bhuwali Khairwar, resident of Village Chima, Tahsil Pal, District Sarguja
6. Satyendra Prasad Sinha, Petition writer, Collectorate, Ambikapur, Distt. Sarguja
7. State of Chhattisgarh, Through Collector Sarguja, Ambikapur, Distt. Sarguja (CG)

---- Respondents

For Appellants/Def.No.1 to 4 & 7 :	Mr. H.B.Agrawal, Senior Advocate with Mrs.Prabha Sharma, Advocate
For Respondents No.1 to 5	: Ms Neha Verma, Advocate
For Respondent No.7	: Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/02/2019

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by defendants No.1 to 4 and 7 are as under:-

1. “Whether the suit of the plaintiff was barred by limitation or not ?”
2. “Whether the 1st appellate court could have entertained the First Appeal in the absence of the plaintiff depositing the requisite court fee?”
3. “Whether the finding of the lower appellate court in respect of the sale deed is proper or not in the light of Sections 52, 58 & 59 of the Registration Act?”

[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. Four plaintiffs filed a suit for declaration of title and permanent injunction stating inter-alia that the suit land was owned by Shri Golwa Khairwar, father of plaintiffs No.1 to 3 and husband of plaintiff No.4, who died in the year 1990. It was further pleaded that they came to know that defendants No.1 to 4 got their names mutated in the revenue records on the suit land on the basis of sale deed dated 30.8.1988 (Ex.D/1), which confers no title in favour of defendants No.1 to 4 and sought relief of declaration of title that they are owners of the suit land and also sought relief of permanent

injunction and declaring the sale deed dated 30.8.1988 (Ex.D/1) as null & void and forged and not binding on them, but only paid ₹ 30 as court fee on the relief of declaration of title and had not paid court fee on other reliefs.

3. Defendants No.1 to 4 filed their written statement stating inter-alia that defendants No.1 to 3 have purchased the suit land from Golwa Khairwar, predecessor-in-title of the plaintiffs, by registered sale deed dated 30.8.1988 (Ex.D/1) and valid title has been passed in their favour and therefore, suit be dismissed.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 19.2.1999, held that the plaintiffs' predecessor-in-interest Golwa Khairwar has sold the suit land in favour of defendants No.1 to 3 by registered sale deed dated 30.8.1988 (Ex.D/1) and delivered peaceful possession thereto and dismissed the suit holding it to be barred by limitation and also held that proper court fee for setting aside sale deed dated 30.8.1988 (Ex.D/1) has not been paid by the plaintiffs and directed to pay court fee of ₹ 470/- in order to make the decree effective. The plaintiffs preferred first appeal before the First Appellate Court, but did not pay the requisite court fee as directed by the trial Court and ultimately, the First Appellate Court allowed the appeal and set aside the judgment and decree of the trial court, against which, this second appeal under Section 100 of

the CPC has been preferred by the appellants/defendants No. 1 to 4 and 7, in which substantial questions of law have been framed and set-out in the opening paragraph of this judgment.

5. Mr.H.B.Agrawal, learned Senior Counsel along with Mrs.Prabha Sharma, learned counsel for the appellants/defendants No.1 to 4 and 7, would submit:-

(i) That the trial Court had dismissed the suit also on the ground that suit was barred by limitation, but that finding was not set aside by the First Appellate Court and allowed the appeal.

(ii) The trial Court directed the plaintiffs to pay additional court fee of ₹ 470/- on the relief of cancellation of sale deed, but court fee as directed by the trial Court was not paid by the plaintiffs and there was no proof of payment of requisite court fee. In absence of that, appeal could not have been entertained by the First Appellate Court.

(iii) The sale deed dated 30.8.1988 (Ex.D/1) is valid and proved by examining witness to the sale deed i.e. Amrit (DW-2) and that sale deed cannot be held to be forged.

6. Ms Neha Verma, learned counsel for respondents No.1 to 5, would submit that the judgment and decree passed by the First Appellate Court is in accordance with law.

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

Answer to substantial questions of law No.1 to 3:-

8. The trial Court admittedly and undisputedly dismissed the suit holding to be barred by limitation stating that the defendants are in possession of the suit land for last 10 years and the plaintiffs were aware of the sale deed, as such, they ought to have filed suit for cancellation of sale deed dated 30.8.1988 (Ex.D/1) within 3 years from the date of execution of sale deed, but the First Appellate Court did not set aside that finding which has become final, yet allowed the appeal, which is apparent error on the face of record. Unless the finding that suit is barred by limitation is set aside, appeal could not have been allowed by the First Appellate Court on other grounds.

9. The plaintiffs only paid court fee on the relief of declaration, but did not pay court fee on the relief of setting aside/cancellation of sale deed dated 30.8.1988 (Ex.D/1). The trial Court while dismissing the suit in para-13 clearly held that the plaintiffs ought to have valued the suit as per consideration amount of sale deed and directed for payment of additional court fee of ₹ 470/-, which they failed to pay during appeal, yet the First Appellate Court has allowed the appeal particularly when the trial Court has clearly

indicated that decree would be effective only when additional court fee as directed by the trial Court is paid within 7 days. Neither time was extended for payment of court fee nor it is said to have been paid by the plaintiffs. Sale deed (Ex.D/1) is said to have been executed by Golwa Khairwar, father of plaintiffs No.1 to 3 and husband of plaintiff No.4 on 11.5.1988 and has been registered on 30.8.1988 (Ex.D/1). One of the witnesses of sale deed i.e. Amrit (DW-2) has been examined, who has proved thumb impression of Golwa Khairwar on the sale deed, which is said by the plaintiffs to be forged, but no evidence has been brought on record. No officials from the office of Sub-Registrar, Ambikapur has been examined to prove that in place of Golwa Khairwar, some other person appeared and executed sale deed in favour of defendants No.1 to 3 particularly when Golwa Khairwar died in the year 1990 and suit was filed on 5.10.94 and particularly when pursuant to the sale deed both the Courts below have concurrently recorded that the defendants are in possession of the suit land. The First Appellate Court has granted decree for possession to the plaintiffs though they claimed possession as the plaintiffs are admittedly not in possession, as such, the finding recorded by the First Appellate Court that execution of sale deed by Golwa Khairwar in favour of defendants No.1 to 3 is not proved, is held to be perverse and liable to be set aside.

10. There is additional reason for not upholding the judgment and

decree of the First Appellate Court. The plaintiffs are admittedly not in possession of the suit land though they claimed possession in the plaint, but did not pay court fee on the relief of possession. Thus, the suit become only the suit for declaration of title without consequential relief of possession, which is barred by proviso to Section 34 of the Specific Relief Act, 1963, as such, the First Appellate Court has committed legal error in granting the appeal without setting aside the finding of the trial Court that suit is barred by limitation and further the plaintiffs failed to comply with the terms of decree of the trial Court and by recorded a finding with regard to sale deed, which is perverse.

11. For the foregoing reasons, the judgment & decree passed by the First Appellate Court is hereby set aside and that of the trial Court is hereby restored. The substantial questions of law are answered accordingly.

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

13. A decree be drawn up accordingly.

Sd/-
(Sanjay K.Agrawal)
Judge