

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.596 of 2003

Sikandar (dead) through LRs

1.a. Surendra Kumar Paikra, S/o late Sikandar, aged about 28 years

1.b. Reena Paikra, D/o late Sikandar, aged about 20 years

1.c. Smt. Fulbasiya, W/o late Sikandar, aged about 40 years

1.d. Narendra Kumar Paikra, S/o late Sikandar, aged about 25 years

All R/o Village Karabel, Tahsil and P.S. Sitapur, District Surguja (C.G.)
(Plaintiffs)
---- Appellants

Versus

1. Jagarnath, S/o Sukhdev Ram, Caste Kanwar, aged about 60 years,
R/o Karabel, Tahsil Sitapur, District Surguja (C.G.)
(Defendant No.2)

2. The State of M.P. (Now C.G.), through Collector, Surguja, Ambikapur
(C.G.)
(Proforma Defendant)

3. Ajmet Bai, W/o Dilsay (Dead & Deleted)
(Defendant No.1)
---- Respondents

For Appellants:	Mr. A.K. Prasad, Advocate.
For Respondent No.1:	Mr. Sunil Tripathi, Advocate.
For Respondent No.2 / State: -	Mr. Aditya Bharadwaj, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

27/03/2019

1. This second appeal under Section 100 of the CPC has been admitted by formulating the following substantial questions of law for determination:

“1. Whether the lower appellate Court has declared the judgment and decree dated 21-12-94 passed in Civil Suit No. 5-A/92 as illegal, void and inoperative, is without any evidence on record?

2. Whether finding of fraud is based on no evidence on record and as such perverse?”

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

2. The suit property was earlier held by Ajmet Bai – defendant No.1 in the suit. Sikandar – the plaintiff herein, had earlier filed a civil suit bearing Civil Suit No.5-A/1992 (Sakindar Ram v. Smt. Ajmet Bai and another) in which the civil court on 21-12-1994 held that Ajmet Bai had only the life interest of maintenance and after her death, plaintiff Sikandar would succeed the property. Thereafter, during her lifetime, Smt. Ajmet Bai sold the suit property to defendant No.2 herein on 6-11-1996 (incorrectly mentioned in the judgment of the trial Court as 6-11-94), which was challenged by instituting the instant suit i.e. Civil Suit No.216-A/1998 by plaintiff Sikandar that pursuant to the judgment & decree of the earlier suit, Ajmet Bai had no right to alienate the suit property in favour of defendant No.2 on 6-11-1996 impleading Ajmet Bai as party defendant. Ajmet Bai apart from filing reply also setup a counter-claim that judgment & decree passed in the earlier suit i.e. Civil Suit No.5-A/1992 is null, void and inoperative. But during the pendency of suit, she died and by order dated 17-9-1999, her name was deleted from the cause title, as she was issue-less. Ultimately, the suit was decreed by the trial Court holding that since Ajmet Bai has only life interest in the suit property pursuant to the compromise decree of the trial Court, therefore, she could not alienate the suit property in favour of defendant No.2. On appeal preferred by defendant No.2, the first appellate Court allowed the counter-claim of the deceased defendant No.1 and declared that the decree passed in Civil Suit No.5-A/1992 dated 21-12-1994 is null and void against which

this second appeal has been preferred in which the substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.

3. Mr. A.K. Prasad, learned counsel appearing for the plaintiffs / appellants, would submit that the name of Ajmet Bai has already been deleted on 17-9-1999 pursuant to her death, before the trial Court and thus, her counter-claim came to an end and defendant No.2 being purchaser of the suit property did not raise any such counter-claim seeking declaration of judgment & decree null and void, therefore, the first appellate Court has no business to allow the counter-claim which has come to an end on account of the death of defendant No.1. Therefore, judgment & decree of the first appellate Court deserve to be set aside and the appeal deserves to be allowed.
4. Mr. Sunil Tripathi, learned counsel appearing for defendant No.2 / respondent No.1 herein, would submit that since the judgment and compromise decree passed by the trial Court were patently illegal and void, therefore, death of defendant No.1 Ajmet Bai would have no effect and as such, the first appellate Court is justified in granting the counter-claim preferred by defendant No.1 Ajmet Bai and therefore the second appeal deserves to be dismissed.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Admittedly, compromise agreement was entered into between Sikandar and Ajmet Bai which culminated into compromise decree on 21-12-1994 in Civil Suit No.5-A/1992 in which it was held that Ajmet Bai has only life interest of maintenance over the suit property and after her death, Sikandar – the plaintiff would be the title holder. But,

Ajmet Bai during her lifetime sold the suit property to defendant No.1 which the plaintiff questioned by filing the instant civil suit and in which defendant No.1 admittedly, set up the plea of counter-claim that the judgment & decree which resulted into compromise decree is null and void, but unfortunately, she could not see the outcome of her counter-claim and she died during the pendency of civil suit itself and her name was deleted from the cause-title, and the trial Court held that she had no right to alienate the suit property as per the compromise decree Exs.P-1 & P-2 which the first appellate Court considered and granted the decree.

7. The question is, whether on death of Ajmet Bai who has filed counter-claim and even no evidence was led, the first appellate Court is justified in granting the counter-claim?
8. It is established on record that Ajmet Bai died after filing counter-claim and her name was permitted to be deleted pursuant to the order of the trial Court dated 17-9-1999, as such, the counter-claim which has the status of cross-suit came to be disposed of either by abatement or by dismissal as the case may be and therefore the lis of cross-suit / counter-claim was not available to be adjudicated either by the trial Court or by the first appellate Court in appeal preferred by defendant No.2 who is the purchaser. The first appellate Court could have only considered in appeal preferred by defendant No.2 as to whether the plaintiff is entitled for decree on facts and law available on record minus the counter-claim / cross-suit preferred by defendant No.1 which has already come to an end upon the death of defendant No.1 and the dismissal of counter-claim even could not be questioned by defendant No.2, as the counter-claim was filed by defendant No.1 and the said counter-claim stood disposed of on account of the death of

defendant No.1. Therefore, the first appellate Court is absolutely unjustified in granting the counter-claim holding that judgment & decree of the trial Court are unsustainable and bad in law, particularly when there is no counter-claim raised by defendant No.2 before the trial Court, who had preferred appeal before the first appellate Court. Resultantly, the decree passed by the trial Court holding that defendant No.1 had no right to alienate the suit property in favour of defendant No.2, cannot be said to be invalid. Accordingly, judgment & decree passed by the first appellate Court suffers from illegality and perversity, it is liable to be and is hereby set-aside and that of the trial Court is restored.

9. Mr. Tripathi, learned counsel appearing for defendant No.2 / respondent No.1 herein, at this stage, submits that defendant No.2 may be allowed to challenge the judgment & decree passed in the earlier suit. No liberty is required in this regard, as defendant No.2 is always at liberty to proceed in accordance with law.

10. The second appeal is allowed to the extent indicated herein-above.

No order as to cost(s).

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge