

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 484 of 2003**

Sushila Devi, Wife of Laxman Prasad Shrivastava, Aged about 48 years,
Caste Barber R/o Village Namnakala, Police Station & Tahsil
Ambikapur, District Surguja (CG) ---- **Appellant/Defendant**

Versus

1. Chamru Ram, Son of Thakur Kahaiwar, aged about 52 years, R/o Darripara, Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (CG)**Respondent/Plaintiff**
2. Ram Autar Agrawal, S/o Dulichand, Aged about 52 Yrs., R/o Sadar Road, Ambikapur, District Surguja (CG) ...**Respondent/Defendant**
3. State of Chhattisgarh, Through Collector, Surguja, Ambikapur, District Surguja (CG) ...**Respondent/State**

For Appellant/Defendant	:	Mr. V.K. Pandey, Advocate
For Respondent/Plaintiff No.1	:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates
For State/Respondent No.3	:	Mr. Aditya Bharadwaj, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****31.07.2019**

1. This appeal is directed against impugned judgment and decree dated 14.05.2003 passed by First Additional District Judge, Surguja in Civil Appeal No.12-A/1999 reversing judgment and decree of the Trial Court and allowing the plaintiff's suit and granting decree in his favour by declaring sale deed dated 23.06.1976 valid only to the extent of 3.73 decimal and sale deed dated 20.08.1985 valid only to the extent of 3.73 decimal along with other ancillary relief.

2. The second appeal was admitted on following substantial question of law :

“Whether the First Appellate Court is justified in declaring the sale deed dated 20.08.1985 as null and void to the extent of plaintiff's share without there being any relief sought in the plaint with that regard ?”

3. Chamru Ram predecessor-in-title of respondent filed suit against Ram Autar, Mahesh Lal and Sushila Devi for declaration on the pleadings that the property in dispute was the joint family property of plaintiff-Chamru Ram and defendant No. 2/Mahesh Lal, which was later on, partitioned. Defendant No.2 was allotted his share to the extent of 30.33 decimal, whereas, the plaintiff along with his mother were together allotted 60.67 decimal. It was further pleaded that defendant No. 2/ Mahesh Lal sold a parcel of land of his share on 29.01.1976 and on 12.05.1976 by registered sale deed in favour of other persons and thus, only 3.73 decimal remained available in hand. Further case of the plaintiff was that defendant No.1/ Ram Autar fraudulently got 10 decimal of land recorded in his name. By way of amendment, it was also pleaded that the defendant, vide sale deed dated 20.08.1985, sold another parcel of land. According to the plaintiff, sale made by defendant No.2 was in excess of his own share. The relief, however, was confined to seeking a declaration that the mutation order passed by the Collector on 04.07.1983 is valid only to the extent of 3.73 decimal plot which remained in the hands of defendant No.2 and the order is inoperative in respect of the share of the plaintiff. The Defendants having disputed the claim of the plaintiff, learned trial Court framed as many as 5 issues. One of the issue was whether a partition had already taken place between the plaintiff and defendant No.2. Learned Trial Court recorded finding against the plaintiff and dismissed the suit. Against the judgment and decree of the Trial Court, the plaintiff filed an appeal. In the appeal, learned Lower Appellate Court reversing the judgment and decree of the Trial Court by recording a finding that the sale of disputed land effected under two sale deeds dated 23.06.1976 and 20.08.1985 was valid only to the extent of 3.73 decimal and therefore, the order of the Collector directing mutation in respect of land beyond 3.73 decimal is inoperative.

4. Learned counsel for the appellant argued that the plaintiff's suit, as it reads, clearly shows that the plaintiff had come out with the case that defendant No.2 could not have sold land beyond 3.73 decimal under the two respective sale deeds. But the defendant did not seek any relief against the registered sale deeds in favour of different persons. He would argue that the plaintiff could not be granted any relief which were only in the nature of ancillary relief unless the plaintiff made specific prayer seeking declaration against the sale deeds which came in the way of his claim. Relying upon several decisions, learned counsel for the appellant would argue that the plaintiff's suit was not maintainable in the absence of there being declaratory relief sought against the registered sale deeds.

5. On the other hand, learned counsel for the respondents, relying upon several authorities, would submit that the appellant is not entitled to succeed on technical ground. He would argue that in the entire body of the plaint, the plaintiff's case has been that defendant No.2 could not have sold the entire property but only that which fell to his share and therefore, the sale deeds in excess of defendant's share were void as those sale deeds were made basis to effect mutation by the Collector. The plaintiff prayed for relief that the order dated 04.07.1983, in excess of defendant's share of 3.73 decimal, be declared inoperative, it being in the share of the plaintiff. He would further argue that the plaintiff had also sought a relief and prayed for residuary relief to which he was found entitled may be granted. He would argue that the law did not require the plaintiff to seek other ancillary relief and once a declaration was sought that the mutation order was passed by the Collector was inoperative to the extent of share of the plaintiff, that was sufficient to maintain the suit and it was not necessary for the plaintiff to further seek a relief that the sale deeds were void and inoperative to the extent of share of the plaintiff.

6. I have heard learned counsel for the parties and perused the records.

7. The plaintiff's suit was essentially based on his claim over the property in dispute which according to him, came to his share. The plaintiff's case, as apparently seen from the plaint, was that defendant No.2/his brother, sold property in dispute which was in excess of his share. The plaintiff pleaded in his plaint that defendant No.2 by two sale deeds dated 29.01.1976 and 12.05.1976 sold different parcel of land belonging to him to different persons and thereafter during pendency of the suit, sold another parcel to defendant Sushila Devi, one of the defendant on 20.08.1985. According to the plaintiff, as the defendant No.2 was having only 3.73 decimal of land left in his hand, he could not have sold land in excess of his share i.e. 3.73 decimal of land. Thus, in essence, the plaintiff's case was directed against various sales made by defendant No.2 at different point of time. However, despite having made such a pleading, the plaintiff did not seek any relief of declaration that those sale deeds were valid and operative only to the extent of 3.73 decimal being the share of defendant No.2 and were illegal and inoperative in law against remaining part of the land which according to the plaintiff, belong to his share. The relief sought in the suit by the plaintiff was that a subsequent mutation order passed by the Collector on 04.07.1983 be declared valid only to the extent of 3.73 decimal and inoperative in respect of plaintiff's share. No relief

for declaration that the sale deeds be declared void in excess of 3.73 decimal was sought by the plaintiff.

8. In a recent decision in the case of **Murugan and others Vs. Kesava Gounder (dead) Thr. Lrs. and others, 2019 SCC Online SC 270**, the settled legal position in this regard has been reiterated by the Supreme Court, relying upon earlier decision in the case of **Vishwambhar V. Laxminarayan (dead) Through Lrs.,(2001) 6 SCC 163**, that the plaintiffs were required to have sale deeds set aside before making any claim in respect of suit properties sold and a suit without such a prayer was of no avail to the plaintiffs.

9. Learned counsel for the appellant has also relied upon another decision reported in the case of **Chikkathamaiah and others vs. Chikkahutchiah and others, AIR 1977 Karnataka 99**, wherein on facts that ancestral property was sold by the father and when after his death, suit was filed by sons for declaration of title and injunction without seeking relief of cancellation of sale deed, it was held that in absence of any relief sought for cancellation of sale deed, the plaintiff was not entitled to any relief.

10. Reliance placed by learned counsel for the respondent on decision of the Supreme Court in the case of **Hindalco Industries Ltd. V. Union of India and others, 1994 (2) SCC 594, Rajendra Tiwary V. Basudeo Prasad and another, 2002(1) SCC 90, Ram Singh & Others V. Kapooribai & Others, 2015 SCC Online MP 1360 and order dated 11.01.2019 passed by this Court in Second Appeal No.73 of 2002 (Chinttaram Pandey (dead) V. Kanti Bai and others)** is misplaced in law. These are the decisions where, it has been held that where a principal relief has already been sought, other relief including ancillary relief need not be always asked for and such relief could always be molded but in the present case, the plaintiff has not sought the main relief as required under Section 34 of the Specific Relief Act. Unless, the registered sale deeds are avoided by seeking appropriate relief of declaration, other reliefs which were prayed by the plaintiff, being ancillary in nature, could not be granted. Therefore, this Court is of the opinion that without seeking any declaratory relief against the sale deeds dated 23.06.1976 & 20.08.1985 that those sale deeds were valid and operative only to the extent of share of defendant No.2 and illegal and inoperative in respect of the share as claimed by the plaintiff, the suit, itself, was not maintainable and no relief could be granted as prayed for in the said suit. Learned Lower Appellate Court committed patent illegality in granting declaratory relief that the two sale deeds

dated 23.06.1976 & 20.08.1985 were partly operative and partly inoperative, without there being any relief sought in that behalf.

11. In the result, the substantial question of law framed by this Court is answered in the manner that the First Appellate Court was not justified in law in declaring sale deed dated 23.06.1976 and 20.08.1985 as null and void to the extent of plaintiff's share without there being any relief sought in the plaint in that regard.

12. In the result, the appeal is allowed. The impugned judgment and decree passed by the Lower Appellate Court is set aside and the plaintiff's suit is dismissed. Parties shall bear their respective costs.

13. Let Appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge