

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 503 of 2012

Basant Kumar Chandrakar S/o Bahla Prasad Chandrakar Aged About 40 Years Jamgaon, P.C. No. 13, Teh. Patan, Distt. Durg C.G., Chhattisgarh

---- Appellant/ Plaintiff

Versus

1. Tulsiram And Ors. S/o Udhoram Chandrakar Aged About 70 Years Ameri, Teh. Patan, Distt. Durg C.G. Presently R/o 53 Nc Sector, Govindpura, Bhel, Bhopal, Distt. Bhopal M.P
2. Government Of Chhattisgarh Thru- Collector, Durg, Teh. And Distt. Durg C.G. Pin- 491001
3. Smt. Maya W/o Ramswaroop Aged About 48 Years 7/23, Ispat Nagar, Bhilai, Distt. Durg C.G
4. Smt. Usha W/o Hari Narayan Verma Aged About 45 Years Sunder Nagar, Raipur C.G.
5. Smt. Asha Chandrakar W/o Ravi Chandrakar Aged About 41 Years Raipur, Distt. Raipur C.G
6. Smt. Nisha Patil W/o Manoj Patil Aged About 39 Years Vasai, Mumbai M.S., District : Mumbai, Maharashtra
7. Santosh S/o Tulsi Chandrakar Aged About 37 Years Jamgaon M, Teh. Patan, Distt. Durg C.G.

---- Respondents/ Defendants

For Appellant/ Plaintiff	:	Mr. Manoj Paranjpe, Advocate
For Respondents No. 1 & 3 to 7	:	Mr. Vijay K. Deshmukh, Advocate
For State/ Respondent No. 2	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16.07.2019

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellant/ plaintiff.
2. The plaintiff filed a suit for possession of the suit land stating inter alia that his grand-father has purchased the property in his favour on 04.05.1983 and his father Tulsiram sold the suit property on 10.01.1984 which is contrary to the provisions contained in The Hindu Minority and Guardianship Act, 1956 (in short 'the Act'). Therefore, he is entitled for possession. The trial Court, after appreciating the oral and documentary evidence available on

record held that the alienation dated 10.01.1984 is in violation of provisions contained in Section 8 of the Act but dismissed the suit holding that the plaintiff has not challenged and had not sought declaration that sale deed dated 10.01.1984 is null and void which has been upheld by the first appellate Court.

3. Mr. Paranjpe would submit that the judgment and decree passed by the two Courts below are perverse and contrary to law and appeal involves substantial question of law for determination.
4. I have heard the learned counsel for the plaintiff/ appellant, considered his submissions made and went through the records with utmost circumspection.
5. The appellant/ plaintiff though sought relief for possession but did not seek that the sale deed dated 10.01.1984 is null and void which he was required to seek. The Supreme Court, recently in the matter of ***Murugan & Others vs. Kesava Gounder (Dead) Thr. LRs and Others***¹ has held as under :-

“22.The alienations, which were voidable, at the instance of minor or on his behalf were required to be set aside before relief for possession can be claimed by the plaintiffs. Suit filed on behalf of the plaintiffs without seeking prayer for setting aside the sale deeds was, thus, not properly framed and could not have been decreed.”

6. In that view of the matter, plaintiff/ appellant having failed to seek relief of cancellation of the sale deed dated 10.01.1984, the suit was not properly framed and therefore, both the Courts have rightly dismissed the suit in which I do not find any illegality or perversity available on record. No much less substantial question of law is framed in this appeal.

7. Accordingly, the second appeal deserves to be and, is hereby dismissed at admission stage. No substantial question of law is involved. No cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**