

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.447 of 2004**

1. Manbahal s/o Late Sukhiram, age 52 years, Caste-Rajwar.
2. Mangal Say s/o Late Sukhiram, age 45 years, Caste-Rajwar.
3. Jangua s/o Sukhiram, age 40 years, Caste-Rajwar.

All r/o village Thor, P.S. & Tehsil Ambikapur, District Surguja, C.G.

---- Appellants/Plaintiffs

Versus

1. Mohar Say s/o Aagar Say, age 35 years (Dead), through Lrs:-
 - 1.A. Jaimangal s/o Mohar Say, age 52 years, r/o village Thor, P.S. Ambikapur, Distt. Surguja, C.G.
 - 1.B. Karmato w/o Radha, r/o village Jogibandh, P.S. Ambikapur, Distt. Surguja, C.G.
2. Daya Ram s/o Tahru, Caste-Bargah (Dead) through Lrs:-
 - 2.A. Pawan Kumar s/o Late Dayaram, age 30 years, r/o village Thor, P.S. Ambikapur, Distt. Surguja, C.G.
 - 2.B. Kaushilya (died and deleted)
3. The State of Chhattisgarh, through Collector, Ambikapur, Distt.Surguja, C.G.

---- Respondents

For Appellants/Plaintiffs	: Mr.A.K.Prasad, Advocate
For Res.No.1.A & 1.B/defendant No.1:	Mr.Sunil Tripathi, Advocate
For Res.No.2.A	: None present
For Respondent No.3	: Mr.Ravi Kumar Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

26/07/2019

1. The substantial questions of law involved, formulated and to be answered by this Court in this plaintiffs' second appeal are as under:-

“1. Whether the findings arrived at by the two Court below that the defendant is the owner of the suit property is legal, proper and justified ?

2. Whether the title of the suit property can be conferred upon the defendants without the sale deed having been proved before the trial Court ?

3. Whether the title of the suit property can be conferred upon the defendants only on the basis of mutation entry made in the record ?

4. Whether the findings of the two Court below by holding that the suit of the plaintiffs is barred by limitation is proper, legal and justified ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court]

2. The suit land was held by Budhan, Bhurdi and Sukhi. Budhan and Bhurdi died issueless. Plaintiffs No.1 to 5 are sons of Sukhi Rajwar and plaintiff No.6 is widow of Sukhi Rajwar. It is the case of the plaintiffs that Budhan and Bhurdi died issueless and they have inherited the suit property after death of Sukhi Rajwar in the year 1983-84. In the year 1998, they came to know when defendant No.1 filed an application for demarcation of suit land on the basis of unregistered sale deeds dated 24.2.65 and 26.2.65 and on that basis defendants No.1 and 2 got their names mutated by order dated 28.2.65 in revenue records. Order of mutation dated 28.2.65 was challenged before the Sub-Divisional Officer, Ambikapur, which was dismissed holding that mutation is in accordance with law as Bhurdi died on 7.1.79 and Sukhi died on 3.6.85 and at the time of mutation on 28.2.65 they were alive, but no objection was taken by them or their legal representatives and therefore, the order of mutation is in accordance with law. The instant

suit was filed by the plaintiffs (successor-in-interest of Sukhiram) stating inter-alia that sale deeds dated 24.2.65 and 26.2.65 allegedly executed by father of plaintiffs No.1 to 5 namely Sukhi and their uncle Bhurdi are null and void and they do not confer any title to defendants No.1 and 2 and defendants No.1 and 2 are illegal possession of the suit land shown in Schedule "B" and "C", therefore, the plaintiffs be declared title-holder of the land shown in Schedule "B" and "C" and sale deeds dated 24.2.65 and 26.2.65 be declared void and order of the Sub Divisional Officer, Ambikapur dated 15.11.99 (Ex.D-8) also be declared illegal and the plaintiffs are entitled for decree of possession.

3. Defendant No.1 filed his written statement denying the averments made in the plaint stating inter-alia that they are in possession of the suit land from the date of sale made on 24.2.65 and 26.2.65, as such, the suit is liable to be dismissed. On appeal being preferred by the plaintiffs, the first appellate Court concurred with the judgment and decree of the trial Court and dismissed the appeal by affirming the judgment and decree of the trial Court. Questioning that judgment and decree, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.

4. Mr.A.K.Prasad, learned counsel for the appellants/plaintiffs, would submit that both the Courts below have concurrently erred and fallen into legal error in holding that the suit is barred by limitation and

the plaintiffs have no right and title over the suit land, as such, the judgment and decree of the first appellate Court deserves to be set aside.

5. Mr.Sunil Tripathi, learned counsel for respondents No.1.A and 1.B/defendant No.1, would submit that concurrent finding recorded by two Courts below on issue of title of defendants No.1 and 2 and issue of limitation is the finding of fact based on evidence available on record, which is not liable to be interfered with, as such, the appeal deserves to be dismissed.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also went through the records with utmost circumspection.

7. It is the case of the plaintiffs that the suit property was held by Budhan, Bhurdi and Sukhi-father of plaintiffs No.1 and 5 and Budhan & Bhurdi died issueless, after death of Sukhi, they have succeeded the suit land. It is their own case that on the basis of unregistered sale deeds dated 24.2.65 and 26.2.65, names of defendants No.1 and 2 were came to be recorded vide Ex.P-5 (Sanshodhan Panji) and their names were recorded in presence of Bhurdi and Sukhi. The order of mutation dated 28.2.65 in favour of defendants No.1 and 2 was challenged by the plaintiffs before the SDO. The SDO dismissed the appeal on merits on 15.11.99 (Ex.P-8), in which it has been recorded that Bhurdi died on 7.1.79 and Sukhi died on 3.6.85 and that has

become final and the suit was filed by the plaintiffs on 4.12.99 claiming that they have been dispossessed in the year 1998. The plaintiffs have sought declaration that two sale deeds dated 24.2.65 and 26.2.65 are null and void, but neither those sale deeds were produced by the plaintiffs nor they were exhibited, therefore, declaration was not granted in favour of the plaintiffs by two Courts below. When the sale deeds are basis of mutation in favour of defendants No.1 and 2 as per plaintiffs' own showing and on the basis of which, mutation in the names of defendants No.1 and 2 was done during life-time of Bhurdi and Sukhi, father of plaintiffs No.1 to 5 for 34 years, the plaintiffs ought to have produced copies of sale deeds of which they are seeking declaration/cancellation which they failed to produce.

8. Both the Courts below have clearly held that sale was made on 24.2.65 and 26.2.65 and the suit was filed on 4.12.99 seeking cancellation of sale deeds and declaration of title. It is apparently barred by limitation and did not accept their plea that they were not aware of the sale deeds executed by Bhurdi and Sukhi in favour of defendants No.1 and 2. The plaintiffs are not in possession of the suit land as it is the case of the defendants that they are in possession from the date of sale made in their favour, as such, both the Courts below have rightly concluded that the plaintiffs have failed to prove their title over the suit land as their predecessor-in-interest have already alienated the suit land in favour of defendants No.1 and 2, which they questioned seeking cancellation of those sale deeds, but they remained

unsuccessful, as such, the finding recorded by two Courts below on the basis of question of title as well as on limitation holding that the suit is barred by limitation is the finding of fact based on evidence available on record and the plaintiffs have failed to produce the copies of sale deeds executed in favour of defendant No.1. I do not find any illegality or perversity in the said finding. The substantial questions of law are answered in favour of the defendants and against the plaintiffs.

9. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

10. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-