

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.481 of 2003**

- Laxman Name Deleted As Per Honble Court Order Dated 03/11/2017, Legal Heirs Of Late Laxman Singh Appellant-
 - 1.1 - Rampyari W/o Bhaiya Ram, Aged About 66 Years R/o Jhaphal, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.2 - Shanti Bai, W/o Itwari Singh, Aged About 64 Years Village Semariya, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.3 Ati Bai, W/o Gorelal, Aged About 62 Years R/o Village Sardha, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.4 Asha Bai, Widow Of Late Pitambar, Aged About 60 Years R/o Semaria, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.5 Ramkumari W/o Jagdish, Aged About 47 Years R/o Village Gandhidih, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.6 Nohar Singh, S/o Late Laxman Singh, Aged About 58 Years R/o Village Sardha, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.7 Girwar Singh, S/o Late Laxman Singh, Aged About 55 Years R/o Village Sardha, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.8 Jai Singh, S/o Late Laxman Singh, Aged About 52 Years R/o Village Sardha, Tahsil Lormi, District Mungeli, Chhattisgarh.
 - 1.9 Tope Singh, S/o Late Laxman Singh, Aged About 50 Years R/o Village Sardha, Tahsil Lormi, District Mungeli, Chhattisgarh.

---- **Appellant/Respondent No.1(Defendant)**

Versus

1. Gajanand S/o Shri Khamhan, Aged About 61 Years R/o Kudrapara, Lormi, Tahsil Lormi, District Bilaspur, Chhattisgarh., Chhattisgarh

Respondent No.1/Plaintiff

2. State Of Chhattisgarh, Through District Collector, District Bilaspur, Chhattisgarh. Proforma Party, District : Bilaspur, Chhattisgarh

Respondent No.2

Present:-

Smt. Hamida Siddiqui, Advocate for appellants.

Shri Vipin Singh, Advocate for Respondent No.1.

Shri Aditya Bhardwaj, Panel Lawyer for respondent No.2/State.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

JUDGMENT

11/09/2019

Heard.

1. This second appeal arises out of the impugned judgment and decree dated 21-07-2003 passed by the Additional District Judge, Mungeli, District Bilaspur in Civil Appeal No.15-A/2002, by which, the learned lower appellate Court, reversing the judgment and decree dated 03-08-2002 passed by the learned Trial Court in Civil Suit No.22-A/1994, has partly decreed the plaintiff's suit.

2. This appeal was admitted for hearing on 20-07-2018 on the following two substantial questions of law:-

(1) "Whether the lower appellate Court, while reversing the findings of the trial Court, has committed an illegality in holding that the registered deed of sale dated 01.08.1967 (Ex.D.1), purported to have been executed by Smt. Savitri Bai in favour of defendant No.1-Laxman, is valid only to the extent of 2.16 acres of land even in absence of questioning the validity of the same, is perverse ?

(2) "Whether the lower appellate Court, while decreeing the plaintiff's claim in part holding that the suit as framed is within time, is perverse?"

3. The respondent-plaintiff filed a suit seeking declaration of title that the plaintiff, along with his mother Kachara Bai and Savitri Bai, widow of his uncle, jointly owned the properties situated in Village Semariya and in a suit filed by Savitri Bai seeking her share, decree was passed, in which, Savitri Bai was entitled to 1/3rd share in the property as described in Schedule-"A" of the plaint. It was the case of the plaintiff that in revenue proceedings of partition, settlement was arrived at between the parties and Savitri Bai was given 7.03 acres of land. Out of 5.66 acres of land situated in Khasra No.399 & 403, 1.70 acres on western side was given to the share of Savitri Bai, as described in

Schedule "A" and remaining 3.92 acres on the Eastern side was received upon partition by the plaintiff. The plaintiff's case was that Savitri Bai, later on, executed sale deed on 01-08-1967 in respect of 2.83 acres of land situated in Khasra No.403 & 399, which was in excess of her share of 1.70 acres of land. Savitri Bai, it was pleaded, had no right to sell more than 1.70 acres of land and therefore, sale in excess of 1.70 acres was in excess of Savitri Bai's right. The plaintiff, though contested before the Revenue Courts, but finally when he lost before the Revenue Court on 16-08-1993, suit was filed. It was also pleaded that when dispute arose between the parties, proceedings under Section 145/146 of Cr.P.C. were also initiated and the entire land ad-measuring 2.83 acres was attached and later on, possession was handed over to Supurddar and after that, it was handed over to the defendant No.1. On such pleadings, the plaintiff sought declaratory relief that he be declared titleholder of 3.92 acres of land out of 5.66 acre of land situated in Khasra No.399 and 403. Later on, amendment was carried out in the year 1997 to include the relief of recovery of possession of 1.13 acres of land.

4. Appellant-defendant contesting the case of the plaintiff denied his claim and stated that entire property was sold by Savitri Bai in favour of the defendant, way back on 01-08-1967, by registered sale deed, to which, the plaintiff-Gajanand himself was attesting witness. He had full notice and knowledge of the sale deed, but he never raised any dispute. After death of Savitri Bai, suit was filed on 26-02-1994. According to the defendant, as per the revenue records, Savitri Bai was allotted share in the properties, which were sold by her in favour of the defendant-Laxman vide registered sale deed dated 01-08-1967. An objection to the maintainability of the suit was also taken by pleading that the suit is barred by limitation. It was also pleaded that the plaintiff being witness to the sale deed, was estopped from disputing the validity of the

transaction.

5. Learned trial Court framed as many as 8 issues, which included an issue as to whether the deceased Savitri Bai was allotted only 1.70 acres of land out of lands comprised in Khasra No.403 and Khasra No.399 and whether the plaintiff is titleholder of 3.92 acres of land comprised in Khasra No.399 and 403. Learned trial Court also framed an issue as to whether the suit is barred by limitation.

6. Learned trial Court, on the issue of limitation, held that the plaintiff being one of the attesting witness to the sale deed dated 01-08-1967, Ex.D-1, had full notice and knowledge of the sale deed, yet, he having not filed any suit to seek cancellation of the same, within the period of limitation as provided under Article 58 & 59 of the Schedule appended to the Limitation Act and further that the suit for recovery of possession was filed after long delay of more than 12 years, beyond the period of limitation, as provided under Article 64, held the suit to be barred by limitation. Learned trial Court held that the plaintiff has failed to prove that Savitri Bai was allotted only 1.70 acres of land out of total lands comprised in Khasra No.399 & 403 and also failed to prove that the plaintiff was allotted 3.92 acres of land out of land comprised in aforesaid khasra numbers.

7. On appeal being preferred, the learned lower appellate Court reversed the finding of the trial Court on the issue of limitation and relying upon the compromise entered into between the parties, held that Savitri Bai was allotted only 1.70 acres of land comprised in Khasra No.399 & 403 and remaining land i.e. 3.92 acres was allotted to the share of plaintiff-Gajanand. On such findings, the judgment and decree passed by the learned trial Court was reversed and the plaintiff's suit was partly decreed, giving rise to this appeal.

8. On the issue of limitation, learned counsel for the appellants would argue

that the findings recorded by the learned lower appellate Court that the present case was governed by Section 14 of the Limitation Act, is completely perverse, patently illegal and based on complete misleading of Article 14 of the Limitation Act. Next submission of learned counsel for the appellant is that in view of the evidence of Phulchand, PW-2 i.e. the plaintiff's witness that the defendant is in possession of the property in dispute since 20-25 years, even for recovery of possession of the property in dispute, the plaintiff's case was hopelessly barred by limitation. It is also the submission of learned counsel for the appellant that the plaintiff did not even challenge the sale deed nor any relief was sought for cancellation or declaring null and void the registered sale deed dated 01-08-1967 and therefore, for that reason alone, the suit was not maintainable and liable to be dismissed not only as barred by limitation, but also not sustainable. On the first substantial question of law, learned counsel for the appellant would argue that the learned lower appellate Court has committed gross perversity in holding that there was a settlement amongst Savitri Bai, Kachra Bai and Gajanand, based only on application for settlement, Ex.D-2, without there being any order of apportionment of share amongst Savitri Bai, Kachra Bai and Gajanand.

9. On the other hand, learned counsel for the respondent No.1-plaintiff would argue that the plaintiff's case is not in denial of share of 1/3rd share of Savitri Bai, but plaintiff's case was that in the matter of partition amongst Savitri Bai, Kachra Bai and Gajanand, out of 5.66 acres of land comprised in Khasra No.403 & 399, Savitri Bai was allotted only 1.70 acres of land, whereas the plaintiff-Gajanand was allotted 3.92 acres of land, which is evident from application for partition based on compromise entered into between the parties filed by the defendant himself as Ex.D-2. Therefore, the finding of the learned lower appellate Court that there was an agreement between the parties, under

which, Savitri Bai was allotted 1.70 acres of land, out of 5.66 acres, comprised in Khasra No.403 and 399, does not suffer from perversity or patent illegality, but merely a finding of fact based on legally admissible evidence. On the issue of limitation, learned counsel for respondent No.1 would submit that the learned lower appellate Court has rightly recorded a finding that as the plaintiff and defendant were involved in several litigations since 1980-81, which were pending in various Courts including Revenue Courts, the plaintiff would be entitled to exclude of the period, during which, those disputes were pending before the Civil Courts and Revenue Courts. He would further argue that the plaintiff's cause of action, as stated in the plaint, was that cause of action arose for filing a suit when order was passed by the Revenue Court on 16-08-1993 and therefore, it cannot be said that the suit was barred by limitation. He would also submit that no plea of estoppel or even of limitation is established because even though, the plaintiff Gajanand admits that having signed as witness to the sale deed dated 01-08-1967, in his evidence he has deposed that he did not know the contents of the sale deed, therefore, neither suit can be said to be barred by limitation nor it can be held that the plaintiff was estopped from disputing the correctness and validity of the sale deed.

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

11. I shall first take up the issue with regard to limitation. The plaintiff's suit itself contains pleading that Savitri Bai executed sale deed on 01-08-1967 in favour of the defendant. It has been pleaded that since then, disputes were going on between the parties and cases were pending in the Revenue Courts and Revenue Courts passed an order against the plaintiff on 16-08-1993 give rise to cause of action.

The plaintiff-Gajanand was examined himself as PW-1, has clearly

deposed in para 10 of his cross-examination that in the sale deed executed by Savitri Bai selling property, he had signed. However, he states that he signed the sale deed as witness on the request of Laxman. Ex.D-1 is the registered sale deed, by which, Savitri Bai sold the land in dispute ad-measuring 2.83 acres of Khasra No.399 & 403 of Village Semariya, in favour of Laxman Singh for a consideration of Rs.6,000/-. Gajanand appeared as one of the witness of the sale deed and Gajanand admits his signature in the sale deed. His statement, however, that he does not know who sold and who purchased the land, is a complete falsehood. Savitri Bai was Gajanand's aunt and Gajanand was only other family member, when Savitri Bai was selling huge extent of land of 2.83 acres. Therefore, the statement of plaintiff-Gajanand that, though, he signed the document of sale deed as attesting witness, he did not know, who was selling and who was purchasing, is liable to be rejected. That shows that right from the date, sale deed was executed, with effect from 01-08-1967, the plaintiff-Gajanand has full notice and knowledge of execution of sale deed in respect of the property in dispute in favour of defendant-Laxman. Even in para 9 of his cross-examination, he admits that after one year of compromise, he was informed by the Patwari that the land of 2.83 acres was registered and it was mutated in the name of Laxman and then he made an application before the Tahsil Court. Thus, there is overwhelming evidence on record that as soon as the sale deed was executed, it was fully within the notice and knowledge of the plaintiff.

12. Phulchand, PW-2, plaintiff's own witness has stated in his cross-examination that the defendant is in possession of the property for the last 20-25 years. This would further show that not only the plaintiff, who fully knowing about the sale deed, in which, he was a witness, the defendant on the basis of sale deed, he obtained possession also

It is also found that the plaintiff did not seek any declaration of cancellation of sale deed dated 01-08-1967, though in the body of the plaint, he disputed legality and validity of the sale deed dated 01-08-1967 to the extent it was in excess of 1.70 acres of land, but no relief was sought against the said sale deed.

13. Initially, when the suit was filed in the year 1994, no relief of recovery of possession was sought by the plaintiff, but later on, an application for amendment was made, which was allowed by the trial Court on 03-09-1997 and relief of recovery of possession was also added. In view of the plaintiff's own witness, Phulchand, PW-2, the defendant was in possession of the property in dispute for the last 20-25 years. That means, suit for recovery of possession was filed, after expiry of 12 years and was therefore, barred by limitation, in view of the period of limitation prescribed in Article 64 of the Limitation Act.

14. The plaintiff being witness to the sale deed, did not file any suit, seeking cancellation of the sale deed within the period of limitation as provided under Article 58 & 59 of the Schedule appended to the Limitation Act. Under Article 59 of the Limitation Act, three years limitation is provided to seek cancellation or set aside an instrument or decree or for the rescission of a contract and the time from which, the limitation is to be counted is when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

In view of what has been stated by the plaintiff himself in para 9 & 10 of his cross-examination, the plaintiff was not only knowing about the sale deed, but he had also come to know on the basis of the sale deed dated 01-08-1967 that the name of Laxman was mutated in the revenue records and precisely for this reason also, the plaintiff did not seek any cancellation of sale deed, but then

without seeking cancellation of the registered sale deed dated 01-08-1967, the suit itself was not maintainable.

15. The learned lower appellate Court has committed patent illegality in bringing in application, the provisions under Article 14 of the Limitation Act. Section 14 of the Limitation Act reads as under:-

Section 14 in The Limitation Act, 1963

14 Exclusion of time of proceeding bona fide in court without jurisdiction. —

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.— For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.

16. The learned lower appellate Court has recorded a finding that as the plaintiff and the defendant were involved in various litigations before the Revenue Courts, therefore, that period would be excluded. On the face of it, this reasoning is unsustainable in law. The period, which is liable to be excluded from the period of limitation, has been exhaustively provided in Section 14 of the

Limitation Act. The period during which proceedings before the Revenue Courts were pending, could not be excluded under Section 14 of the Limitation Act. Present is not a case where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. Further, Section 14 of the Limitation Act has no application whatsoever in respect of the proceedings under Section 145/146 of Cr.P.C. Therefore, in that view of the matter, this Court is of the considered opinion that the plaintiff's suit was hopelessly barred by limitation and the finding recorded by the learned lower appellate Court is patently illegal and perverse in law, and therefore, cannot be sustained.

17. As far as first question of law is concerned, this Court does not consider it necessary to dwell into the aspect of merit, because second substantial question of law, as already held by this Court, is that the suit filed by the plaintiff is barred by limitation.

18. In the result, the appeal is allowed. The impugned judgment and decree dated 21-07-2003 passed by the learned lower appellate Court in Civil Appeal No.15-A/2002 is set aside and the plaintiff's suit is dismissed as barred by limitation. Let appellate decree be drawn accordingly. Parties to bear their respective costs.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE