

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.292 of 2004

Punamchand, S/o Bisambhar Lal Agrawal, aged about 26 years, R/o Bhilai, Tahsil & District Durg (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Hemchand, S/o Bisambhar Lal Agrawal, aged about 32 years, Occupation Doctor, R/o Bhilai, Tahsil & District Durg
2. Kallu (Died and deleted)
3. Bodra (Died and deleted)
4. Ganesh, S/o Mohanlal, aged about 40 years, R/o Village Khamariya, Tahsil Bemetara, District Durg.
5. State of C.G., Through Collector, Durg.

(Defendants)
---- Respondents

For Appellant: Mr. Hari Shankar Patel, Advocate.

For Respondents No.1 and 4: -
None present.

For Respondent No.5 / State: -
Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

28/11/2019

1. This second appeal preferred by the plaintiff / appellant was admitted for hearing by formulating the following substantial questions of law: -

“(A) Whether, in absence any evidence the lower appellate Court was justified in holding that the alleged sale, dated 05.03.1963(Ex.D-3), was executed for security of the loan amount?

(B) Whether, upholding of the alleged sales, (Ex.D-4) and (Ex.D-5) without determining the legal necessity of its alienation, vitiates the judgment and its findings?”

(For sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial

Court.)

2. The plaintiff instituted suit for declaration of title and for possession stating inter alia that the suit land described in Schedule A appended to the plaint is the ancestral property acquired by him and his brother – defendant No.1. It was further pleaded that by registered sale deed dated 1-8-1967 (Ex.D-4), defendant No.1 alienated the suit land to defendant No.3 and by yet another sale deed dated 1-8-1967 (Ex.D-5), part of the suit land was alienated by defendant No.1 in favour of defendant No.2 and defendants No.2 & 3, in their turn, have alienated the suit land to defendant No.4 by executing two registered sale deeds dated 23-1-1968 (Ex.D-6) and 15-1-1968 (Ex.D-7), respectively. It was alleged that the plaintiff was minor at the time of alleged alienations and same has been executed without any legal necessity and therefore half of his interest would not be affected by virtue of the alleged sales. Defendant No.1 admitted the claim, whereas defendants No.2 to 4 contested the claim stating inter alia that the suit land was not the ancestral property and they have refuted the claim of the plaintiff. The trial Court decreed the suit holding that the sale deed Ex.D-3 executed by defendant No.3 Bodra in favour of the plaintiff and defendant No.1 was out and out right sale and it was not executed for security of the loan amount, and the defendants have failed to prove that the alleged sales – Exs.D-4 & D-5 have been executed for legal necessity of the plaintiff, which was reversed by the first appellate Court holding that the suit as framed for mere declaration without seeking any relief for cancellation of alleged sales is not maintainable by virtue of Section 27 read with Section 31 of the Specific Relief Act against which this second appeal has been preferred by the plaintiff in which substantial questions of law have been framed and which have

been set-out in the opening paragraph of this judgment.

3. Mr. Hari Shankar Patel, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court was absolutely unjustified in reversing the judgment & decree of the trial Court granting decree in favour of the plaintiff by recording a finding which is perverse and contrary to the record, as such, the appeal deserves to be allowed by setting aside the judgment & decree of the first appellate Court and restoring the judgment & decree of the trial Court.
4. None present for respondents No.1 and 4.
5. I have heard learned counsel for the parties present and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
6. Firstly, the plaintiff & defendant No.1 jointly purchased the suit land from defendant No.3 Bodra vide Ex.D-3 and thereafter, they have sold the suit property to defendants No.2 & 3 by two registered sale deeds Exs.D-4 & D-5 and thereafter, defendants No.2 & 3 have sold the property to defendant No.4 vide Exs.D-6 & D-7. The suit was filed on 20-4-1979 claiming that the plaintiff & defendant No.1 are minors at the time of alleged alienation of the suit property and therefore they could not have alienated the suit property in light of Section 8(2) of the Hindu Minority and Guardianship Act, 1956 which the trial Court has accepted in part, but the first appellate Court did not accept merely on the ground that the plaintiff & defendant No.1, both, have sold the suit property in favour of defendants No.2 & 3 by registered sale deeds Exs.D-4 & D-5 and they were party to the said sale deeds, but while filing suit, they did not claim setting aside of the sale deeds, whereas they ought to have claimed setting aside of the said sale deeds

wherein they were party and sought for declaration of the said sale deeds as null and void, mere seeking declaration that the sale deeds are not binding on them is not enough in view of Section 27 read with Section 31 of the Specific Relief Act. Such finding is a finding of fact based on the evidence available on record. Even otherwise, in Exs.D-4 & D-5, the plaintiff and defendant No.1 had shown their age to be 18 years as on 1-8-1967, even if they were minors, three years would be complete by 1-8-1970, but they have brought the suit on 20-4-1979 which is again hopelessly barred by limitation in view of Article 60(a) of the Limitation Act, 1963. As such, the first appellate Court has not committed any legal error in granting the appeal and dismissing the suit. The substantial questions of law are answered accordingly. I do not find any merit in the appeal. The second appeal deserves to be and is hereby dismissed with no order as to cost(s).

7. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma