

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 157 of 2008**

1. Santram, son of Ganga Ram, aged about 38 years,
 2. Chamar Sai, aged about 40 years, son of Shri Ganga Ram,
 3. Guruvai Bai, Widow of Late Ganga Ram, aged about 63 years,
- All are resident of village Taapra, Tah. And Distt. Korba (C.G.)

----Appellants/Plaintiffs**Versus**

1. Baal Singh, son of Laal Singh
 2. Sukh Singh, son of Laal Singh
 3. Sumit Singh, son of Laal Singh
 4. Sukhi Singh, son of Laal Singh
 5. Kunit Singh, son of Laal Singh,
 6. Bund Kunwar, Widow of Laal Singh,
 7. Budhwar, son of Chaitram,
- All are resident of village Taapra, Tah. And Distt. Korba (C.G.)
8. State of Chhattisgarh, through the Distt. Collector, Distt. Korba (C.G.)

----Respondents/defendants

For Appellants	: Mr. Ravindra Sharma, Advocate
For Respondent No. 8	: Mr. Akash Pandey, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment On Board****23/10/2019**

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs under Section 100 of the Code of Civil

Procedure, 1908.

(2) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below have absolutely unjustified in not holding that the plaintiff No. 2 was not empowered to alienate the suit property in favour of defendants' father, by recording a finding, which is perverse to the record and, therefore, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) Plaintiff No. 2 -Chamar Sai sold the land bearing Khasra No. 100, area 1.20 acres by registered sale deed dated 28.11.1978 (Ex.P-1) in favour of father of defendants No. 1 to 5 and delivered peaceful possession thereof, thereafter, on 8.5.2001 a bare suit for declaration of title and injunction was filed by the plaintiffs including Chamar Sai (plaintiff No. 2), who are two brothers (sons of Gangaram) and widow of Ganga Ram stating that since the suit property was joint family property , therefore, plaintiff No. 2 – Chamar Sai had no right to alienate the suit land in favour the father of defendants to 1 to 5 and the said alienation made by plaintiff No. 2 is not binding on them and, therefore, accordingly decree of declaration of title be granted in their favour.

(4) The trial Court by its judgment & decree dated 2.4.2007 dismissed the suit. Plaintiffs preferred first appeal there-against. The first appellate court, on re-appreciation of evidence available on record dismissed the appeal affirming the judgment & decree of the trial Court, against which, instant second appeal under Section 100 of the CPC has been preferred.

(5) Admittedly, the plaintiff No. 2 sold the suit property in favour of father of defendants No. 1 to 5 claiming to be the owner thereof and he was party to sale deed (Ex.P-1) dated 28.11.1978 , therefore, he was required to file suit seeking cancellation of

the sale deed (Ex.P-1) but admittedly he has merely sought declaration that the sale deed dated 28.11.1978 is not binding on them, as such, suit filed by plaintiff No. 2 was admittedly not maintainable for want of not seeking relief of cancellation of the said sale deed. Likewise, the two courts below have recorded a finding that in the alienation made by plaintiff No. 2 in favour father of defendants No. 1 to 5, his brother - Santram and widow of Ganga Ram i.e. Guruwari Bai had consented for the said alienation. Admittedly, the plaintiffs No. 1 & 3 did not enter into witness box to say that they have not consented to the alienation made by plaintiff No. 2 in favour of father of defendants No. 1 to 5, as such, both the courts below have rightly concluded that the plaintiffs have failed to prove that plaintiff No. 2 had no right to alienate the suit property in favour of father of defendants No. 1 to 5, as such, finding of fact recorded by both the courts below that sale deed (Ex.P-1) dated 28.11.1978 is not null and void is a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

