

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No.102 of 2006

1. Smt. Rambai Wd/o. Mangalram, aged about 45 Years.
 2. Sambaluram, S/o. Mangalram, aged about 22 years.
 3. Navaluram, S/o. Mangalram aged about 20 years.
 4. Lekhram S/o. Mangalram, aged about 16 years.
 5. Kumari Sawan Bai D/o. Mangalram Halba, aged about 14 years (Both 4 & 5 are minors through natural guardian Smt. Rambai appellant no.1 Wd/o. Mangalram.
- All R/o. Village- Potgaon, Tah & Distt. Kanker, Chhattisgarh.

---- Appellants/Plaintiffs

Versus

1. Smt. Kanvala Bai W/o. Madhav Ram Halba, Aged about 40 years.
2. Mehtarin Bai, D/o. Latel Ram Wd/o. Sher Singh, aged about 60 years. (deleted).
Both R/o Village. Potgaon, Tah & Distt Kanker C.G.
3. Ashok Kumar, S/o. Satau Ram, aged about 22 years.
4. Vikram Ram S/o. Satau Ram, aged about 20 years.
5. Ku. Sakuntala, D/o. Satau Ram, aged about 12 years.
6. Ku. Savitiri D/o. Satau Ram, aged about 10 years. (Deleted).
7. Ku. Sulochanan Bai, D/o. Satau Ram, aged about 8 years.
8. Master Sant Kumar, S/o. Satau Ram, aged about 6 years.
Respondent Nos. 5 to 8 are minor through legal guardian respondent no.3 -Ashok Kumar S/o. Satau Ram.
All R/o. Villlage- Mavalipara, Tah & Distt. Kanker, Chhattisgarh
9. State of Chhattisgarh, through the Collector, Kanker, Distt. Kanker, Chhattisgarh.

---- Respondents/Defendants.

For Appellants	:	Mr. Vishnu Koshta, Advocate with Mr. Shobhit Koshta, Advancate.
For Respondents	:	None.

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

16/07/2019

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

“(1) Whether a valid adoption of Mangal Ram has been proved in this case and the findings of the Courts below in this regard are perverse ?

“(2) Whether the Courts below were justified in holding that the plaintiffs' suit was barred by limitation ? ”

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

2. The suit property was originally held by one Buduram. Original plaintiff -Mangal Ram, filed a suit for declaration of title and permanent injunction and declaration of sale deed dated 08.01.1985 as null and void. It is the case of the plaintiffs that Buduram and his wife were issueless and, therefore, they had adopted him (plaintiff) as their son when he was aged about 8 years as per custom prevalent among 'Gond' caste. It is also the case of the plaintiffs that by sale deed dated 08.01.1985 defendant no.3 Satauram sold the suit land to defendant no.1 for cash consideration of Rs.8,000/- and the Tahsildar by order dated 01.10.1992 mutated the name of defendant No.1 in revenue records, therefore, he is entitled for decree for declaration of title, permanent injunction and declaration of sale deed dated 08.01.1985 as null and void.
3. Defendant no.1 has filed his written statement opposing the averments made in the plaint stating *inter alia* that original plaintiff Mangal Ram is not adopted son of Buduram & Kastura Bai, as such, the suit deserves to be dismissed.

4. The trial Court dismissed the suit holding that it is barred by limitation and plaintiff -Mangal Ram is not adopted son of Buduram & Kastura Bai, which the learned First Appellate Court upheld in an appeal taken up by the LR's of Mangal Ram, against which, this second appeal has been preferred by the appellants/plaintiffs under Section 100 of the C.P.C, in which substantial questions of law have been formulated and set out in the opening paragraph of this judgment.
5. Mr. Vishnu Koshta, learned counsel for the appellants/plaintiffs, would submit that both the Courts below are absolutely unjustified in holding that plaintiff-Mangal Ram is not validly adopted son of Buduram & Kastura Bai and further erred in holding that the suit is barred by limitation, as such, the concurrent findings recorded by the two Courts below are perverse and contrary to the records.
6. None for respondents though served.
7. I have heard learned counsel for the appellants and considered his submissions and also went through the records with utmost circumspection.
8. For the sake of convenience the substantial question of law no.2 is taken up for consideration. The sale deed was executed by defendant no.3 in favour of defendant no.1 alienating the suit property on 08.01.1985 for cash consideration of Rs.8,000/-. The proceeding for mutation was initiated vide Revenue Case No.31-A 6 in the year 1987 (**Kanvala Bai Versus Mangal Ram & Anr**) vide Ex.P-5 and ultimately, the order of mutation was passed in favour of defendant No.1 Kanvala Bai on 01.10.1992.

9. A careful perusal of Ex P-5 would show that proceedings were initiated way back in the year 1987-88 in which, the original plaintiff -Mangal Ram/non-applicant no.1 therein was regularly appearing in the said mutation proceedings and he was having the knowledge of sale deed dated 08.01.1985 and application was filed on 04.08.1985 on the basis of sale deed (Ex.D-1), as such, he was quite aware about the sale deed executed by defendant no.3 in favour of defendant no.1 since 1987-88, but the suit was filed on 05.01.1993. Both the Courts below have dismissed the suit holing that Article 59 of the Limitation Act, 1963 (for short' Act of 1963') would apply and suit for declaration is to be filed within three years "when right to sue accrues" and that starts from knowledge of the sale made by defendant No.3 in favour of defendant No.1.
10. At this stage, it is appropriate to notice Article 58 & 59 of the Act of 1963, which state as under :-

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration	Three years	When the right to sue accrues.
59.	To cancel or set aside an instrument or decree for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree canceled or set aside or the contract rescinded first become known to him.

11. Article 58 of the Act of 1963 prescribes the period of three years for obtaining declaration. The period of three year start running from the time “when the right to sue accrues”.
12. A plain reading of Article 58 of the Act of 1963 would show that there is no manner of doubt that limitation to file suit for declaring sale deed as null and void does not start from the date of execution or registration of the sale deed, but actually it starts from the date when the plaintiffs obtain knowledge about this fact.
13. Supreme Court recently in the matter of **Jamila Begum (Dead) Through Legal Representative versus Shami Mohd (Dead) Through Legal Representatives & Anr**¹ has held as under :-

“36. As discussed, the suit was filed for declaration that the mortgage deed dated 21.11.1967 as well as sale deed dated 21.12.1970 executed by Wali Mohd were not executed by him out of his free will and are void. In para (14) of the plaint, it is averred that the cause of action of the suit arose on 21.11.1967 and 21.12.1970. Under Articles 58 and 59 of the Schedule to the [Limitation Act](#), 1963 in a suit filed for any declaration is to be filed within three years when the right to sue accrues. Under [Article 59](#) of the [Limitation Act](#), suit filed to cancel or set aside the instrument or decree, the suit has to be filed within three years from the date when the facts entitling the plaintiff to set aside or cancel the instrument or decree became first known to him. Plaintiff- Shami Mohd has admitted in his evidence that he got knowledge about the execution of the sale deed dated 21.12.1970 on the third day of death of his father on 17.05.1971. The suit must have been filed within three years of the date of knowledge or the date of the sale deed but the suit was filed on 12.07.1978. In

1 (2019) 2 SCC 727

the case in hand, the suit filed challenging the validity of the mortgage deed dated 21.11.1967 and sale deed dated 21.12.1970 is beyond the period of limitation of three years as prescribed under Articles 58 and 59 of the Schedule to the [Limitation Act](#) and barred by limitation.”

14. Reverting facts of the present case, it is quite vivid that the plaintiff came to know about the execution of sale deed dated 08.01.1985 by defendant no.3 in favour of defendant no.1 in the year 1987-88 and the contested mutation application claimed by defendant no.1 on the basis of said sale deed till 01.10.1992 and when the application was allowed then only he filed the suit on 05.01.1993, whereas the suit, ought to have filed within three years from the date of acquiring the knowledge about the said alienation. In view of that, both the Courts below are absolutely justified in dismissing the suit of the plaintiff to be barred by Article 58 of the Act of 1963. Likewise, two Courts below have concurrently recorded a finding that plaintiff- Mangalram is not adopted son of Buduram is a finding of fact based on evidence available on record. It is neither perverse nor contrary to record. I hereby affirm the said finding. I do not find any merit in this second appeal, it deserves to be and accordingly dismissed. Leaving the parties to bear their own cost(s).

15. Decree be drawn-up accordingly.

Sd /-

(Sanjay K. Agrawal)
Judge

J/-