

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 236 of 2005**

Kameshwar, S/o Ram Das Kanwar, aged about 50 years, R/o Village
Tahsil Pratap Pur, District Surguja (C.G.)

---- Appellant

Versus

1. Dharmu, S/o Ramdas Kanwar, Aged about 40 years, R/o Village Singari, Tahsil Pratappur, District Surguja (C.G.)
2. State of Chhattisgarh, Through Collector, Surguja, Ambikapur, Distt. Surguja (C.G.)

---- Respondents

For Appellant	: Mr. Sunil Tripathi, Advocate.
For Respondent No. 1	: Mr. V.K. Pandey, Advocate
For Respondent No. 2/State	: Mr. Akash Pandey, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

30/07/2019

(1) The substantial questions of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

- "1. Whether the valid execution of the gift deed dated 11.7.1991 was not proved in accordance with law ?
2. Whether the Courts below were justified in entertaining the fact of acquisition of property by gift by the defendant in absence of any such pleading in this regard as the defendant has not filed any written statement in this suit ?

(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) Plaintiff - Kameshwar instituted a suit stating that he and defendant No. 1 both are real

brothers. The plaintiff has purchased the suit land by registered sale deed in the month of May, 2009 and thereafter he is in possession over the suit land, but the defendant No. 1 got the gift deed executed of the suit land in his favour by impersonating some other person and got his name mutated in the revenue record, against which the plaintiff filed a suit for declaration of title and permanent injunction.

(3) The defendant No. 1 – Dharmu did not file his written statement and his opportunity to file written statement was closed by order dated 23.11.2002, though the defendant No. 1 was allowed to adduce evidence and the gift deed dated 11.07.1991 was permitted to be exhibited as Ex. D-2.

(4) The trial Court, after appreciating the oral and documentary evidence available on record, dismissed the suit holding that though the plaintiff has claimed the suit land on the strength of registered sale deed stating that he has purchased the suit land by registered sale deed but he has not produced the said sale deed and even alleged gift deed which is alleged to have been executed on his behalf in favour of defendant No. 1 has not been challenged as a void document, therefore, he is not entitled for decree of declaration of title and permanent injunction.

(5) The defendant No. 1 preferred first appeal thereagainst. The first appellate Court, after re-appreciation of the oral & documentary evidence, dismissed the appeal and now this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which, substantial questions of law has been formulated, which have been set-out in the opening paragraph of this judgment.

(6) Learned counsel appearing for the appellant/plaintiff would submit that the both the courts below have concurrently erred in holding that gift deed dated 11.07.1991 (Ex.D-2) is void document and no written statement was filed on behalf of defendant No. 1 and, therefore, suit filed by the plaintiff ought to have been decreed.

(7) Per contra, counsel for respondent No. 1 would support the impugned judgment and decree.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(9) A careful perusal of the plaint would show that the plaintiff has claimed the suit land by registered sale deed purchased in the month of May, 2019 and came in possession thereof but no sale deed evidencing sale was produced before the trial Court and it was also not proved in accordance with law and, therefore, both the courts below have rightly come to the conclusion that plaintiff has failed to prove the execution of sale deed. Since the sale made by the plaintiff itself is not proved, the question of the said gift deed in favour of defendant No. 1 does not arise for consideration. As such, the finding recorded by both the courts below being based on evidence on record in which I do not find any perversity or illegality warranting interference under Section 100 of the Code of Civil Procedure. Substantial questions of law are answered accordingly in favour of plaintiff and against the defendant No. 1.

(10) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed without notice to the other side. No cost(s).

(11) Decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

