

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.201 of 2010**

1. Paltu @ Loksai, S/o Shri Sakharam Gond, aged about 52 years,
2. Rewa Ram, S/o Paltu Gond, aged about 26 years,
3. Smt. Devla, W/o Paltu @ Loksai, aged about 47 years,
All of R/o village-Nartora, Tehsil-Chhura, District-Raipur (CG)

---- Appellants/Defendants**Versus**

1. Devkunwar, S/o Sonsai, aged about 40 years,

---- Plaintiff

2. Sukhmat Bai, Wd/o. Sonsai, aged about 61 years,

---- Defendant

Both Resident-Village Nartora, Tehsil-Chhura

3. State of Chhattisgarh, Through the Collector, Raipur (CG)

---- Respondents

For Appellants/Defendants:

Mr. Raghvendra Pradhan, Advocate

For Respondent No.1/Plaintiff:

Mr. Rakesh Thakur, Advocate

For Respondent No.2/Defendant:

Mr. Sanjay Agrawal, Advocate

For Respondent No.3/State:

Dr. Veena Nair, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****25/08/2020**

1. Final hearing of this second appeal has been taken-up through video conferencing.
2. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellants/defendants No.1 to 3 is as under:-

"Whether the finding of both the Courts below relating to possession and title of respondent No.1 Devkunwar is perverse ?"

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

3. Sonsai and Paltu @ Loksai both are brothers and the plaintiff is son of Sonsai. It is admitted position on record that partition has already been taken place between the parties and the suit property fell in share of the plaintiff's father Sonsai, but the suit property stand recorded in the name of defendant No.1- Paltu and he is in possession over the suit property. Defendant No.5-Sukhmat Bai is said to be second wife of Sonsai, plaintiff's father. The plaintiff filed a suit that the suit property fell in his father's share on partition between his father and defendant No.1, but defendant No.1 got his name mutated illegally in revenue records. It was further pleaded that Sukhmat Bai being keep of his father has no right and title over the suit property of his father, which the plaintiff has exclusively inherited and defendant No.1 being in possession of the suit property, therefore, decree of title and decree for possession be granted in his favour.

4. Resisting the suit, defendants No.1 to 3 have filed

their joint written statement and admitted that though partition has already taken place between the parties and the suit property fell in share of Sonsai, but Sonsai in his lifetime by sale deed dated 10.2.95 (Ex.D-1) sold the suit property in favour of defendant No.1 on cash consideration of ₹ 20,000/- and delivered peaceful possession thereof and on the strength of sale deed (Ex.D-1), the suit land has been recorded in the name of defendant No.1-Paltu, as such, the plaintiff has no right and title over the suit land. Defendant No.5-Sukhmat Bai also laid her claim that she being chudi wife of Sonsai and now being widow has also right and title over the suit property.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 16.2.2009, decreed the suit holding that Sonsai, father of the plaintiff, has never sold the suit land in favour of defendant No.1-Paltu and defendant No.5 being keep and she is not legally wedded wife of Sonsai would not inherit the property of Sonsai and the plaintiff would be titleholder of the suit land and entitled for possession over the suit property from the defendants. On appeal being preferred by defendants No.1 to 3, the first appellate Court maintained the judgment and decree of

the trial Court. Feeling aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second under Section 100 of the CPC has been filed by the appellants/defendants No.1 to 3, in which substantial question of law has been formulated, which has been set-out in the opening paragraph of this judgment for sake of completeness.

6. Mr. Raghvendra Pradhan, learned counsel for the appellants/defendants No.1 to 3, would submit that the first appellate Court is absolutely unjustified in affirming the judgment and decree of the trial Court decreeing the suit holding that sale deed dated 10.2.1995 (Ex.D-1) requires registration, which is perverse and therefore, the judgment and decree of both the Courts below deserve to be set aside and the suit deserves to be dismissed.

7. On the other hand, Mr. Rakesh Thakur, learned counsel for respondent No.1/plaintiff, would support the judgment and decree of both the Courts below.

8. Mr. Sanjay Agrawal, learned counsel for respondent No.2/defendant No.5 would support the defendants No.1 to 3.

9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and also went through the records with utmost

circumspection.

10. Admittedly and undisputedly, the suit property on oral partition between the plaintiff's father Sonsai and defendant No.1-Paltu fell in share of Sonsai, plaintiff's father. It is also established that defendant No.5 being keep of Sonsai as fact of marriage between the plaintiff's father Sonsai and Sukhmat Bai has not been established, therefore, she would not inherit the property of Sonsai in exclusion of others.

11. Now, defendants No.1 to 3 set-up a plea that Sonsai has sold the suit property in favour of defendant No.1 for cash consideration of ₹ 20,000/- on 10.2.1995 vide Ex.D-1 and therefore, he has become title-holder of the suit property. Admittedly, Ex.D-1 is for consideration of ₹ 20,000/- and any sale of immoveable property for more than 100 rupees requires registration by virtue of the provisions contained in Section 54 of the Transfer of Property Act, 1882 (hereinafter called as 'TP Act'). In that view of the matter, the trial Court rightly held that title has not been transferred at any point of time by the plaintiff's father in favour of defendant No.1, which in turn, has been duly affirmed by the first appellate Court.

12. Finding recorded by two Courts below that sale deed (Ex.D-1) is inadmissible in evidence for want of registration and did not transfer any title in favour of defendant No.1 is in accordance with the provisions contained in Section 54 of the TP Act as Ex.D-1 being unregistered document sold for more than 100 rupees i.e. ₹ 20,000/- mandatorily requires registration in view of the provisions contained in Section 17 read with Section 49 of the Indian Registration Act, 1908 and therefore, both the Courts below have rightly held that the plaintiff is only title-holder of the suit land and accordingly, proceeded to grant decree of declaration of title and further decree of delivery of restoration of possession in favour of the plaintiff, which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding.

13. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed by answering the substantial question of law in favour of the plaintiff and against the defendants leaving the parties to bear their own cost(s).

14. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-