

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 300 of 2009**

1. Pili Bai, Wd/o viro, Aged about 46 years, R/o Village Rabo, Tahsil and P.S. Gharghoda, Distt. Raigarh, Chhattisgarh.
2. Daya Sagar S/o Viro, Aged about 32 years.
3. Vasudeo S/o Satyawadi, Aged about 62 years.
4. Kanha @ Kaliya S/o Satyawadi, Aged about 65 years.
5. Venu S/o Satyawadi, Aged about 60 years.

All by caste Kolta, R/o Village Kathani, P.O. Mohlai, Up- Tahsil Pusaur, Tahsil and Distt. Raigarh, Chhattisgarh.

---Appellants/Defendants

Versus

1. Bahartin Bai, Wd/o Bharatlal Irajdar, Aged about 62 years, R/o Village Raigarh, Ward No. 21, Naya Ganj, Tahsil and Distt. Raigarh, Chhattisgarh.

--- Plaintiff

2. State of Chhattisgarh, through Collector, Distt. Raigarh, Chhattisgarh.

--- Defendant

--- Respondents

For Appellants	:-	Mr. M.K. Sinha, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

13/03/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred

by the appellants/defendants under Section 100 of the CPC against the impugned judgment and decree by which the first appellate Court dismissed the appeal preferred by the defendants declining to interfere with the judgment and decree of the trial Court dismissing the suit of the plaintiff and partly granting the counter-claim of the defendants.

2. Mr. M.K. Sinha, learned counsel for the appellants/defendants would submit that both the Courts below have committed legal error in not declaring the sale deed dated 27/05/1982 (Ex. P/9) executed by Lura Bai in favour of the plaintiff Bahartin Bai as null and void by recording a finding which is perverse and contrary to the record, as such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3. Plaintiff – Bahartin Bai filed a suit that she is the title-holder of the suit land bearing Khasra No. 13 area 6.35 acres situated at Village Kathani, District Raigarh and she is entitled to get decree for declaration of title, confirmation of possession and partition, wherein defendants No. 1 to 5 laid counter-claim seeking declaration

of title over the suit land in their favour and also for declaration of sale deed dated 27/05/1982 (Ex. P/9) executed by Lura Bai in favour of the plaintiff as null and void.

4. Learned trial Court, after appreciation of oral and documentary evidence on record, dismissed the suit of the plaintiff and partly granted the counter-claim of the defendants holding that they are title-holders of the suit land, but declined to grant decree that the sale deed dated 27/05/1982 (Ex. P/9) executed by Lura Bai in favour of the plaintiff as null and void against which defendants preferred first appeal wherein learned first appellate Court did not accept the plea of the defendants and dismissed the appeal.

5. The sale deed dated 27/05/1982 (Ex. P/9), which is sought to be declared as null and void by the defendants, was executed by Lura Bai in favour of the plaintiff. Admittedly and undisputedly, neither Lura Bai nor her legal heirs have been impleaded as a party, either as plaintiff or defendant, and in absence of that, the sale deed (Ex. P/9) has rightly not been declared invalid and inoperative by both the Courts below as the seller Lura Bai or her legal heirs ought to have

been impleaded as a party, either as a plaintiff or defendant. Both the Courts below have rightly held that within three years from the date of knowledge of sale deed, counter-claim was not filed and it was only filed on 14/02/2001, as such, it was barred by limitation. Therefore, both the Courts below have rightly dismissed the counter-claim of the defendants to the extent of declaring the sale deed (Ex. P/9) as null and void by recording a finding which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

6. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet