

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.324 of 2008

Shiv Kunwar, Wd/o Harchand, aged about 50 years, R/o Village Katari,
Tehsil Sakti, District Janjgir-Champa (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Mohitram, S/o Shri Nautam Das (Dead) Through Legal Heirs

1A. Shyam Lal, S/o Shri Mohitram, aged about 49 years

1B. Lakhanlal, S/o Shri Mohitram, aged about 46 years,

1C. Yugal Kishore Chandra, S/o Shri Mohitram, aged about 39 years,

All R/o Village Katari, Tehsil Malkharouda, District Janjgir-Champa
(C.G.)

2. Uttam Kumar, S/o Shri Harchand, aged about 33 years, R/o Katari,
Tehsil Sakti, District Janjgir-Champa (C.G.)

(Defendants)
---- Respondents

For Appellant/Plaintiff: -

Mr. Amit Soni, Advocate on behalf of Mr. Sunil Otwani, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiff.
2. By the impugned judgment, the first appellate Court has dismissed the appeal preferred by the plaintiff / appellant affirming the judgment & decree of the trial Court dismissing the suit finding no merit.
3. Mr. Amit Soni, learned counsel appearing for the plaintiff / appellant

herein, would submit that both the Courts below have concurrently erred in holding that defendant No.2 – step-son of the plaintiff namely, Uttam Kumar has rightly alienated the suit land on 5-8-1980 in favour of defendant No.1 by recording a finding which is perverse to the record and such appeal involves substantial question of law for determination and it be admitted accordingly.

4. Harchand had two wives. Uttam Kumar – defendant No.2 is his son from first wife, whereas the plaintiff is second wife of Harchand from whom he had two sons namely, Ramkumar & Rajkumar. It is the case of the plaintiff that Uttam Kumar without her consent and without the consent of her two sons alienated the suit property in favour of defendant No.1 by sale deed dated 5-8-1980 claiming himself to be the power of attorney holder of the plaintiff and her two sons Ramkumar & Rajkumar as such, it is not binding on her and she is entitled for declaration of title.
5. The trial Court dismissed the suit, but the first appellate Court remanded the matter on 28-1-1998 for taking the sale deed on record and taking additional evidence. Thereafter, again, on 18-12-1999, the trial Court dismissed the suit that it was not proved that on partition, the suit property fell in the share of the plaintiff and the sale deed dated 5-8-1980 is not invalid and the plaintiff has consented to transfer the suit land in favour of defendant No.1 which the first appellate Court has concurred with by the impugned judgment.
6. The basis of the plaintiff's suit was that the alienation by her step-son defendant No.2 in favour of defendant No.1 is void. But, a careful perusal of the plaint would show that the sale deed dated 5-8-1980 was

not under challenge, neither declaration nor cancellation of sale deed executed by defendant No.2 in favour of defendant No.1 was sought by the plaintiff though it was collaterally challenged which both the Courts have not found favour with that it was not a fabricated document. It has also not been found proved by both the Courts below that the suit property in partition fell in the share of the plaintiff. Thus, the finding of two Courts below that the suit property did not fell in the share of the plaintiff and the plaintiff has consented for alienation in favour of defendant No.1 is a finding of fact based on the evidence available on record. The plaintiff also did not ask either for cancellation or declaration of sale deed dated 5-8-1980 or its invalidity and challenged collaterally and in view of that, the finding of both the Courts below dismissing the suit cannot be taken exception to.

7. Accordingly, I do not find any substantial question of law for determination. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge