

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.78 of 2010

Shivcharan, S/o Shivmangal, aged about 50 years, Caste Gond, R/o
Village Ramnagar, Tahsil Surajpur, District Surguja (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Chandra Kunwar, D/o Chhote Bagar, aged about 55 years.
2. Bal Kunwar, D/o Chhote Bagar, aged about 50 years, Caste Vishwakarma.
3. Basant Lal Jaiswal, S/o Thakur Prasad Jaiswal, aged about 58 years.

All are R/o Village Ramnagar, Tahsil Surajpur, District Surguja (C.G.)

4. State of Chhattisgarh, Through the Collector, Surguja (Ambikapur),
District Surguja (C.G.)

(Defendants)
---- Respondents

For Appellant / Plaintiff: -

Mr. Ashok Kumar Shukla, Advocate.

For Respondents No.1 & 3 / Defendants No.2 & 3: -

Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

For Respondent No.2 / Defendant No.1 – Bal Kunwar: -

None present though served.

For Respondent No.4 / State: -

Mr. Anjali Singh Chauhan, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

03/03/2020

1. This second appeal preferred by the plaintiff / appellant herein was
admitted for hearing on the following substantial question of law: -

"Whether the lower appellate court was justified in reversing the judgment and decree of the trial court in treating the sale deed Ex.D-1 to have been executed only in favour Chandra Kunwar and accepting the same to be a properly executed

document thereby denying defendant No.1 the right over the said property and as a consequence, the sale deed executed by defendant No.1 in favour of the plaintiff also gets nullified?”

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

2. The suit property was held by one Chote Bagar. He had two daughters – Bal Kunwar and Chandra Kunwar, defendants No.1 & 2 herein. He by Ex.D-1 dated 15-7-1985 executed a sale deed alienating the suit property in their favour. Immediately thereupon vide Ex.D-2, on 8-8-1985, he executed a rectification deed unilaterally stating that he wanted to alienate the suit property only in favour of Chandra Kunwar, but erroneously, the name of Bal Kunwar has also been entered in the sale deed, therefore, it be read as alienating the sale deed only in favour of Chandra Kunwar. But thereafter, Bal Kunwar – defendant No.1 alienated the suit property to the plaintiff on 6-7-1989 vide Ex.P-8 and when the dispute arose between the parties, purchaser / plaintiff Shivcharan filed suit for declaration of title that he is the joint owner of the suit land with defendants No.1 & 2 and entitled for possession qua the property purchased vide Ex.P-8 which the trial Court decreed holding that the plaintiff is entitled for partition of his share which he has purchased and possession also. But the first appellate Court reversed the judgment & decree of the trial Court against which this second appeal has been preferred by the plaintiff in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

3. Mr. Ashok Kumar Shukla, learned counsel appearing for the appellant

herein / plaintiff, would submit that the first appellate Court is absolutely unjustified in holding Ex.D-2 as rectification deed which was done unilaterally by Chote Bagar, as the only remedy available to Chote Bagar was to file suit for rectification of sale deed under Section 26 of the Specific Relief Act, 1963. As such, the first appellate Court is absolutely unjustified in setting aside the judgment & decree of the trial Court.

4. Mr. Manoj Paranjpe, learned counsel appearing for respondents No.1 & 3 herein / defendants No.2 & 3, would oppose the submission of learned counsel for the appellant herein / plaintiff and submit that Ex.D-2 remained in force from 8-8-1985 to 6-7-1989, the date on which Bal Kunwar – defendant No.1 transferred the suit land to the plaintiff, as such, unless the rectification deed Ex.D-2 is challenged, the plaintiff would not get any interest or title in the property left by Chote Bagar and therefore the appeal deserves to be dismissed.
5. None present for Bal Kunwar – defendant No.1, though served.
6. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
7. Admittedly and undisputedly, Chote Bagar was owner of the suit property which he alienated vide Ex.D-1 in favour defendants No.1 & 2 jointly on 15-7-1985, but immediately thereafter, without notice to defendant No.1 Bal Kunwar, he executed a registered rectification deed vide Ex.D-2 holding that he has only alienated the property to defendant No.2 Chandra Kunwar, but thereafter, defendant No.1 Bal Kunwar sold her share to the plaintiff on 6-7-1989 vide Ex.P-8 and on the strength

of that sale deed, the plaintiff has brought suit for partition and possession.

8. After the sale deed an instrument is executed in respect of the immovable property by a person he cannot get it corrected rectifying the same unilaterally without coming to Court as contemplated under Section 26 of the Specific Relief Act, 1963. Section 26 of the said Act has limited application, and is applicable only where it is pleaded and proved that through fraud or mutual mistakes of the parties, the real intention of the parties as not expressed in relation to an instrument. Such rectification is permissible only by the parties to the instrument and by none else.

9. This brings me to the submission urged by learned counsel for the appellant herein / plaintiff that Chote Bagar ought to have instituted suit for rectification of sale deed dated 15-7-1985 (Ex.D-1) under Section 26(1)(a) of the Specific Relief Act, 1963, it would be appropriate to notice Section 26(1)(a) of the said Act which states as under: -

“26. When instrument may be rectified.—(1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 (1 of 1956) applies] does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

xxx xxx xxx”

10. A meaningful reading of Section 26(1)(a) of the Specific Relief Act, 1963 would show that Section 26(1) of the said Act would be applicable when through fraud or a mutual mistake of the parties, a

contract or other instrument in writing does not express their real intention. It is not the case of Chote Bagar that there is mutual mistake either on his part, but his case was that he wanted to alienate the suit property only in favour of Chandra Kunwar, but erroneously, the name of Bal Kunwar has also been entered in the sale deed, therefore, it be read as alienating the sale deed only in favour of Chandra Kunwar.

11. In the matter of M/s. Siddique and Co. v. M/s. Utomal and Assudamal Co.¹, the Privy Council while considering Section 31 of the Specific Relief Act, 1877 has held that in order to obtain rectification of an instrument under Section 31, it must be proved that it was through a mutual mistake of the parties, that instrument in question did not truly express the intention of parties; and the duty of the Court, before it can rectify, is to find it clearly proved that there has been mistake in framing the instrument, and it must ascertain the real intention of the parties in executing the instrument. On being satisfied of those two elements, it is in the discretion of the Court to grant rectification.

12. In this context, the ratio of law laid down by the Supreme Court in the matter of Joseph John Peter Sandy v. Veronica Thomas Rajkumar and another² is pertinent to be noticed herein profitably. Paragraph 11 of the report reads as follows: -

“11. Thus, in view of the above, it can be held that Section 26 of the Act has a limited application, and is applicable only where it is pleaded and proved that through fraud or mutual mistake of the parties, the real intention of the parties is not expressed in relation to an instrument. Such rectification is permissible only by the parties to the instrument and by none else.”

1 AIR 1946 PC 42

2 (2013) 3 SCC 801

13. Reverting to the facts of the present case in the light of the principles of law flowing from the aforesaid decisions rendered by the Privy Council and the Supreme Court (*supra*), it is quite vivid that once the sale is executed and title is transferred in terms of Section 54 of the Transfer of Property Act and if Chote Bagar – original holder, was of the opinion that the sale deed did not express the true and real intention of the parties including himself and mutual mistake has crept-in in the sale, his remedy was to file suit for rectification of sale deed under Section 26 of the Specific Relief Act, 1963, but he cannot unilaterally even without notice to defendant No.1 Bal Kumar could have executed a valid rectification deed holding that he has transferred the property only to defendant No.2 Chandra Kunwar. Such a course is wholly impermissible in law and by such rectification deed, title already conveyed to defendant No.1 Bal Kunwar could not be taken away.
14. In view of the aforesaid facts and circumstances of the case, the first appellate Court is absolutely unjustified in holding that the sale deed Ex.D-1 has been rectified by Ex.D-2 and thereby the plaintiff is not entitled for partition and possession. As such, judgment & decree of the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered accordingly.
15. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).
16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge