

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 241 of 2009****Judgment reserved on 10.08.2020****Judgment delivered on 24.08.2020**

1. Top Ram, S/o Tara Chand, Dhobi, aged about 42 years, agriculturist, R/o Vill. Bunga, Tah.and Distt. Raigarh (C.G.)

----- Appellant/Defendant No.1**Versus**

1. Baratram, S/o Arathram, aged about 57 years.

2. Jagatram, S/o Arathram, aged about 50 years.

3. Puniram, S/o Arathram, aged about 45 years.

4. Mohitram, S/o Arathram, aged about 40 years.

5. Harishanker, S/o Sitaram, aged about 45 years.
(Plaintiffs)

6. Sahaniram, S/o Bhogde Mawar, aged about 25 years.

7. State of Chhattisgarh, Through Collector, Raigarh, District Raigarh (C.G.)

(Defendants)**----- Respondents**

For Appellant	: Shri B.P. Gupta, Advocate.
For Respondents	: None appeared.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment [C.A.V.]

(1) Final hearing of this second appeal has been conducted through video conferencing.

(2) The substantial question of law involved, formulated and to be answered in this second appeal preferred by defendant No. 1 herein states as under:

“Whether finding regarding the ownership over property in question and sale deed dated 24.11.98 is perverse ?”

(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).

(3) Dispute relates to the land bearing Khasra No. 93/3 (99/6), area 0.101 hectare owned by original plaintiff No. 1 – Arath Ram and the land bearing Khasra No. 303/3, area 0.089 hectare owned by plaintiff No. 2 – Harishanker. It is the case of plaintiffs that the aforesaid lands fell in their share pursuant to the batwara suchi dated 17.6.1996 (Ex.P-1) and on the basis of which order dated 25.06.1996 was passed by Naib Tahsildra, Pussour under Section 178 of the C.G. Land Revenue Code, 1959 and they came in possession of the aforesaid

lands. But defendants No. 2 & 3 in collusion with the revenue authorities got their names mutated by order of Tahsildar dated 18.6.1998, and against which the plaintiffs preferred appeal and in an appeal, that order was stayed by the Sub Divisional Officer (Revenue), Raigarh on 13.8.1998 but meanwhile defendants No. 2 & 3 alienated the aforesaid lands in favour of defendant No. 1 by registered sale deed dated 24.11.1998 vide Ex.P-4 and, thereafter, defendant No. 1 started interfering with the possession of plaintiffs over the aforesaid land necessitating the plaintiffs to file suit for declaration of title and permanent injunction relating to the land shown in Schedule 'C' of the plaint and for declaring the sale deed dated 24.11.1998 (Ex.P-4) null and void.

(4) Resisting the claim of the plaintiffs, the defendant No. 1 filed written statement stating *inter alia* that he is title holder of the suit land as his name has duly been recorded in the revenue records and the suit land has already been transferred in his favour and, therefore, he has become the title holder of the suit land.

(5) The trial Court, after appreciating the oral & documentary evidence available on record, held that plaintiffs are the title holder of the suit land pursuant to the order of partition passed under Section 178 of the C.G. Land Revenue Code, 1959 vide Ex.P-1 and that order has not been challenged by the other side and that has attained finality and, therefore, sale deed dated 24.11.1998 vide Ex.P-4 is null and void and not binding on the plaintiffs, particularly, order passed by the Nayab Tahsildar dated 15.06.1998 recording the names of defendants No. 2 & 3 in the revenue records is contrary to the order dated 25.06.1996 and that order dated 15.06.1998 has ultimately been set aside by the Sub Divisional Officer (Revenue) on 6.10.2000 vide Ex.P-5 and consequently decreed the suit in favour of the plaintiffs. The appeal preferred there-against by defendant No. 1 has been dismissed by the first appellate Court affirming the judgment & decree of the trial Court, against which the second appeal has been preferred in which substantial question of law has been framed and set out in the opening paragraph of the judgment for sake of completeness.

(6) I have heard learned counsel appearing for the

appellant and considered his submission and went through the record with utmost circumspection.

(7) It is quite vivid from the record that the suit land bearing Khasra No. 93/3, area 0.19 hectare fell in share of plaintiff No. 1 in the Batwara Suchi and likewise the land bearing Khasra No. 303/3, area 0.89 hectare fell in share of plaintiff No. 2 in the mutual partition under Section 178 of the Code, 1959 and ultimately the order of partition was passed on 25.6.1996 vide Ex.P-1 and, thereafter, names were recorded in the revenue records and that order has never been challenged by any party including the defendants No. 2 & 3 and that order has attained finality. But anyhow, defendants No. 2 & 3 got their name recorded in the revenue records by order dated 25.6.1998 and though that order was stayed by the Sub Divisional Officer (Revenue) on 13.08.1998, they transferred the suit land in favour of defendant No. 1 vide Ex.P-4 having no title and ultimately the order dated 25.06.1998 has been set aside by the Sub Divisional Officer (Revenue) by order dated 6.10.2000.

(8) It is well settled law that a person, who has no

title, cannot transfer any title to any other person. (See: **Prahlad Pradhan v. Sonu Kumhar**¹).

(9) The Supreme Court in the matter of **Prahlad Pradhan** (supra) had held that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise and held as under :-

“7. Since Mangal Kumhar did not have an exclusive right, title or interest in the suit property, his widow Etwari Kumharin was not legally competent to sell the suit property to the appellants, purporting to be the sole owner of the property. Reliance is placed on **Eureka Builders v. Gulabchand**² wherein this Court held: (SCC pp. 75-76, paras 35-36)

“35. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

1 2019 (10) SCC 259

2 (2018) 8 SCC 67 : (2018) 4 SCC (Civ) 9

36. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfer."

(10) In view of the aforesaid legal position, it is clear that since the defendants No. 2 & 3 had no right, title or interest over the suit land, they could not have transferred the suit land in favour of defendant No. 1 merely on the basis of mutation. As such, since in view of the order of partition under Section 178 of the Code, 1959, the suit property fell in share of plaintiffs No. 1 & 2, respectively, therefore, the defendants No. 2 & 3, merely on the basis of alleged mutation during operation of the interim order dated 13.8.1998 passed by Sub Divisional Officer (Revenue), could not have alienated the suit property in favour of defendant No. 1, by which no title was conveyed to defendant No. 1 and consequently he had no right and title to interfere with the right, interest & title of plaintiffs No. 1 & 2. As such, the first

appellate Court has rightly affirmed the judgment & decree of the trial Court, which is neither perverse nor contrary to law. I do not find any illegality in the judgment & decree of the trial Court and consequently I do not find any merit in the second appeal, it deserves to be and is hereby dismissed further affirming the judgment & decree of the first appellate Court and thereby dismissing the appeal. Substantial question of law is answered accordingly.

(11) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed leaving the parties to bear their own costs.

(12) A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

