

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 28 of 2010**

Sakharam, S/o Koduram, Aged-about 35 years, R/o Munrethi, P.H. No. 78, Revenue Nirikshak mandal – Mandir hasoud, Tahsil & Distt. Raipur (C.G.)

----Appellant/Plaintiff

Versus

1. Raabiya Begum, W/o Sheikh Sultan, R/o Village – Munrethi, p.h. no. 78, Revenue Nirikshak Mandal – Mandir Hasoud, Tahsil & Distt. – Raipur [C.G.]

2. Pratibha Bai, W/o late Balmukund Brahman Lakkad Praveer Border Panara para, Behind middle school, Jagdalpur, tahsil & Distt.- Jagadalpur [C.G.]

3. State of Chhattisgarh, Raipur through – Collector, Raipur, Distt.- Raipur [C.G.]

----Respondents/defendants.

For Appellant : Mr. Y.C. Sharma, Advocate.
For Respondents No.1&2 : None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

23/09/2020

1. Heard on the question of admission and formulation of substantial question of law in a second appeal preferred by the appellant/plaintiff.

2. By the impugned judgment, first appellate Court has dismissed the appeal preferred by the plaintiff affirming the judgment & decree of the trial Court dismissing the suit.

3. Shri Y.C. Sharma, learned counsel appearing for the

appellant/plaintiff would submit that both the courts below were absolutely unjustified in dismissing the suit of the plaintiff by recording a finding which is perverse to the record and appeal involves substantial question of law for determination.

4. The suit land was earlier said to be owned by the plaintiff. His grandfather -Padau transferred the suit land in favour of defendant No.2- Pratibha Bai by registered sale deed dated 8.4.1966 during his minority and, thereafter, defendant No. 2 transferred the suit land in favour of defendant No. 1 - Raabia Begum. On 22.4.1999, the plaintiff filed a suit for declaration of title and possession stating *inter alia* that the said transfer was made by his grandfather without any legal necessity and without any permission from the competent court of jurisdiction under Section 8(3) of The Hindu Minority & Guardianship Act, 1956 (henceforth "Act, 1956") and, therefore, the said sell is void and he be granted decree of declaration of title and possession, which the trial Court dismissed vide its judgement & decree dated 23.06.2009 and the first appeal preferred there-against by the plaintiff was also dismissed by the first appellate court vide its impugned judgment and decree dated 30.11.2009. Against which, this second appeal has been preferred.

5. Both the courts below have dismissed the suit of the plaintiff finding no merit. The transfer of the suit

land was made by plaintiff's grandfather- Padau vide registered sale deed dated 8.4.1966 (Ex.D-5) in favour of defendant No. 2 - Pratibha Bai and the plaintiff is said to have become major in the year 1988 but he has filed the suit on 22.04.1999 whereas he was required to file the suit within three years from the date of attaining the majority by virtue of Article 60(a) of the Limitation Act, 1963. Even otherwise, the plaintiff was required to plead for setting aside the sale deed dated 8.4.1966 (Ex.D-5), but he has not sought relief to get it set aside. As such, both the courts below have rightly dismissed the suit filed by the plaintiff as the suit is barred by limitation as well as not maintainable in absence of challenge made to the sale deed dated 8.4.1966 (Ex.D-5). Thus, the aforesaid finding of fact arrived at by the two courts below is based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

6. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-
(Sanjay K. Agrawal)
Judge

