

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 304 of 2010

1. Puranlal S/o Uderam, aged about 70 years;
2. Dilip Kumar, S/o Puranlal, aged about 29 years;
3. Dinesh S/o Puranlal, aged about 27 years;
4. Rupeshwar, S/o Puranlal, aged about 24 years;
5. Mamta, D/o Puranlal, aged about 20 years;
6. Smt. Bisahin, W/o Puranlal, aged about 66 years;
7. All are R/o Village Bhadarsi, Tahsil & Distt.-
Mahasamund C.G.

---- Appellants

Versus

1. Dileshwar, S/o Puranlal, aged about 42 years, R/o Village Bhadarsi/Karmapatpar, Police Station & District Mahasamund, C.G.
2. State of Chhattisgarh through Collector, Mahasamund C.G.

---- Respondents

For Appellants :- Mr. Manoj Paranjpe & Mr. Anurag Singh, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

22/09/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in the second appeal preferred by the appellants/plaintiffs.
3. By the impugned judgment, the first appellate Court has reversed the judgment and decree of the trial Court by dismissing the suit by granting reversal under Section 96 of Code of Civil Procedure, 1908.
4. Mr. Manoj Paranjpe, learned counsel for the appellants/plaintiffs, submits that first appellate Court went wrong in reversing the judgment and decree of the trial Court by recording the finding which is perverse to the record. It ought to have upheld the decision of the trial Court holding that the suit property was purchased by plaintiff No.1 in the name of defendant No.1 by recording a finding which is perverse to the record.
5. Plaintiff No.1 purchased the suit property in the name of defendant No.1 by two sale deeds dated 09.03.1968 & 04.06.1968 as the defendant

No.1 was minor at that time and thus the suit property was purchased through guardian plaintiff No.1. Suit was instituted on 27.02.2005 for permanent injunction simpliciter stating that suit property is purchased from joint family property by plaintiff No.1 in the name of defendant No.1. The trial Court decreed the suit and granted permanent injunction in favour of the plaintiffs and against the defendant No.1. Defendant No.1 preferred appeal their against. The first appellate Court reversed the decree holding that no declaration that the suit property so purchased is the property of joint family, was sought and plaintiffs had failed to prove that the suit was purchased from the joint family property and accordingly dismissed the suit granting the appeal. The plaintiffs have filed suit only for permanent injunction though the sale deeds stand in the name of defendant No.1 way back on 09.03.1968 and 04.06.1968, but no declaration was sought that the purchase made in the name of defendant No.1 is the joint family property. Even otherwise, such plea was barred by

Section 4(1) of the Benami Transactions (Prohibition) Act, 1988. The first appellate Court has rightly concluded that plaintiffs are not entitled for permanent injunction as the said property was purchased by defendant No.1 and no declaration was sought by the plaintiffs. The first appellate Court has rightly granted the appeal which is neither perverse nor contrary to the records. The first appellate Court is justified in granting the appeal which is strictly in accordance with law.

6. I do not find any perversity in the second appeal. Accordingly, the instant second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit