

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.261 of 2008**

Bhurwaram @ Ghurwaram, S/o Dongarharam, aged 48 years, Caste-Teli (Sahu), Occupation-Agriculturist and Poojari of Kaila Devi Chamunda Mandir, Pandatarai, R/o Village-Pandatarai, District-Kabirdham (CG)

----- **Appellant/Plaintiff**

Versus

1. Bharat, S/o Govind, aged 45 years, Caste-Marar, Occupation-Agriculturist and Laborer, R/o Village Pandatarai, Tahsil-Pandariya, District-Kabirdham (CG)
2. Munni Sao, S/o Ramdheen, aged 65 years, Caste-Gupta, Occupation-Agriculturist, R/o Village-Pandatarai, Tahsil-Pandariya, District Kabirdham (CG)
3. Gopi, S/o Lala, aged 65 years, Caste-Teli (Sahu), Occupation-Agriculturist, R/o Village-Pandatarai, Tahsil-Pandariya, District-Kabirdham (CG)
4. Panchuram, S/o Punnuram @ Punniram, aged 35 years, Caste-Teli (Sahu), Occupation-Agriculturist, R/o Village-Pandatarai, Tahsil-Pandariya, District-Kabirdham (CG)
5. State of Chhattisgarh Through-Collector, District-Kabirdham (CG)

----- **Respondents/Defendants**

For Appellant/Plaintiff: Mr. Rajeev Shrivastava and Mr. Malay Shrivastava, Advocates

For Res.No.1 to 4/Defendants:

: None present

For Respondent No.5 : Mr. Ravi Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

30.01.2020

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the plaintiff are as under:-

"1. Whether the Courts below have committed an error of law by holding that the document Ex.P/8 having not been registered, is not admissible in evidence and the plaintiff cannot establish his title on the basis of said document ?

2. Whether the finding recorded by the Courts below that the defendants have not encroached on the suit land 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].

2. The suit property including other properties was purchased by Baiyanbai and Punniram in the names of Bhurwa and Panchuram jointly by registered sale deed 28.4.1964, at that time, both plaintiff-Bhurwa and defendant No.4-Panchuram were minors. It is the case of the plaintiff that out of which, Punnuram, father of defendant No.4-Panchuram, has sold 4 decimal of land by unregistered sale deed dated 15.5.1969 (Ex.P-8) in favour of plaintiff-Bhurwaram and delivered the peaceful possession to him. Thereafter, defendants No.1 to 3 have encroached upon 0.11 decimal of land of the plaintiff, as such, he is entitled for declaration and possession.

3. The defendants set-up a plea that the plaintiff is not title-holder of the suit land and as such, he is not entitled for declaration and possession.

4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 3.10.2007, dismissed the suit holding that Ex.P-8 is unregistered document and no decree can be granted on the basis of unregistered document. On appeal being preferred by the plaintiff, the first appellate Court upheld the judgment and decree of the trial Court. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial questions of law have been formulated, which have been set-out in the opening paragraph of this judgment.

5. Mr. Shrivastava, learned counsel for the appellant/plaintiff, would submit that both the Courts below have committed legal error in holding that Ex.P-8 requires registration as it is unregistered document by which Punnuram, father of defendant No.4- Panchuram has sold the suit land in favour of plaintiff-Bhurwa on cash consideration of ₹ 38/- and delivered possession and sale would complete thereby and it does not require registration in view of the provisions contained in Section 54 of the Transfer of Property Act, 1882 (hereinafter called as 'TP Act'),

as such, both the Courts below have committed legal error in dismissing the suit.

6. None present for respondents NO.1 to 4/defendants though served.

7. I have heard learned counsel for the appellant/plaintiff and considered his submissions made hereinabove and also went through the records with utmost circumspection.

8. Admittedly, 4 decimal of land was earlier purchased by Baiyanbai and Punniram in the names of plaintiff-Bhurwa and defendant No.4 herein-Panchuram (both minors at that time) by registered sale deed dated 28.4.1964 and Punniram, father of defendant No.4, is said to have transferred the suit land in favour of the plaintiff by unregistered sale deed dated 15.5.1969 (Ex.P-8) on cash consideration of ₹ 38/- and by Ex.P-8 he is claiming title over the suit land, which the Courts below have not accepted on the ground that Ex.P-8 is unregistered document and it is inadmissible in evidence for want of registration though sale deed is unregistered document, but sale amount is less than one hundred rupees, therefore, registration may not be necessary in view of definition of sale under Section 54 of the TP Act, but the fact remains that the suit land was purchased in

the names of Bhurwa and Panchu-defendant No.4 by registered sale deed dated 28.4.64 (Ex.P-9) and at that time, defendant No.4 was minor and father of defendant No.4 has transferred the suit land in favour of the plaintiff during the minority of defendant No.4 on 15.6.69. While alienating the property of defendant No.4, neither permission under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 has been obtained from the Court by Punnuram, father of defendant No.4 nor it is established that alienation was made for legal necessity and for the benefit of minor, rather it is the case where minor's property is said to have been transferred by Punnuram, father of defendant No.4 unauthorizedly. Admittedly, he had no title independently on the date of sale to the plaintiff as in the sale deed dated 28.4.64 (Ex.P-9) he was one of seller in favour of defendant No.4, therefore, he could not have transferred or conveyed title to the plaintiff, as such, this Court is not inclined to hold that both the Courts below have committed legal error in dismissing the suit. I do not find any merit in this second appeal. The substantial questions of law are answered in favour of the defendant and against the plaintiff.

9. Accordingly, the second appeal being devoid of merit

is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

10. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-