

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 145 of 2008**

1. Ramishwar S/o Chandu Cherwa, Aged about 32 years.
2. Deo Kunwar D/o Late Ugrasen, Aged about 13 years.
3. Son Kunwar D/o Late Ugrasen, Aged about 11 years.
4. Shiv Prasad (died and deleted).

Appellants No. 2 to 4 are minors and represented through their uncle appellant No. 1.

Appellant No. 1 to 4 are R/o Village Tendua, Tahsil Baikunthpur, District Korla, Chhattisgarh.

5. Sendurmati W/o Suresh, Aged about 20 years, R/o Village Pathargawan, Tahsil Ramanujnagar, District Surguja, Chhattisgarh.
6. Chandra Mani, W/o Harinath D/o Ugrasen, Aged about 21 years, R/o Village Telaimuda, Tahsil Ramanujnagar, District Surguja, Chhattisgarh.
7. Kadam Kunwar W/o Sushil, Aged about 20 years, R/o Kaskela, Tahsil Khadgawana, Post Kalka, District Surguja, Chhattisgarh.

---Appellants/Lrs. Of the plaintiff

Versus

1. Dilbasia D/o Late Bhola W/o Deolal Singh, Aged about 41 years, R/o Village Paradol, Tahsil Sonhat, District Korla, Chhattisgarh.
2. State of Chhattisgarh, Through Collector Korla, Baikunthpur, District Korla, Chhattisgarh.
3. Smt. Sunita, Widow of Late Shivprasad, Aged about 21 years.

4. Siddharth S/o Late Shivprasad, Aged about 1 and ½ year R/o Village Tendua, P.S. Patna, Tahsil Baikunthpur, District Korla, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:- Mr. J.K. Shastri, Advocate
For State	:- Mr. Mateen Siddiqui, Dy. A.G.

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

11/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/LRs. of the plaintiff under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which learned trial Court dismissed the suit of the plaintiff finding no merit.

2. Mr. J.K. Shastri, learned counsel for the appellants/LRs. of plaintiff would submit that both the Courts below have committed illegality in dismissing the suit of the plaintiff and not granting decree in his favour as original plaintiff – Mohar Say has already purchased the suit land by sale deed dated 21/06/1974 from defendant No. 1 through his guardian uncle Ugan Gond and has also perfected his title by way of

adverse possession, as such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3. The suit land was originally held by defendant No. 1 Dilbasiya, daughter of Bhola Gond. It is a case of the plaintiff that defendant No. 1's guardian uncle namely Ugan Gond sold the suit land in his favour by sale deed dated 21/06/1974 for legal necessity as he required money for maintenance of defendant No. 1 and since then, plaintiff has been in continuous possession of the suit land and he has therefore, perfected his title over the suit land by way of adverse possession to which defendant No. 1 set up a plea that the said transaction is not a sale transaction and defendant No. 1's guardian uncle Ugan Gond had no right to sell the suit land without the leave of the Court under Section 8(2) of the Hindu Minority and Guardianship Act, 1956.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit holding that plaintiff has failed to prove his title over the suit land as he has not perfected his title by way of adverse possession and defendant No. 1's uncle Ugan Gond had no

right and title to alienate the suit land in favour of the plaintiff without the leave of the Court when she was a minor, as such, the sale is not a real sale which was also affirmed by learned first appellate Court in the appeal preferred by the plaintiff under Section 96 of the CPC.

5. Admittedly, the suit land was held by defendant No. 1 Dilbasiya and both her parents died when she was a minor, thereafter, she was looked after by her uncle namely Ugan Gond, who without the leave of the Court, sold the suit land in favour of the plaintiff by sale deed dated 21/06/1974. Both the Courts below did not accept the said sale transaction to be a real and outright sale for the reason that during that time, defendant No. 1 was still a minor and without taking the leave of the Court, the suit land could not have been alienated by her guardian uncle Ugan Gond and since, defendant No. 1 belongs to 'ab-original tribe', the plea of adverse possession is not available to the plaintiff.

6. Both the Courts below concurrently recorded a finding that the alienation made by defendant No. 1's guardian uncle in favour of the plaintiff on

21/06/1974 without the leave of the Court is in violation with Section 8(2) of the Act of 1956 and defendant No. 1, being a member of the 'ab-original tribe', the plea of adverse possession is not available to the plaintiff and even otherwise, the plea of adverse possession was not found established by the two Courts below. The said finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

7. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet