

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 316 of 2008**

Vigan Ram, S/o. Balsai Rajwar, aged about 54 years,
R/o. Village Unchdih, Tahsil Surajpur, District –
Surguja (C.G.)

-----Appellant/Plaintiff

Versus

1. Singaro, W/o. Desu Rajwar, aged about -49 years.
2. Ram Singar, S/o. Desu Rajwar, aged about -44 years,
3. Ram Prasad, S/o. Desu Rajwar, aged about -47 years,

All of respondents No. 1 to 3 are R/o. Village Kharsura, Tahsil – Surajpur, District – surguja (C.G.)

4. Tamsai, S/o Balsai, aged about – 56 years,
5. Tilsai, S/o. Balsai, aged about 52 years,
6. Lalsai, S/o. Balsai, aged about -38 years,

Respondents No. 4 to 6 are R/o. Village Unchdih, Tahsil Surajpur, District – Surguja (C.G.)

7. Mankunwar, W/o Balsai, aged about -33 years, R/o. Village Durmaria, Tahsil – Surajpur, District – Surguja (C.G.)
8. Sukhan @ Duhan, S/o. Gona Rajwar, aged about-57 years, R/o. Village Kharsura, Tahsil Surajpur, District – Surguja (C.G.)
9. State of Chhattisgarh, through – Collector, Surguja, Ambikapur

-----Respondents/Defendants

For Appellant : Mr. Pushpendra Kumar Patel, Adv.
For Respondent No.9 : Mr. Rahul Jha, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/02/2020

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 05.05.2008 passed by Second Additional District Judge (Fast Track Court), Surajpur, District Surguja in Civil Appeal No.2-A/2008 affirming the judgment & decree dated 28.01.2008 passed by Civil Judge, Class-II, Surajpur in Civil Suit No. 89-A/1993, dismissing the suit finding no merit.

(2) Suit property was originally held Bhukhal. He had two daughters namely Jugmel and Dhanmet. Original holder Bhukhal, during his life, had executed two gift-deeds of his property; one was on 31.07.1992 in favour of Darogi and another was on 8.3.1973 (Ex.D-2) in favour of Dhutur & Duhannd. The said gift deeds were challenged by Smt. Dhanmet, daughter of Bhukhal being Civil Suit No. 10-A/1977 (Smt. Dhanmet v. Ghutru & others), that civil suit was decreed on 26.10.1981 but the first appeal preferred by Ghutru & others thereagainst was allowed by the first appellate Court being Civil Appeal No. 75-A/84 on 21-2-1985 (Ex.D-4). Against which, Dhanmet preferred Second Appeal No.

349/85 before the High Court of Madhya Pradesh, which was dismissed by the said Court on 20-10-1992 vide Ex.D-3, thereafter, instant civil suit was preferred by Vigan Ram (grandson of Bhukhal) on 5.5.1993, which was dismissed by the trial Court and on an first appeal being preferred by Vigan Ram (plainitff) thereagainst, the first appellate Court has dismissed the appeal affirming the judgment of the trial Court, against which, instant second appeal has been preferred.

(3) Learned counsel appearing for the appellant/plaintiff would submit that dismissal of instant civil suit as framed and filed by Vigan Ram, appellant/plaintiff herein by holding that it was hit by principle of *res judicata* as contained in Section 11 of the CPC by recording a finding, which is perverse and contrary to the record, as such, the appeal deserves to be admitted for hearing by formulating substantial question of law.

(4) The subject matter of earlier suit and instant suit is the gift deeds made by Bhukal in favour of Dagori, Dhutur & Duhan, which were challenged earlier filed and dismissed and ultimately Madhya Pradesh High Court vide its judgment dated 20.10.1992 passed in Second Appeal No. 349/85 (Ex.D-3) dismissed the second appeal affirming the decree of the first appellate court

dismissing the suit filed by Smt. Dhanmet, daughter of Bhukul, as such, subject matter of the earlier suit, which culminated in the judgment of the High Court of Madhya Pradesh (Ex.D-3) and the subject matter of the present suit filed by grandson of Bhukhal i.e. appellant/plaintiff herein are directly and substantially in issue in second suit and subject matter of both the civil suits are identical as earlier daughter of Bhukal i.e. Smt. Dhanmet had challenged the gift deeds and now the grandson of Bhukhal i.e. appellant/plaintiff herein had challenged the said gift deeds, as such, both the courts below have rightly concluded that present suit is hit by principle of res judicae as contained in Section 11 of the CPC. The said finding is a finding of fact based on material available on record and I do not find it either perverse and contrary to the record and no question of law much less substantial question of law is involved in this appeal.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to other side.

D/-

Sd/-
(Sanjay K. Agrawal)
Judge

