

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 427 of 2009**

Suhata Bai, D/o Late Shri Inderman, aged about 48 years, R/o Village – Mudagaon, Post – Ranipartewa, Tahsil – Gariyaband, District Raipur (C.G.)

----Appellant/Plaintiff

Versus

1. Heeraram, S/o Indal, aged about 38 years, R/o Village – Amlidih, Post – Panduka, Tahsil – Kurud, District – Dhamtari (C.G.)

2. State of Chhattisgarh, Through : Collector, Dhamtari, District Dhamtari (C.G.)

----Respondents/Defendants

For Appellant/Plaintiff

: Mr. D.N. Prajapati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/07/2020

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal under Section 100 of the Code of Civil Procedure, 1908 preferred by appellant/plaintiff against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial court dismissing the suit.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts were absolutely unjustified in dismissing the suit preferred by the plaintiff holding that the original defendant No. 1 -Chandar Bai has rightly sold the suit property in favour of defendant No. 2 – Heeraram without consent of the appellant/plaintiff as original defendant No. 1 – Chander Bai ought to have sold the suit property with the consent of the appellant/plaintiff as she (plaintiff) is also the co-owner of the suit property, as such,

the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(4) The suit property was originally held by one Inderman; and the original defendant No. 1 – Chander Bai (since deceased) was his wife. Plaintiff is the daughter of Inderman and Chander Bai. Chander Bai sold the suit property to the extent of 2 acres of the land out of 5 acres of the land in favour of defendant No. 2- Heeraram vide registered sale deed dated 23.08.1987, which necessitated the plaintiff to file civil suit on 27.04.2000 for seeking declaration that the said sale deed dated 23.08.1997 (Ex.P-1) as void, which the trial Court as well as the first appellate Court dismissed the suit holding the plaintiff's mother -Chandar Bai inherited five acres of the land and she, out of five acres of the land, alienated two acres of the land to the defendant No. 2 and she can alienate the suit property to the extent of her share. In the considered opinion of this Court, both the courts below have rightly and concurrently held that late Smt. Chander Bai, wife and widow of late Inderman was entitled to alienate only two acres of the land out of total five acres of the land in favour of defendant No. 2 – Heeralal, which is less than to the extent of her share in the suit property. The said finding recorded by both the courts below are correct finding of fact 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.

(5) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

(1) Whether the first appellate Court was justified in granting decree in favour of the plaintiff ignoring the fact that erstwhile owner of the suit land Raja..... and his son..... has already executed a title deed / sale deed dated 28.08.2002 (Ex.D-1) in favour of defendants No. 2 & 3, by recording a finding, which is perverse and contrary to the record ?

(2) Whether the first appellate Court was justified in not remitting the matter after holding that the permission for review was granted without affording opportunity of hearing to the plaintiff by virtue of provisions contained in Section 51 of the C.G. Land Revenue Code,