

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.67 of 2009**

1. Vishnuram, S/o. Kejuram, aged 40 years, R/o. Village-Pond, Tahsil Rajim, District Raipur (CG)
2. Dhanushram, S/o. Kejuram, aged about 30 years, R/o. Village-Pond, Tahsil Rajim, District Raipur (CG)

----- Appellants/Defendants**Versus**

1. Sonal Bai, S/o. Ramadhin Sahu, aged about 58 years, R/o. Village-Rajankata, Tahsil Rajim, District Raipur (CG)
2. Sonbati Bai, D/o. Ramadhin Sahu, aged about 56 years, R/o. Village-Kopara, Tahsil Rajim, District Raipur (CG)

----- Plaintiffs

3. State of Chhattisgarh through the Collector, Raipur, District Raipur (CG)

----- Respondents

For Appellants/Defendants: Mr.Raghvendra Pradhan and
Mr.Shikhar Sharma, Advocates
For Res.No.1&2/Plaintiffs: Mr.Awadh Tripathi and Mr.Vivek
Tripathi, Advocates
For Respondent No.3/State: Mr.Anshuman Rabra, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****17.02.2020**

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

"1. Whether the finding recorded by the courts below regarding nature of suit property as ancestral is based on no evidence and is perverse ?

2. Whether the finding recorded by both the courts below regarding execution of sale-deed

dated 15.02.1999 (Exhibit P/2, P/4 & P/5) in favour of sons of Leela Bai i.e. Vishnu, Dhaniram and Bhagwat, by late Ramadhin, without consideration, ignoring the admission of late Ramadhin in his written statement especially when both the courts below held that Ramadhin was of sound mind at the time of execution of sale-deed, is perverse and deserves to be set aside ?”

[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 was originally held by Ramadhin Sahu. Plaintiffs-Sonaibai and Sonbati are daughters of Ramadhin Sahu and original defendant No.1 was also daughter of Ramadhin Sahu who died during pendency of the suit and her legal representatives i.e. defendants No.1(A)-Vishnu Ram Sahu, 1(B)-Dhanushram and 1(C)-Bhagwat were brought on record. Ramadhin Sahu was also impleaded as defendant No.1(D) in the plaint and his name was deleted during pendency of the suit. Two plaintiffs filed a suit that the suit property was ancestral property in the name of their father Ramadhin Sahu in which they are entitled for 1/3rd share and alienation made by Ramadhin Sahu in favour of defendants No.1(A), 1(B) and 1(C) on 15.2.1999 (Exs.P-2, P-4 and P-5) are null & void and not binding on the plaintiffs.

3. Original defendant No.1-Leelabai and her legal representatives i.e. defendants No.1(A), 1(B) and 1(C) filed their written statement and denied the averments made in the plaint stating inter-alia that Ramadhin Sahu has already alienated the suit property in favour of defendants NO.1(A), 1(B) and 1(C) and therefore, the plaintiffs are not entitled for any share.
4. Defendant No.1(D)-Ramadhin Sahu filed his separate written statement stating inter-alia that he has alienated the suit property in favour of defendants NO.1(A), 1(B) and 1(C).
5. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 22.6.2007 returned the finding that only 2.33 hectares of land situated at village Pond is ancestral property of Ramadhin Sahu and alienation made by Ramadhin Sahu in favour of defendants No.1(A), 1(B) and 1(C) on 15.2.1999 (Exs.P-2, P-4 and P-5) is not in accordance with law and each of the plaintiffs are entitled for 1/3rd share in the suit property and in 1/3rd share, legal representatives of original defendant No.1-Leelabai are entitled. On appeal being preferred by defendants No.1(A) and 1(B), the first appellate Court affirmed the judgment and decree of the trial Court and dismissed the appeal. Questioning the judgment and

decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by defendants No.1(A) and 1(B), in which substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment.

6. Mr. Shikhar Sharma, learned counsel for the appellants/defendants, would submit that both the Courts below have committed legal error in holding that the suit property i.e. 2.33 hectares was ancestral property of Ramadhin Sahu and each of the plaintiffs are entitled for 1/3rd share in the suit property and also committed legal error in holding that sale-deeds dated 15.2.1999 (Exs.P-2, P-4 and P-5) are not real sale deeds and not binding on the plaintiffs and as such, the judgment and decree of both the Courts below deserve to be set aside.

7. On the other hand, Mr. Vivek Tripathi, learned counsel for respondents No.1 and 2/plaintiffs, would support the impugned judgment and decree.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to substantial question of law NO.1:-

9. It is the case of the plaintiffs that the suit

property was ancestral property in the name of their father Ramadhin Sahu and thereafter two plaintiffs and original defendant No.1-Leelabai have succeeded jointly being daughters of Ramadhin Sahu, in which the defendants except defence of denial did not take a plea that the suit property was separate property of Ramadhin Sahu and therefore, he was empowered to alienate the same in favour of defendants NO.1(A), 1(B) and 1(C) by sale deeds dated 15.2.1999 (Exs.P-2, P-4 and P-5) and took only defence of denial as stated. The trial Court after analyzing oral and documentary evidence available on record reached to the conclusion that only the land i.e. 2.33 hectares is ancestral property of Ramadhin Sahu and not the entire land i.e. 4.69 hectares as mentioned in the plaint and sale deeds were executed only to avoid to grant any share to the plaintiffs, which the first appellate Court has also agreed and dismissed the appeal, though learned counsel for the appellants/defendants tried to canvass that finding recorded by two Courts below holding that the suit property is ancestral property is perverse, but he cannot demonstrate that findings are perverse. The trial Court has recorded a finding that the defendants including Ramadhin Sahu who filed his separate written statement did not take a plea that the suit property

is his self-acquired property and therefore, he has alienated the same in favour of defendants No.1(A), 1(B) and 1(C) and the plaintiffs have no right over the suit property, on contrary, the trial Court has clearly recorded a finding that only 2.33 hectares of land is ancestral property of Ramadhin Sahu in which each of the plaintiffs are entitled for 1/3rd share, which the first appellate Court has affirmed. Finding recorded by two Courts below holding the suit property i.e. 2.33 hectares to be ancestral property is finding of fact based on evidence available on record. It is is neither perverse nor contrary to record.

Answer to substantial question of law NO.2:-

10. Admittedly, Ramadhin Sahu has executed three sale deeds dated 15.2.1999 (Exs.P-2, P-4 and P-5) in favour of defendants No.1(A), 1(B) and 1(C).

11. In the matter of **Smt.Dipo v. Wassan Singh and others**¹ the Supreme Court noticed the incidents of ancestral property as quoted in the Mulla's Hindu Law (15th Edition), pages 289 and 291 respectively in the following words:

".....if A inherits property, whether movable or immovable, from his father or father's father, father's father's father, it is ancestral property as regards his male issue. If A has no son, son's son, son's son's son in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he

¹ AIR 1983 SC 846

can deal with it as he pleases.....A person inheriting property from his three immediate paternal ancestors holds it and must hold it, in coparcenary with his sons, son's sons and son's son's son, but as regards other relations, he holds it and is entitled to hold it, as his absolute property.

The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession."

- 12.** Reverting to the facts of the present case in light of principles of law laid down by the Supreme Court in above-stated judgment (supra), it is quite vivid that since daughters of Ramadhin Sahu were not coparceners, therefore, ancestral property in the hands of Ramadhin Sahu was his absolute property and he was absolute owner thereof and he can deal with it as he pleases, but both the Courts below have concurrently held that alienation made by Ramadhin Sahu in favour of defendants No.1(A), 1(B) and 1(C) was not for legal necessity and no consideration was passed in favour of Ramadhin Sahu, and it was nominal sale only to avoid the allotment of share to the plaintiffs. Finding recorded by two Courts below that alienation made by Ramadhin Sahu in favour of

defendants No.1(A), 1(B) and 1(C) was without consideration and without legal necessity is finding of fact based on evidence available on record, which is neither perverse nor contrary to record.

13. 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).

14. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-