

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 49 of 2009**

1. Abdul Hamid Beg, S/o Pyar Beg, Aged about 65 years, R/o Jamshedpur, District Singhbhum, Bihar.
2. Kalam Beg, S/o Yaar Beg, Aged about 55 years.
3. Manan Beg, S/o Yaar Beg, Aged about 50 years.
4. Saleem Beg, S/o Yaar Beg, Aged about 38 years.
5. Aleem Beg, S/o Yaar Beg, Aged about 40 years.
6. Kaleem Beg, S/o Yaar Beg, Aged about 34 years.
7. Haseena Be, D/o Yaar Beg, Aged about 50 years.
8. Noorjahan Be, D/o Yaar Beg, Aged about 42 years.

Appellants No. 2 to 8 are r/o Village Devkar, Tahsil Saja, District Durg, Chhattisgarh.

9. Chand Beg, S/o Miyan Beg, Aged about 60 years, R/o Jamshedpur, District Singhbhum, Bihar.

--Appellants/Plaintiffs

Versus

1. Jayanab Be, W/o Jumman Khan, Aged about 55 years, R/o Village Khairtal, Tahsil Baloda Bazar, District Raipur, Chhattisgarh.
2. Subaratan Be, W/o Shajuddin, Aged about 50 years, R/o Village Gurra, Tahsil Baloda Bazar, District Raipur, Chhattisgarh.
3. Jumman Beg, S/o Miyan Beg, Aged about 65 years, R/o Behind Railway Station, Bhatapara, Tahsil Baloda Bazar, District Raipur, Chhattisgarh.
4. Kunjlal, S/o Samaylal Dewangan, Aged about 32 years, R/o Village Devkar, Tahsil Saja, District Durg, Chhattisgarh.

5.State of Chhattisgarh, through Collector, Durg,
District Durg, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:-	Mr. Manoj Paranjpe and Mr. Shubhank Tiwari, Advocates
For State	:-	Mr. Akash Pandey, Panel Lawyer

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

25/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs 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 trial Court dismissed the suit finding no merit.

2. Mr. Shubhank Tiwari, learned counsel for the appellants/plaintiffs would submit that both the Courts below have committed illegality in holding that Hajra Be had full right and title to alienate the suit property in favour of defendant No. 3 namely Kunjlal vide registered sale deed dated 17/05/1984 and thereby, dismissing the suit of the plaintiffs by recording a finding which is perverse and contrary to the record, as such, the appeal

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

3. Miya Beg had two wives namely Sakunat Be and Hajra Be (defendant No. 1). The three plaintiffs are the grandson and sons of Miya Beg respectively, born out his wedlock with his first wife Sakunat Be. Defendants No. 1(a) and 1(b) are daughters of Hajra Be and Miya Beg and defendant No. 2 Jumman Beg is the son of Miya Beg born out of his wedlock with his second wife Hajra Be.

4. Defendant No. 1 - Hajra Be sold the suit property in favour of defendant No. 3 by registered sale deed dated 17/05/1984 against which plaintiffs filed a suit for declaration of title, possession and permanent injunction stating *inter alia* that defendant No. 1 had no right and title to alienate the suit property in favour of defendant No. 3, as such, plaintiffs have right of preemption over the suit property for purchasing the same to which defendant No. 3 opposed by filing written statement stating that Miya Beg had already sold the suit property to defendant No. 1 - Hajra Be by registered sale deed dated

17/12/1968 (Ex. D1/A), as such, Hajra Be was fully entitled to sold the suit property to defendant No. 3.

5. In the first round of litigation, learned trial Court decreed the suit of the plaintiffs and on appeal being preferred by the defendants, learned first appellate Court allowed the application under Order 41 Rule 27 and remanded back the matter to the trial Court. In the second round of litigation, the trial Court dismissed the suit holding that Hajra Be was entitled to sell the suit property in favour of defendant No. 3 as she purchased the suit property from Miya Beg vide registered sale deed dated 17/12/1968 (Ex. D1/A) and became the title-holder of the suit property which was eventually affirmed by the first appellate Court in the appeal preferred by the plaintiffs.

6. Admittedly and undisputedly, vide Exhibit D1/A, Miya Beg sold the suit property to Hajra Be (defendant No. 1) way back on 17/12/1968 and defendant No. 1 Hajra Be, being the owner thereof, alienated the suit property in favour of defendant No. 3 by registered sale deed

dated 17/05/1984 and admittedly, the said sale deed dated 17/12/1968 (Ex. D1/A) was not under challenge before the trial Court so, the sale made by Miya Beg in favour of defendant No. 1 Hajra Be vide registered sale deed dated 17/12/1968 (Ex. D1/A) has become final.

7. In that view of the matter, learned trial Court, though in the second round of litigation, has rightly held that defendant No. 1 Hajra Be was fully entitled to alienate the suit property in favour of defendant No. 3 and plaintiffs have no right of preemption over the suit property which has rightly been affirmed by the first appellate Court.

8. The said finding recorded by the trial Court duly affirmed by the first appellate Court that defendant No. 1 Hajra Be, having acquired title over the suit property by strength of sale deed dated 17/12/1968 (Ex. D1/A), was fully empowered to alienate the suit property in favour of defendant No. 3 vide sale deed dated 17/05/1984 is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record, as such,

it does not involve any substantial question of law for determination.

9. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet