

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 63 of 2009**

Mangal Singh S/o Amol Singh Thakur, Aged about 72 years, Agriculturist R/o Village Parpora, Tahsil Berla, District Durg, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Bhagela Singh, S/o Amol Singh Thakur, Aged about 80 years, Agriculturist R/o Village Parpora, Tahsil Berla, District Durg, Chhattisgarh.
2. State of Chhattisgarh, Through the Collector, Durg, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:- Mr. Vinod Kumar Sharma, Advocate
For State	:- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01/07/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the impugned judgment and decree of the first appellate Court affirming the

judgment and decree by which trial Court dismissed the suit of the plaintiff.

3. Mr. Vinod Kumar Sharma, learned counsel for the appellant/plaintiff, would submit that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiff by holding that plaintiff is not entitled for decree with respect to the land shown in paragraphs 2(a) and 2(b) of the plaint. They ought to have held that the alienation made by Amol Singh Thakur i.e. father of plaintiff and defendant No. 1 through his power of attorney holder defendant No. 1, vide sale deeds dated 09/07/1970 (Exhibits D/3 and D/4), was the benaami transaction in favour of Chetan Singh and Keju Singh, as such, the appeal deserves to be admitted by formulating substantial question of law.

4. Plaintiff and defendant No. 1, both of them are sons of Amol Singh Thakur, as such, both are brothers. It is the case of the plaintiff that the land shown in paragraphs 2(a) and 2(b) was his father's property which was alienated by his power of attorney holder defendant No. 1 in favour of one Chetan Singh and Keju Singh respectively, by sale deeds dated 09/07/1970

(Exhibits D/3 and D/4), and thereafter, he got the said land transferred in his own name, therefore, the land shown in paragraphs 2(a) and 2(b) of the plaint, admeasuring 14.73 hectares in total, is the joint family property and he is entitled to $\frac{1}{2}$ share in the said suit land.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit of the plaintiff holding that he is not entitled for any share in the suit land mentioned in paragraphs 2(a) and 2(b) of the plaint as sale deeds (Exhibits D/3 and D/4) allegedly executed by Amol Singh Thakur in favour of Chetan Singh and Keju Singh have not been challenged in the suit and no declaration has been sought seeking invalidation of the said sale deeds, therefore, plaintiff is not entitled for decree as claimed, which was affirmed by learned first appellate Court in the appeal preferred by the plaintiff.

6. Admittedly, the suit land mentioned in paragraphs 2(a) and 2(b) of the plaint admeasuring 14.73 hectares of land in total was transferred by Amol Singh Thakur through his power of attorney holder defendant No. 1 way back on 09/07/1990 vide Exhibits D/3 and D/4. Undisputedly, the said sale

deeds were not challenged in the suit filed by the plaintiff as late as on 13/05/2004. One of the findings recorded by both the Courts below is that in absence of challenge laid to the sale deeds (Exhibits D/3 and D/4), the said sale deeds have become final and therefore, at this stage after 34 years, the plaintiff cannot be permitted to assail those sale deeds collaterally. The plaintiff ought to have questioned the sale deeds in the suit and in absence of that, the alienation of suit land made by Amol Singh Thakur in favour of Chetan Singh and Keju Singh has become final and now, the plaintiff cannot challenge collaterally by simply seeking declaration that he is entitled for $\frac{1}{2}$ share in the suit land.

7. Thus, both the Courts below have concurrently and rightly held that suit land mentioned in paragraphs 2(a) and 2(b) of the plaint admeasuring 14.73 hectares in total is not the joint family property of plaintiff and defendant No. 1 and therefore, plaintiff is not entitled for $\frac{1}{2}$ share in the said suit land which is neither perverse nor contrary to the record. I do not find any perversity or illegality in the said

finding which could give rise to substantial question of law for determination.

8. 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