

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.263 of 2008

Loknath S/o Premdas, age about 40 years, R/o Bazirao
Mahara para, Raigarh, Tahsil & Distt: Raigarh (CG)

----- Appellant/Plaintiff

Versus

1. Kartikdas, S/o Kuldhar, Age about 65 years,
2. Phagolal, S/o Kuldhar, age about 45 years,
3. Premdas, S/o Indersai, Age about 65 years,
4. Baratmati, W/o Premdas, Age about 65 years,
5. Shantibai D/o. Premdas Satnami, Age about 26 years,
Respondent No. 1 to 3 are Occupation-Farmer,
Respondent NO.4, Occupation-Nothing, Respondent No.5
Occupation-House wife, All R/o Gram Jampali, Tahsil
& District : Raigarh (CG)
6. State of Chhattisgarh Through collector, Raigarh,
District-Raigarh (CG)

----- Respondents/Defendants

For Appellant/Plaintiff	: Mr.Amit Sharma, Advocate
For Respondents No.1&2	: Mr.Atul Pandey, Advocate
For Respondent NO.6	: Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

03/02/2020

1. Heard on admission and formulation of substantial
question of law in the second appeal preferred by
appellant/plaintiff questioning the impugned
judgment and decree passed by the 3rd Additional
District Judge (F.T.C.), Raigarh reversing the
judgment and decree of the trial court by which the
plaintiff's suit for declaration of title and

possession has been dismissed by granting the appeal.

2. Mr. Amit Sharma learned counsel for the appellant/plaintiff, would submit that first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial court after having held that the suit property mentioned in Schedule-A of the plaint was ancestral property of his father-Premdas by recording a finding that his father sold the suit property in favour of defendants No. 1 and 2 by registewred sale deed dated 09.02.1996, by recording a finding which is perverse and contrary to record and as such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3. The suit property was held by plaintiff's father Premdas/defendant No.3. The plaintiff filed a suit against his father Premdas (defendant No.3, mother and his sister i.e. defendants No.4 and 5 and against defendants No. 1 and 2 who are purchasers from the plaintiff's father vide registered sale deed dated 09.02.1996 stating *inter-alia* that the suit property is ancestral property of his father Premdas and therefore, alienation made by his father in favour of defendants No. 1 and 2 is not binding

on him and he is entitled for 1/4th share in the suit property, which was opposed by the defendants including his father Premdas by filing written statement. The trial court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 29.9.2006, held that the suit property is ancestral property of his father and his father had no right to alienate the suit property in favour of defendants No. 1 and 2 and accordingly, decreed the suit. On appeal being preferred by defendants No. 1 and 2, the first appellate court allowed the appeal and set-aside the judgment and decree of the trial court and dismissed the suit. Both the Courts below have recorded a finding that the suit property was ancestral property of plaintiff's father Premdas. The first appellate Court has held that alienation made by Premdas in favour of defendants No. 1 and 2 was for legal necessity. Though both the Courts below held the suit land to be ancestral property of the plaintiff's father Premdas, but the first appellate Court after analyzing oral and documentary evidence available on record including the statement of alinee/defendant No.1 came to the categorical conclusion that alienation was made by defendant No.3 Premdas for legal necessity of family. The said

finding recorded by the first appellate Court of legal necessity is a finding of fact based on evidence available on record. It is neither perverse nor contrary to record. I do not find any substantial question of law for determination of this second appeal.

4. Accordingly, the second appeal is dismissed at admission stage without notice to other side.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-