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HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 396 of 2008****Order reserved on 19/02/2020****Order delivered on 28/02/2020**

1. Sadhusharan Singh S/o. late Baldeo, aged about 67 years.
2. Smt. Gayatri Devi Wd/o. late Ravishankar, aged about 51 years.
3. Shrawan Kumar Patel S/o. late Ravishankar, aged about 26 years.
4. Vidya Sagar S/o. late Ravishankar, aged about 24 years.

Appellants No.1 to 4 are R/o. Village Govindpur, Post Ramkola, Tah. Pratappur, District Surguja, Chhattisgarh.

5. Chandrakala Patel D/o. late Ravishankar, aged about 32 years, R/o. Village- Goverdhanpur, P.S. Ramkola, Tah. Pratappur, District Surguja, Chhattisgarh.
6. Mala Devi D/o. late Ravishankar, aged about 30 years, R/o. Village Siwari, P.S.H. Chalgali, Tah. Wadrafnagar, Distt. Surguja, Chhattisgarh.
7. Sudama Devi D/o. late Ravishankar, aged about 25 years, R/o. Village Ghumadand, P.S.H. Ramkola, Tah. Pratappur, District Surguja, Chhattisgarh.

--- Appellants/Defendants**Versus**

1. Nageshwar S/o. Bharat, aged about 50 years.
2. Bhuwaneshwar S/o. Bharat, aged about 45 years.
3. Dharmajeet S/o. Kethan, aged about 61 years.
4. Ranveer S/o. Kethan, aged about 56 years.
5. Bheemsen S/o. Kethan, aged about 51 years.

Respondents No. 1 to 5 are R/o. Village Govindpur, P.S.H. Ramkala, Tah. Pratappur, District Surguja, Chhattisgarh.

6. Kewalkunwar W/o. Neelshyam, aged about 56 years, R/o. Pansara, P.S.H. Chalgali, Tah. Wadraf Nagar, District Surguja, Chhattisgarh.
7. Vimalkunwar W/o. Biharilal, aged about 54 years, R/o. Village Ramnuj Nagar, P.S.H. Ramanuj Nagar, Tah. Surajpur, District Surguja, Chhattisgarh.
8. State of Chhattisgarh, through Collector Surguja, Ambikapur, Chhattisgarh.

----**Respondents/Plaintiffs**

 For Appellants :- Mr. J.K. Shastri, Advocate
 For Respondents:- Mr. Atanu Ghosh, Advocate
 For State :- Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by appellants/defendants under Section 100 of the CPC against the impugned judgment and decree passed by

the first appellate court allowing the appeal of the plaintiffs by reversing the judgment and decree of the trial Court and thereby, decreeing the suit of the plaintiffs holding that the sale deeds dated 29/05/1979 and 12/09/1979 executed by defendant No.3 Makkhu @ Fulkunwar in favour of defendant No.2 is void and ineffective.

2. Suit property was originally held by Baldeo and his first wife was Nanki. He had three sons namely Kethan (plaintiff No.1), Bharat (plaintiff No.2) and Sadhu Sharan (defendant No.1). Ravishankar (defendant No.2) is the son of Sadhu Sharan (defendant No. 1). Smt. Makkhu @ Fulkunwar, claiming to be the wife of Baldeo, sold the suit property by two sale deeds dated 29.05.1979 and 12.09.1979 vide Exhibits P/3 and P/4 respectively, in favour of the son of defendant No.1 namely Ravishankar (defendant No. 2). The two plaintiffs namely Kethan and Bharat instituted a suit on 09.05.1980 against the defendants seeking that sale deed executed by defendant No.3 Makkhu @ Fulkunwar in favour of defendant No.2 be declared as void and ineffective and also sought permanent injunction against the defendants stating *inter alia* that after the death

of Baldeo, plaintiffs and defendants are in joint possession of the suit property and no partition has taken place between plaintiffs and defendants No. 1 and 3 wherein defendants filed their written statement and denied the plaint allegation by stating that defendant No.3 had already sold the suit property in favour of defendant No.2 as partition has already taken place between them.

3. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit whereas learned first appellate court, on appeal being preferred by the plaintiffs, reversed the judgment and decree of the trial court and decreed the suit of the plaintiffs holding that the suit property is joint family property of the parties and therefore, defendant No.3, one of the member of joint family without consent of other members, could not have alienated the suit property in favour of defendant No. 2, and accordingly, declared the sale deeds (Exhibits P/3 and P/4) as void and ineffective.

4. The finding recorded by the trial court that defendant No.3 Makkhu @ Fulkunwar was the wife of Baldeo was affirmed by the first appellate court in the appeal preferred by the plaintiffs. The

first appellate court also held that the suit property was jointly possessed by plaintiffs and defendant No.1 and 3 and therefore, defendant No.3 could not have alienated the suit property in favour of defendant No.2 without the consent of other members of the joint family.

5. It is well-settled law that co-parcenary interest can be transferred subject to the condition that purchaser, without the consent of other co-parceners, cannot get possession. He acquires a right to sue for partition (see: Hardeo Rai v. Sakuntala Devi and Ors.¹).

6. Since, defendant No. 3 Makkhu @ Fulkunwar was not one of the co-parcener, she could not have alienated the suit property to defendant No. 2 as she was not competent to alienate the joint family property.

7. The aforesaid finding recorded by the first appellate court affirming the judgment and decree of the trial Court is in accordance with law in which I do not find any perversity or illegality much less any substantial question of law for determination.

¹ (2008) 7 SCC 46

8. The second appeal deserves to be and is accordingly dismissed in *limine* without notice to the other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

Harneet