

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 432 of 2008**

1. Bhagwatiya, S/o Nanhee Rawat, Aged about 46 years,

2. Manglu, S/o Nanhee Rawat, Aged about 41 years

Both are resident of village – Sariya, Tehsil-Sarangarh,
Dist- Raigarh (C.G.)

-----Appellants/Plaintiffs

Versus

Smt. Kunti Devi, W/o Kubercharan Pradhan, Aged about 54
years, R/o village – Sariya, Tehsil – Sarangarh, Distt –
Raigarh (C.G.)

-----Respondent/Defendant

For Appellants : Mr. Ravindra Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/01/2020

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 27th August, 2008 passed by 3rd Additional District Judge (Fast Track Court), Raigarh in Civil Appeal No. 26-A/2008 affirming the judgment and decree dated 27.10.2005 passed by Civil Judge, Class-I, Raigarh, in Civil Suit No. 62-A/2002, dismissing the suit.

(2) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are absolutely unjustified in dismissing the suit of the plaintiffs holding that plaintiffs' grandfather Dular Singh died on 10.10.1943 ignoring the order of Sub Divisional Officer, Sarangarh dated 28.1.1994 (Ex.P-2), in which it has been held that plaintiffs' grandfather Dular Singh died in the year 1971, by recording a finding which is perverse to the record and, therefore, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) Suit property was admittedly held by Dular Singh. Dular Singh had one son namely Dau Ram and Parwati Bai was daughter of Dau Ram, who sold the suit property in favour of Kunti Bai (defendant herein) by sale deed dated 7.5.1991. On 6.1.1997, plaintiffs, who are daughters of Uma Bai (daughter of Dular Singh), filed a suit for declaration of title that Parwati Bai had no right or title to alienate the suit property in favour of defendant as their grandfather died in the year 1971, therefore, sale deed dated 7.5.1991 be declared void, which the trial Court did not accept holding that Dular Singh, who is original title holder of the suit property, died in the year 1943 i.e. before coming into force of the Hindu Succession Act, 1956; and plaintiffs' mother – Uma Bai was not the co-parcener in the suit property as Dular Singh died in the year 1943 and the suit property was succeeded by Dau Ram, son of Dular Singh, therefore, Parwati Bai has rightly alienated the suit property in favour of

defendant. The said finding has been affirmed by the first appellate Court, on an appeal being preferred by the plaintiffs, against which this second appeal under Section 100 of the CPC has been preferred.

(4) Both the courts below have concurrently recorded a finding that Dular Singh, who is original title holder of the suit property and grandfather of the plaintiffs, died in the year 1943 and, therefore, their mother Uma Bai did not have any right or title over the suit property of Dular Singh, which is a finding of fact based on material available on record. Further, both the courts below have rightly recorded a finding that Dular Singh died in the year 1943 i.e. prior to coming into force of the Hindu Succession Act, 1956 and, therefore, Uma Bai had no right and title over the suit property, which is also a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(5) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

(1) Whether the first appellate Court was justified in granting decree in favour of the plaintiff ignoring the fact that erstwhile owner of the suit land Raja..... and his son..... has already executed a title deed / sale deed dated 28.08.2002 (Ex.D-1) in favour of defendants No. 2 & 3, by recording a finding, which is perverse and contrary to the record ?

(2) Whether the first appellate Court was justified in not remitting the matter after holding that the permission for review was granted without affording opportunity of hearing to the plaintiff by virtue of provisions contained in Section 51 of the C.G. Land Revenue Code,