

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 410 of 2007**

1. Sanjay Kumar Soni S/o Late Sitaram Soni, Aged About 21 Years R/o Village Pathariya, Tahsil And District Durg, Chhattisgarh, Chhattisgarh
2. Virendra Kumar S/o Late Sitaram Soni, Aged About 27 Years R/o Village Pathariya, Tahsil And District Durg, Chhattisgarh

---- Appellants**Versus**

1. a. Janak Lal Soni Dead Through LRs Through District Magistrate Durg, Chhattisgarh

1b(i) - Smt. Purnima Soni W/o Bhushan Soni, Aged About 30 Years R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

1b(ii) - Rahul Soni S/o Bhushan Soni, Aged About 6 Years Minor, Through Natural Guardian Mother Purnima Soni, R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

1b(iii)- Shantanu Soni S/o Bhushan Soni, Aged About 4 Years Minor, Through Natural Guardian Mother Purnima Soni, R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

1.c Shivraj S/o Late Janak Lal Soni, Aged About 30 Years R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

1.d Smt. Vatsala D/o Late Janak Lal Soni, Aged About 33 Years R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

1.e Smt. Godawari D/o Late Janak Lal Soni, Aged About 28 Years R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

1.f Kumari Jyoti D/o Late Janak Lal Soni, Aged About 24 Years R/o Village Pathariya, Tehsil Dhamdha, District Durg, Chhattisgarh

2. State Of Chhattisgarh, Through District Magistrate Durg, Chhattisgarh
3. Pyarelal S/o Dadu Dhimar, Aged About 22 Years R/o Village Pathariya, Tahsil And District Durg, Chhattisgarh
4. Jawahar Lal S/o Kartikram, Aged About 24 Years R/o Village Pathariya, Tahsil And District Durg, Chhattisgarh
5. Shyamlal S/o Kartikram, Aged About 22 Years R/o Village Pathariya, Tahsil And District Durg, Chhattisgarh
6. Gautriha S/o Kartikram, Aged About 20 Years R/o Village Pathariya, Tahsil And District Durg, Chhattisgarh

---- Respondents

For Applicant	:	Shri B.P.Sharma with Shri Hari Agrawal, Advocate
For State	:	Shri Ravindra Agrawal, counsel for respondents 1, 3 to 6.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/11/2020

This Second Appeal arises out of judgment and decree dated 25/06/2007 passed by the 8th Additional District Judge (FTC), Durg, Chhattisgarh in Civil Appeal No.33A/2006 arising out of judgment and decree dated 07/02/2003 passed by the 5th Civil Judge, Class II, Durg in Civil Suit No.53A/2000.

2. The respondent / plaintiff filed a suit seeking declaration of his title and also seeking a declaration that will deed dated 05/01/1981 and subsequent sale deed dated 04/03/1985 and 04/04/1985 are illegal and inoperative in law. A consequential relief of permanent injunction was also sought. Plaintiff's suit was based on the pleadings that the property in dispute was part of the ancestral property earlier held by the grand father Gayaram. It was pleaded that Gayaram had two sons, Bodhan and Tularam. After their death, Tularam, father of the plaintiff and the plaintiff succeeded to the property and remained in cultivating possession. After various sale deeds, 14.92 acres of land remained in the hands of Tularam and one Daduram, son of Malla Dheemar got sale deed fraudulently executed on 05/01/1981 from Tularam without payment of any consideration which led to filing of a suit by Tularam that such sale deed was not binding on him. During the pendency of such suit, Tularam died. In course of time, dispute arose when the defendants claiming title on the basis of alleged sale deed, which led to opening of revenue proceedings also. Two sale deeds were also consequently executed on 04/03/85 and 04/04/85. In this manner, cause of action arose for the plaintiff to file suit.

3. On the other hand, the defendants resisted claim of the plaintiff by submitting that it is the defendants who acquired valid title by virtue of sale deed and therefore, will deed

and sale deed were in accordance with law.

4. The plaintiff's suit was dismissed by the learned Trial Court holding it to be barred by limitation and also on other issues on the will deed and sale deed.

5. Aggrieved by the judgment and decree passed by Trial Court, the respondent / plaintiffs filed First Appeal which was allowed. By impugned judgment and decree, learned lower Appellate Court reversed the finding of the Trial Court with regard to validity of the sale deed and will deed. Suit of the plaintiff was finally dismissed.

6. This appeal was admitted on following two substantial question of law -

"I) Whether the first appellate Court has committed an illegality by disbelieving the registered will deed dated 05/01/1981 (Ex. D/7) inspite of examination of the scribe and the attesting witness ?

II) Whether the first appellate Court could have allowed the first appeal preferred by the respondent No.1 / plaintiff without dealing with the trial Courts finding on issue no.4 regarding the suit being barred by limitation ?"

7. Learned counsel appearing for the appellant would prefer to make his submission on second substantial question of law, first by submitting that the suit of the plaintiff was dismissed not only on merits but also by recording categorical finding on issue No.4 regarding limitation. He would argue that the learned Trial Court on issue no.4 categorically recorded finding in para 29 and 30 of its judgment that the plaintiff's suit was barred by limitation as it sought to seek declaration of title along with declaration that the sale deeds were null and void. Learned lower Appellate Court, though, traversed finding on merits of the case with regard to validity of the sale transaction as also will deed, it did not touch upon finding with regard to limitation much less traversing those findings. Learned counsel for the appellant made short and simple submission that the learned lower Appellate Court could not have decreed plaintiff's suit without traversing the finding with regard to limitation, therefore, only on this count, the impugned judgment and decree is unsustainable in law and is liable to be set aside.

8. On this substantial question of law, learned counsel for the respondent defended the decree by submitting that though learned Trial Court found the suit was barred by limitation, it would not affect the decree passed by the Appellate Court because the learned Trial Court granted decree with reference to seeking declaration of sale deed dated 04/03/1985 and 04/04/1985 and nothing more. He would submit that only on that ground the plaintiff could not have been non-suited.

9. After hearing learned counsel for the parties, this Court is of the considered opinion that the appeal deserves to be allowed only on second substantial question of law.

10. Learned Trial Court dismissed plaintiff's suit by recording specific finding on issue no.4 that the plaintiff's suit was barred by limitation. Though in the course of discussion on the pleadings and evidence on record, learned Trial Court referred to two sale deeds, but in the ultimate conclusion, the entire suit was dismissed as barred by limitation. Irrespective of whether the finding was sustainable in law or not, learned lower Appellate Court when called upon to decide the appeal challenging the validity of the judgment and decree of the Trial Court, was enjoined under the law to deal with each and every issue decided by learned Trial Court, particularly with regard to limitation. Once the suit itself was dismissed as barred by limitation, learned lower Appellate Court could not have decreed plaintiff's suit without traversing the finding that the suit was barred by limitation and recording specific finding that the suit, either wholly or in part, is not liable to be dismissed as barred by limitation and relief sought by the plaintiff either wholly or in part could be decreed.

Though learned counsel for the respondent argued that such finding is unsustainable in law, this exercise ought to be done by the First Appellate Court and not by this Court. In this regard, learned counsel for the appellant has rightly relied upon the decision of the Supreme Court in the case of **Santosh Hazari v. Purushottam Tiwari (deceased) by LRs, (2001) 3 SCC 179** wherein, Their Lordships in the Supreme Court held as below -

“15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi v. Bijendra Narain Choudhary*, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact (See *Madhusudan Das v. Smt. Narayanibai & Ors.*, AIR 1983 SC 114). The

rule is ____ and it is nothing more than a rule of practice ____ that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh & Ors.*, AIR 1951 SC 120). Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.”

The aforesaid judgment only remind the first Appellate Court on the obligation cast upon them and holds that the First Appellate Court continue to be a final Court of fact.

11. Therefore, in view of the above, the second question of law is answered in favour of the appellant and against the plaintiffs / respondents that the learned lower Appellate Court was not justified in decreeing the suit without traversing the finding on the issue of finding recorded by the Trial Court that the suit is barred by limitation.

It is not necessary to go into other substantial question of law as on the second question of law, the matter would be required to be remanded for consideration to the first Appellate Court.

12. Accordingly, the appeal is allowed. The impugned judgment and decree is set aside. The case is remanded to the first Appellate Court. The first Appellate Court shall decide the appeal in accordance with law on all issues that arise for determination on the basis of submissions and grounds raised in the appeal. Let appellate decree be accordingly drawn. Parties to bear their respective costs.

13. Considering that the suit itself is old, learned Trial Court shall do well to decide the appeal within three months.

Let appellate decree be accordingly drawn.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge