

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.388 of 2007Judgment reserved on: 10-1-2020Judgment delivered on: 17-1-2020

Smt. Pushpa Bai, W/o Harprasad Choubey, Aged about 52 years, Caste Brahmin, R/o Village Udayband, Presently residing at Janjgir, District Janjgir-Champa (C.G.)

(Plaintiff)
(Appellant in first appeal)
---- Appellant

Versus

1. Tulsi Ram, S/o Shiv Prasad, Aged about 67 years, Caste Kahara, R/o Janjgir, Tehsil Janjgir, District Janjgir-Champa (C.G.)
2. State of Chhattisgarh, Through the Collector, Janjgir, District Janjgir-Champa (C.G.)

(Defendants)
(Respondents in first appeal)
---- Respondents

For Appellant: Mr. Malay Shrivastava, Advocate.

For Respondent No.1: -

Mr. Hanuman Prasad Agrawal, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the plaintiff was admitted on the following substantial question of law: -

“Whether both the Courts below were justified in dismissing the suit of the plaintiff for correction of sale deed dated 25/01/1985 executed by defendant No.1 in favour of plaintiff ignoring Ex.P/2 and other admissible evidence on record by recording a finding which is perverse and contrary to the record?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The plaintiff filed suit for rectification of sale deed dated 25-1-1985 (Ex.P-1) stating inter alia that she has purchased suit land bearing Khasra No.2411/1, area 0.24 acre, but a typographical error has been crept-in in executing the sale deed and Khasra number has been mentioned as 3930, area 0.24 acre, therefore, she is entitled for rectification of the sale deed and consequently, permanent injunction.
3. Defendant No.1 was ex parte before the trial Court and neither filed written statement nor adduced any evidence in support of his case.
4. The plaintiff examined herself and witnesses and brought Exs.P-1 & P-2 and other documents on record to establish her case, but the trial Court and the first appellate Court dismissed the suit holding that the suit land bearing Khasra No.2411/1 is also recorded in the name of Tulsiram and apart from Tulsiram there are other co-owners of the said land, but they have not been impleaded and declined to grant decree in favour of the plaintiff against which this second appeal has been preferred by the plaintiff under Section 100 of the CPC in which substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.
5. Mr. Malay Shrivastava, learned counsel appearing for the appellant herein / plaintiff, would submit that both the Courts below have concurrently erred in holding that the plaintiff is not entitled for correction of sale deed ignoring that vide Ex.P-2 Tulsi Ram – defendant No.1 had already agreed and given his consent to correct the Khasra number, but on that basis, mutation was sought which was rejected by the competent authority on the ground that it is not a registered document and appeal there-against was also dismissed which led the plaintiff to file suit for rectification of the mistake. The two courts

below dismissed the claim simply on the ground that other co-owners of the suit property bearing Khasra No.2411/1 have not been impleaded as party defendants though they are dead as duly pleaded in the plaint, as such, judgments & decrees of both the Courts below deserve to be set aside and the second appeal deserves to be allowed by answering the substantial question of law in negative.

6. Mr. Hanuman Prasad Agrawal, learned counsel appearing for respondent No.1 herein / defendant No.1, would oppose the submissions of learned counsel for the appellant / plaintiff and would submit that both the Courts below have rightly dismissed the suit of the plaintiff, as, apart from defendant No.1, other co-owners of the suit land are already there, neither they have been impleaded nor their legal representatives have been impleaded as party defendants on record and therefore no interference is called for by this Court in exercise of the jurisdiction under Section 100 of the CPC.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. It is the case of the plaintiff that she purchased the land bearing Khasra No.3930, area 0.24 acre, but while executing sale deed dated 25-1-1985 (Ex.P-1), typographical error crept-in and Khasra No.2411/1, area 0.24 acre, came to be mentioned for which a correction deed had also been executed by Tulsiram on 15-5-2003, but the Revenue Court declined to accept it on the ground that it is not a registered document and therefore cannot be accepted. It is pertinent to mention that both the Courts below have found that the sale deed was executed by Tulsiram and Bahura Bai, but the suit land is recorded in the names of

Tulsiram, Murli, Ind Kunwar, Ganeshram, Banshiram and Rajmati, and they have not been impleaded as party, therefore, no rectification can be ordered. The trial Court particularly took exception to the fact that the sale deed was executed on 25-1-1985, whereas suit for rectification of sale deed was filed as late as on 7-12-2004 i.e. after about 18 years and as such, the suit is barred by limitation.

9. In the limitation Act, 1963, no period of limitation has been prescribed for rectification of the instrument, however, in that case, Article 113 as contained in Part X which prescribes the period of limitation for the suits for which there is no prescribed period, states that any suit for which no period of limitation is provided elsewhere in this Schedule, period of limitation would be three years when the right to sue accrues.
10. In the case of any suit based upon fraud of the defendant, or for relief from the consequences of a mistake, the period of limitation does not begin to run until the plaintiff has discovered the fraud or mistake, or could, with reasonable diligence, have discovered it. (See Section 17 of the Limitation Act, 1963.) Therefore, the plaintiff may institute the suit for rectification after the fraud is discovered or mistake came to light, at whatever time the discovery takes place. (**See Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.**¹.)
11. In the instant case, the explanation offered by the plaintiff has not been accepted by the trial Court and the trial Court has clearly rejected the same holding that the plaintiff is said to have purchased the suit land on 25-1-1985, but her name was not recorded till then and any attempt in the year 2004 is clearly barred by limitation. As such, the

¹ [2002] 1 SCR 678 (Supreme Court of Canada)

plaintiff could not plead and establish that the suit was filed within three years from the date when the right to sue accrues in her favour.

12. It is well settled that an instrument executed with deliberation and solemnity that a document in writing implies, cannot be lightly touched. This power of reforming the written agreements must be used with extreme care and caution. To substitute a new agreement for one which the parties have deliberately subscribed, ought only be permitted upon evidence of a different intention of the clearest and most satisfactory description. (See Fowler v. Fowler² followed in Rajaram v. Manik³.)
13. Rectification cannot be claimed where the instrument accurately expresses the intention of the parties. (See Julien Marret v. Mahommad Khaleel Shirazi and Sons⁴.) The party seeking rectification must show that the instrument does not reflect the common intention of the parties at the time of executing the instrument. Courts do not rectify contracts; they may and do rectify instruments purporting to have been made in pursuance of the terms of contracts and the fact of mistake must be clearly proved.
14. Reverting to the facts of the present case finally in view of the aforesaid principles of law, it is quite vivid that the trial Court has clearly held that the suit of the plaintiff for rectification was barred by limitation, as there is no justification for first time making attempt to get the land mutated in 2004 and after rejection of the same, filed suit for rectification of the sale deed. In the light of the principles of law laid down in the aforesaid judgments (supra), no exception can be

2 (1859) 4 De G&J 250

3 AIR 1952 Nag 90

4 AIR 1930 PC 86

taken of the judgment of the trial Court as affirmed by the first appellate Court. Likewise, both the Courts have declined to grant decree in favour of the plaintiff on the ground that other owners have not been impleaded as party defendants in the suit and merely in paragraph 12 of the plaint it has been stated that they have died and description of their legal representatives has neither been given nor they have been brought on record. Concurrent finding recorded by the two Courts below refusing to grant decree for rectification after a period of eighteen years from the date of entering into instrument is neither perverse nor contrary to the record. I do not find any perversity or illegality in the finding recorded by the two Courts below and I do not find any merit in this appeal. The substantial question of law is answered against the plaintiff and in favour of the defendant.

15. In the result, the appeal deserves to be and is accordingly dismissed.

No order as to cost(s).

16. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge