

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 254 of 2008**

Nanha @ Mehtar Sahu, Aged 61 years, S/o Late Latel Sahu, Mother's name Surja Bai Sahu, R/o Village Bhakhara, Up-Tahsil- Bhakhara, Tahsil Kurud, Distt. Dhamtari, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Domar, Aged 43 years, S/o Late Thakur Ram Sahu.
2. Meena Ram Sahu, Aged 41 years, S/o Late Dukhu Ram Sahu, Both are R/o Village Bhakhara, Up-Tahsil – Bhakhara, Tahsil Kurud, Distt. Dhamtari, Chhattisgarh.
3. The State of Chhattisgarh, through the Collector, Distt. Dhamtari, Chhattisgarh.

--- Respondents/Defendants

For Appellants	:-	Mr. J.A. Lohani, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which learned trial Court

dismissed the suit of the plaintiff finding no merit.

2. Mr. J.A. Lohani, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff by recording a finding which is perverse and contrary to the record holding that plaintiff is not entitled for decree for declaration of title and possession over the suit property, as such, the second appeal deserves to be admitted by formulating substantial question of law.

3. The suit property bearing Khasra No. 283 area 2.18 acres was originally held by Latel Sahu and his wife Surjabai which was purchased by Surjabai for his minor grandson Domar on 04/08/1964. Latel Sahu and Surjabai had two sons namely Nanha alias Mehtar i.e. plaintiff and Thakur Ram who died leaving behind his son Domar i.e. defendant No. 1.

4. Plaintiff brought a suit that after the death of her mother Surja Bai, suit property bearing Khasra No. 283 area 2.18 acres came to be recorded in the name of plaintiff and his brother

Thakur Ram jointly but despite that, defendant No. 1 Domar alienated 1.68 acres out of the total suit land in favour of defendant No. 2 Maniram by registered sale deed dated 18/05/1984, as such, the said sale deed be declared void and plaintiff is entitled for decree for declaration of title and recovery of possession $\frac{1}{2}$ share in the suit property i.e. 1.09 acres to which both of the defendants opposed by filing their written statement and setting up a plea of title stating that Surja Bai purchased the suit property in the name of her minor grandson Domar (defendant 1) and that too from the income of Thakur Ram and at that time, Thakur Ram had separated from the plaintiff, as such, defendant No. 1 is the title-holder of the suit property and he had full right to alienate the suit property in favour of defendant No. 2.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit of the plaintiff holding that defendant No. 1 is the title-holder of the suit property and plaintiff is bound by the sale deed dated 18/05/1984 by which defendant No. 1 alienated the suit property in favour of defendant No. 3, as

such, plaintiff is not entitled for decree for declaration of title and recovery of possession which was also affirmed by the first appellate Court in the appeal preferred by the plaintiff under Section 96 of the CPC.

6. Both the Courts below have recorded a finding that the suit property was purchased by Surja Bai in the name of defendant No. 1 who was minor at that time and subsequently, both the Courts below also recorded a finding that defendant No. 1 is the title-holder of the suit property and in that capacity, he was fully entitled to alienate the suit property in favour of defendant No. 3, as such, the sale deed dated 18/05/1984 (Ex. D/2) executed by defendant No. 1 Domar in favour of defendant No. 2 Maniram is valid and legal and is binding upon the plaintiff. The said concurrent finding recorded by both the Courts below *qua* title of defendants No. 1 and 2 upon the suit property is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and does not give rise to any substantial question of law for determination.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet