

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.126 of 2008

1. Somari, D/o Bhagat Sumara, aged 65 yrs, W/o Dhansai Ram, Caste Uraon
2. Ganesh Ram Pradhan, aged 40 yrs,
3. Suresh, aged 35 yrs,
4. Naresh, aged 30 yrs,

No.2 to 4 all S/o Dhansai Ram, R/o Village Jaimarga, Kharsota, Tah. & Distt. Jashpur (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Mango Bai, D/o Bhagat Sumra, aged 50 yrs, R/o Village Kharsota, Tah. & Distt. Jashpur (C.G.)
2. Bimal Ram Bairagi, aged 42 yrs,
3. Lalit Ram, aged 44 years
4. Jageshwar Ram, aged 35 yrs,

No.2 to 4 all are S/o Bhagat Ram, R/o Gram Dandtoli, Manora, Tah. & Distt. Jashpur (C.G.)

5. State of Chhattisgarh, Through the Collector, Jashpur (C.G.)
- (Defendants)
---- Respondents

For Appellants/Plaintiffs: -

Mr. Anurag Dayal Shrivastava, Advocate.

For Respondent No.5 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs / appellants herein.

2. Mr. Anurag Dayal Shrivastava, learned counsel appearing for the appellants herein / plaintiffs, would submit that both the Courts have committed a legal error in dismissing the suit of the plaintiffs by recording a finding which is perverse to record and appeal deserves to be admitted by formulating substantial question of law.
3. By the impugned judgment and decree, the first appellate Court has dismissed the appeal affirming the judgment & decree of the trial Court dismissing the suit.
4. The suit property was originally held by Bhagat Sumara. He had four daughters namely, Baro Bai, Punia Bai, Somari – plaintiff No.1 and Mango Bai. The plaintiffs are Somari and her three sons, whereas the defendants are son of Baro Bai (defendant No.2), Punia Bai herself (since deceased) (defendant No.1) and her sons (defendants No.3 & 4). The plaintiffs filed suit that since the property was the property of her father (Somari's father) – Bhagat Sumara, therefore, they have right, title and interest in the property and she is entitled for $\frac{1}{4}$ share in the suit property ad-measuring 18.90 acres situated at Village Kharsota, Distt. Jashpur in which the defendants set up the plea that Bhagat Sumara had already sold the property on 5-12-1951 (Ex.D-1) in favour of husband of defendant No.2 – Bhagatram which has not been questioned therefore, the plaintiffs cannot be granted the suit property, as the suit property was the self-acquired property of Bhagat Sumara. The suit was filed only on 20-9-2000.
5. The trial Court after appreciating oral and documentary evidence available on record, dismissed the suit holding that the plaintiffs did not challenge the legality and validity of the sale deed dated 5-12-1951 (Ex.D-1) and

valid title has been conveyed in favour of Bhagatram Bairagi and therefore decree cannot be granted in favour of the plaintiffs which the first appellate Court in turn, also accepted dismissing the appeal.

6. It is true that the suit property was the property of Bhagat Sumara which he had already sold way back on 5-12-1951 vide Ex.D-1 in favour of her daughter's husband (husband of defendant No.2) – Bhagatram Bairagi and the plaintiffs in the suit filed on 20-9-2000 did not question that sale deed dated 5-12-1951 and did not lay any challenge to the legality and validity of the sale deed that it was not for any legal necessity and their share could not have been alienated in favour of Bhagatram Bairagi and even after dismissal of suit on that ground, the plaint was not amended and no challenge was made even in the first appellate Court that the trial Court expressly held that no prayer was made for declaring the sale deed (Ex.D-1) as null and void. As such, since Bhagat Sumara had already transferred his title in favour of the husband of defendant No.2 and the two Courts below have concurrently recorded a finding that it was the self-acquired property of Bhagat Sumara which was rightly alienated in favour of Bhagatram Bairagi, the finding recorded by the two Courts below that the plaintiffs are not entitled for declaration of title and partition is a finding of fact based on the evidence available on record. It is neither perverse nor contrary to the record. Accordingly, I do not find any substantial question of law for determination. The second appeal deserves to be and is hereby dismissed *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge