

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 147 of 2011**

Sonai Bai D/o Gansudas, Aged about 44 years,
Caste Panika, R/o Ganeshpur, Tahsil Ambikapur,
Distt. Sarguja, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Bundki D/o Etwar Sai, Caste Rajwar, Aged about 44 years.
2. Omprakash S/o Late Sukhlal, Aged about 8 years, through natural guardian mother Sanjho, Aged about 50 years, Caste Panika.

Both are R/o Village Ganeshpur, Tahsil Ambikapur,
Distt. Sarguja, Chhattisgarh.

3. The State of Chhattisgarh, Through the Collector, Ambikapur, Distt. Sarguja, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. A.K. Prasad, Advocate

For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through Video Conferencing)

17/06/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of

CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court dismissed the suit of the plaintiff for declaration of title and permanent injunction.

2. Mr. A.K. Prasad, learned counsel for the appellant/plaintiff, would submit that both the Courts below have gravely erred in holding that the suit property has not been sold by Gansu in favour of defendants No. 1 and 2 by playing fraud by recording a finding which is perverse and contrary to the record. He would also submit that plaintiff has the right and title over the suit property, as such, the appeal be admitted by formulating substantial question of law.
3. It is the case of the plaintiff that suit property was originally held by Ganpati, who died issueless, and since plaintiff's father Gansu was the sole surviving heir of Ganpati, he succeeded the suit property and defendant No. 1 namely Bundki, by playing fraud and by making Gansu used to heavy consumption of liquor, got the sale deed dated 25/05/2007 executed by Gansu in her and defendant No. 2's favour fraudulently, as such,

no title has been transferred by that fraudulently executed sale deed in favour of the defendants and plaintiff is the title-holder of the suit land, therefore, she is entitled for decree for declaration of title and permanent injunction.

4. Upon appreciation of oral and documentary evidence on record, learned trial Court dismissed the suit holding that witness to the sale deed dated 25/05/2007 has not been examined by the plaintiff and as such, plaintiff has failed to prove that the said sale deed has been obtained by defendant No. 1 by playing fraud with Gansu i.e. father of the plaintiff. Learned trial Court also held that by sale deed dated 25/05/2007, Gansu sold 2.155 hectares of suit property to defendants No. 1 and 2 which is less than the suit property shown in Schedules 'A' and 'B' appended with the plaint admeasuring 9.69 hectares and 10.98 hectares respectively, as such, plaintiff has failed to prove that the said sale deed was obtained by defendants No. 1 and 2 by fraud and even otherwise, plaintiff is not in possession of the suit property, which was also

affirmed by the first appellate Court in the appeal preferred by the plaintiff.

5. Both the Courts below have recorded the findings that plaintiff has failed to prove that the sale deed 25/05/2007 has been obtained by defendants No. 1 and 2 from plaintiff's father Gansu by playing fraud and plaintiff has further failed to prove she is the exclusive owner of the suit property and Gansu has only sold less than his share in the total suit property mentioned in Schedule 'A' and 'B' of the plaint. The said findings recorded by both the Courts below are findings of fact based on evidence available on record which is neither perverse nor contrary to the record. I do not find any substantial question of law for admission of this appeal.
6. Accordingly, the second appeal stands dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge