

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 364 of 2010**

1. Devnarayan S/o Dataram Satnami, Aged about 35 years.
2. Devkant (wrongly mentioned as Devram) in impugned judgment S/o Data Ram Satnami, Aged about 30 years.
3. Devanand S/o Dataram Satnami, Aged about 26 years.
4. Mu. Yashoda D/o Dataram Satnami, Aged about 26 years.
5. Mus. Bhanmati Bhagmati (wrongly mentioned as Bhanumati) in impugned judgment Wd/o Dataram Satnami, Aged about 68 years.

All R/o Village Singhanpur, Tahsil Sarangarh,
Distt. Raigarh, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. (Yuhna Ram Died) Through his Lrs. :-

(I). Smt. Radha Devi W/o Late Yuna Ram, Aged about 65 years.

(ii). Jiwan Kumar S/o Late Yuna Ram, Aged about 45 years.

(iii). Ganeshwar Prasad S/o Late Yuna Ram, Aged about 37 years.

(iv). Rameshwar Prasad S/o Late Yuna Ram, Aged about 30 years.

All R/o Village Singhanpur, Tahsil Sarangarh,
Distt. Raigarh, Chhattisgarh.

2. Buddheshwar S/o Yuna Ram, Caste Satnami, Aged about 32 years, Occupation Agriculturist.
3. Omprakash S/o Jhasram, Caste Satnami, Aged about 25 years, Occupation Agriculturist.
4. Ishwar Prasad S/o Jhasram, Caste Satnami, Aged about 30 years, Occupation Agriculturist.
5. Jayprakash S/o Jhasram, Caste Satnami, Aged about 21 years, Occupation Agriculturist.

All R/o Village Singhanpur, Tahsil Sarangarh,
Distt. Raigarh, Chhattisgarh.

--- Respondents/Defendants

For Appellants :-

Ms. Sharmila Singhai, Advocate

For Respondents 3 to 5 :-

Mr. Deepak Kumar Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

29/01/2021

1. This second appeal preferred by the appellants/plaintiffs was admitted for hearing on 03/09/2020 by formulating the following substantial question of law :-

"Whether both the Courts below were justified in holding that alienation made by defendant No. 2 in favour of defendants No. 3 and 5 on 14/02/2004 is valid and in accordance with law ?"

[The parties will hereinafter be referred to as per their status given and ranking shown before the trial Court.]

2. Plaintiffs No. 1 to 4 as well as defendant No. 1 are brothers and sister and defendant No. 2 is the son of defendant No. 1. It is the case of the plaintiffs that during the pendency of the partition proceedings under Section 178 of the Chhattisgarh Land Revenue Code, 1959, initiated before the revenue Court with regard to the suit land bearing Khasra No. 728/1 area 0.567 hectare, being their ancestral property, defendant No. 2 sold the said suit land by registered sale deed dated 14/02/2004 (Ex. P/3) in favour of defendants No. 3 to 5 and ultimately, vide final order of partition dated 12/07/2005 (Ex. P/1), the suit land fell in share of the plaintiffs, as such, by virtue of Section 52 of the Transfer of Property Act, 1882, the alienation made by defendant No. 2 in favour of defendants No. 3 to 5 during the pendency of the partition proceeding is voidable and therefore, decree for declaration of title and possession be granted in their favour.

3. Resisting the suit, defendants No. 3 to 5 filed their written statement controverting the allegations made in the plaint and pleaded that plaintiffs are not entitled for decree as claimed.
4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit vide its judgment and decree dated 30/06/2009, holding that plaintiffs are not entitled for the decree for declaration of title and possession, which was also affirmed by learned first appellate Court vide its impugned judgment and decree dated 22/09/2010, in the appeal preferred by the plaintiffs, against which this second appeal has been preferred by the plaintiffs under Section 100 of CPC in which sole substantial question of law has been framed and set out in the opening paragraph of this judgment.
5. Ms. Sharmila Singhai, learned counsel for the appellants/plaintiffs, would submit that both the Courts below have erred in not applying the provisions contained under Section 52 of the Transfer of Property Act and thereby not declaring the alienation of the suit land made

by defendant No. 2 in favour of defendants No. 3 to 5 during the pendency of the partition proceeding under Section 178 of Land Revenue Code as null and void and therefore, plaintiffs, being the affected party, are entitled for decree for declaration of title and possession as the suit land ultimately fell in their share vide order dated 12/07/2005 (Ex. P/1) passed by the revenue Court in the partition proceedings.

6. None for respondents/defendants No. 1 and 2, though served.
7. Mr. Deepak Kumar Singh, learned counsel for the respondents/defendants No. 3 to 5, would support the judgment and decree passed by both the Courts below.
8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and perused the records.
9. It is not in dispute that the suit land was alienated by defendant No. 2 in favour of defendants No. 3 to 5 vide registered sale deed dated 14/02/2004 (Ex. P/3) and the registration was made on 01/07/2005 whereas the final order of partition was passed by the revenue Court on 12/07/2005 (Ex. P/1), as such, the question for

consideration herein would be whether both the Courts below have erred in not applying Section 52 of the Transfer of Property Act and thereby not granting decree in favour of the plaintiffs ?

10. At this stage, it would be appropriate to notice Section 52 of the Transfer of Property Act, 1882, which states as under :-

"52. Transfer of property pending suit relating thereto. - During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[*Explanation.* - For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]"

11. Now, the question would be whether Section 52 of the Transfer of Property Act would apply to the partition proceeding under Section 178 of the Land Revenue Code ?
12. It has been vehemently contended by Ms. Sharmila Singhai, learned counsel for the appellants/plaintiffs, that Section 52 of the Transfer of Property Act would be applicable in the present case in partition proceeding under Section 178 of the Land Revenue Code and she placed her reliance on the decision rendered by the Nagpur High Court in the matter of **Jairam v. Maifujali**¹ wherein it has been held that Section 52 of the Transfer of Property Act would not confine to Civil Courts and it would also be applicable to Section 58-B of the C.P. Tenancy Act, 1920.
13. In the aforesaid judgment, the Nagpur High Court has clearly held that Section 52 of the Transfer of Property Act would also apply to the partition proceeding before the Revenue Court and further held that even if Section 52 does not apply proprio vigore, but the principle

¹ 1947 SCC Online MP 23

underlying it must apply and it was observed in paragraphs 5 and 6 as under :-

"5. Even if Section 52 of the Transfer of Property Act, does not apply *proprio vigore*, then I would say that the principle underlying it must apply. The principle on which it rests was explained by Turner L.J. in (1857) 1 De. G. & J. 566 :

"It is, as I think, a doctrine common to the Courts both of Law and Equity, and rests, as I apprehend, upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations *pendente lite* were permitted to prevail."

6. The principle was applied in several cases before the Transfer of Property Act was enacted: see *Mulla's Transfer of Property Act*, Edn. 2, pp. 218 and 219, and the cases there cited. I consider therefore that the lower appellate Court was correct in holding that the purchaser was not bound by a transfer *pendente lite*."

14. The Orissa High Court in the matter of **Nata Padhan v. Banchha Baral**² has also held that in the revenue proceeding, the provisions of Section 52 of the Transfer of Property Act would apply if other requirements are made out. As such, Section 52 would also be applicable in the partition proceeding under Section 178 of the Land Revenue Code.

15. Reverting to the facts of the present case in light of the aforesaid legal position, it is

quite vivid that alienation of the suit land was made by defendant No. 2 in favour of defendants No. 3 to 5 by registered sale deed dated 14/02/2004 (Ex. P/3) and the registration was made on 01/07/2005 and thereafter, only on 12/07/2005 (Ex. P/1), final order of partition was passed by the revenue Court. However, no document has been brought on record to show that on which date partition proceeding under Section 178 of the Land Revenue Code was initiated and that on the date of transfer of the suit land i.e. 14/02/2004, the partition proceeding was pending. In that view of the matter, the plaintiffs have failed to establish that on 14/02/2004 when the suit land was alienated by defendant No. 2 in favour of defendants No. 3 to 5, the partition proceeding was still pending before the revenue Court and as such, Section 52 of the Transfer of Property Act is applicable and the alienation made by defendant No. 2 in favour of defendants No. 3 to 5 vide Ex. P/3 is voidable, which is sought to be set aside in the instant appeal.

16. In view of the plaintiffs' failure to clearly plead and establish the pendency of the

partition proceeding on the date of alienation of the suit land made by defendant No. 2 in favour of defendants No. 3 to 5, both the Courts are absolutely justified in holding that plaintiffs have failed to make out the case for granting decree in their favour and for setting aside the alienation of the suit property made by defendant No. 2 in favour of defendants No. 3 to 5 vide registered sale deed dated 14/02/2004 (Ex. P/3) in which I do not find any perversity or illegality warranting interference under Section 100 of CPC.

17. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed.

18. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet