

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.58 of 2012

Gajadhar (died) through LRs

1. Smt. Kaushilya Bai, aged 55 years, W/o Late Gajadhar
2. Rani Bai, aged 35 years, D/o Late Gajadhar
3. Anjana, aged 30 years, D/o Late Gajadhar
4. Ashish, aged 25 years, S/o Late Gajadhar
5. Prahlad, aged 16 years, at present 19 years, S/o Gajadhar

All are R/o Village Gorakpur, Tahsil Pendra road, District Bilaspur (C.G.)

----- Appellant

Versus

1. Ramsharan, aged 68 years, S/o Late Mangal Prasad
2. Smt. Ramrati, aged 65 years, W/o Laxman Prasad
3. Suresh Prasad, aged 35 years, S/o Laxman Prasad

All are R/o Village Gorakhpur, Tahsil Pendra road, District Bilaspur (C.G.)

4. State of Chhattisgarh through the District Collector, Bilaspur, District Bilaspur (C.G.)

----- Respondents

For Appellants

Mr. Somnath Verma, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

21/06/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff.
2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellant/plaintiff vide judgment and decree dated 23.09.2011 passed by the learned Additional District Judge, Pendra Road, District Bilaspur (C.G.) in Civil Appeal No.14A/2011 affirming the judgment and decree of the Trial Court dated 31.07.2009 passed by the learned Civil Judge Class-I, Pendra Road, District Bilaspur (C.G.) in Civil Suit No.141A/2005, whereby the learned Trial Court dismissed the suit preferred by the appellant/plaintiff.
3. Mr. Verma, learned counsel for the appellant/plaintiff, would submit that both the Courts below have grossly erred in concurrently holding that the suit land is the ancestral property of Mangal Prasad and only on that basis, it cannot be held that the appellant has no right and title over the suit

property by recording a finding perverse to the record. As such, the appeal be admitted for hearing by formulating substantial question of law.

4. I have heard learned counsel for the appellant, considered his submissions made herein-above and also went through the records with utmost circumspection.

5. The suit property was originally held by Mangal Prasad. He had three sons namely Gajadhar, Ramsharan and Laxman. The appellants are the legal representatives (wife and children) of Gajadhar. The defendant No.1 is the brother of Gajadhar, whereas the defendant Nos.2 & 3 are the wife and son, respectively, of Laxman. Mangal sold the suit property to defendant No.1 Ramsharan by way of sale deed dated 17.03.1971, in which Gajadhar stood as attesting witness. The original plaintiff Gajadhar filed a suit for declaration of title on 12.05.2003 with respect to the suit land, in which it is the stand of the defendant No.1 that his father Mangal has alienated the suit land and he has purchased the suit land from

his father by way of registered sale deed dated 17.03.1971, in which Gajadhar himself stood as attesting witness.

6. The Trial Court after appreciating the oral and documentary evidence available on record dismissed the suit of the plaintiff by holding that the suit property is held by defendant No.1, who has purchased the same from his father Mangal by way of registered sale deed dated 17.03.1971, in which the original plaintiff Gajadhar himself stood as the attesting witness and interest, if any, has already been surrendered by the plaintiff and there is no right or title over the suit land and even the plaintiff did not seek cancellation of the sale deed dated 17.03.1971. The judgment and decree of the Trial Court has also been affirmed by the First Appellate Court in the appeal preferred by the appellant/plaintiff, against which this second appeal has been preferred.
7. The finding recorded by the two Courts below that Mangal has already sold the suit property to defendant No.1 and Gajadhar himself stood

as the attesting witness is a finding of fact based on the material available on record, which is neither perverse nor contrary to the record.

8. I do not find any substantial question of law for determination in this second appeal so preferred by the appellant/plaintiff. It 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

Nirala