

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 135 of 2012**

1a. Ramau Ram, aged about 68 years, S/o. Mannulal, Retd. Headmaster, R/o. Village Barregaon, Tahsil and distt. Rajnandgaon

1b. Chandra Bhushan, aged about 40 years, S/o. Ramauram, R/o. Village Barregaon, Tahsil and distt. Rajnandgaon

2. Kevra bai aged about 48 years, W/o. Raghuram R/o. Village Thekwa, Post Somani, Tahsil and distt. Rajnandgaon

3. Kasturiya Bai aged about 43 years, W/o. Bhagwat Das R/o. Village and Somni, tahsil and Distt. Rajnandgaon

4. Phool Singh aged about 41 years, S/o. Late Suklal @ Mehtar, R/o. Village Post Nikum, tahsil and distt. Durg

---- Appellants/Plaintiffs

Versus

1. Rajkumar aged about 45 years, S/o. Late Suklal, R/o. Village and Post Nikum Tahsil and Distt. Durg

2. State of Chhattisgarh Through the Collector Durg (CG)

---Respondents/Defendants

For Appellants	: Shri Parag Kotecha, Advocate
For Respondent 1	: Not noticed
For Respondent No.2/State	: Shri Ankur Kashyap, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

24.02.2021.

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants herein/plaintiffs against the impugned judgment and decree dated 29.02.2012 passed by Sixth Additional District Judge, Durg in Civil Appeal No.20A/2011 affirming the judgment and decree dated 30.01.2010 passed by Seventh Civil Judge Class-II, Durg in Civil Suit No.10A/2009 by which the trial Court

dismissed the suit of the plaintiffs.

2. Learned counsel for the appellants herein/plaintiffs submits that both the courts below have concurrently erred in holding that the suit filed by the plaintiffs is barred by limitation as per Article 110 of the Limitation Act, 1963, by recording a finding which is perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal may be admitted for hearing by formulating substantial question of law.

3. I have heard learned counsel for the appellants and went through the record with utmost circumspection.

4. The suit property was originally held by Sukhlal and Sevti Bai and they transferred the suit property in the name of Rajkumar/defendant No.1 by a registered sale deed dated 22.4.1969. The plaintiffs are sons and daughters of Sukhlal. The plaintiffs filed a suit for declaration, permanent injunction and partition against the defendant on 28.4.2005 which has been dismissed by the trial Court on merits as well as on the ground of limitation under Article 110 of the Limitation Act. The plaintiffs, in turn, filed an appeal which has been dismissed by affirming the judgment and decree passed by the trial Court, against which the plaintiffs have preferred the second appeal.

5. Admittedly, the plaintiffs' father and mother sold the property in favour of defendant No.1 on 22.4.1969, and he is in possession of the said land. Thereafter the suit filed by the plaintiffs on 28.4.2005 has been dismissed as barred by limitation under Article 110 of the Limitation Act. It has been clearly recorded by the both the Courts below that the plaintiffs were aware about the execution of sale deed and therefore,

suit ought to have been preferred on or before 22.4.1981 and the suit instituted on 28.4.2005 is hopelessly barred by limitation. As such, the concurrent finding recorded by the two Courts below dismissing the suit as well as the appeal holding that the suit was barred by limitation, is finding of fact based on material available on record, which is neither perverse nor contrary to the record and the appeal does not involve substantial questions of law.

6. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

SD/-

(Sanjay K. Agrawal)
JUDGE