

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 251 of 2011**

1. Karan Singh (died and deleted).

2. Nasiban (died) through LRs. :-

a. Akhtari Begam Wd/o Md. Nawab, Aged about 40 years, R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

b. Md. Iqbal S/o Nawab, Aged about 25 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

c. Mohd. Akbar S/o Nawab, Aged about 20 years, R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

d. Sultana Begam D/o Nawab, Aged about 30 years, R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

e. Mohd. Safiq S/o Md. Habib, Aged about 55 years, R/o Gurunanak Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

f. Kaniy Parvin, Aged about 48 years, Wd/o Mohd. Rafiq R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

g. Reshmi Khan, Aged about 25 years, D/o Late Mohd. Rafiq R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

h. Shahin Ansari, Aged about 23 years, D/o Late Mohd. Rafiq, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

I. Majbur Rahman, Aged about 20 years S/o Mohd. Rafiq R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

j. Md. Salim S/o Md.Habib, Aged about 38 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

k. Md. Kayum S/o Md. Habib, Aged about 38 years R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

l. Md. Iliyash S/o Md. Habib, Aged about 35 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

m. Md. Yunus S/o Md. Habib, Aged about 30 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

n. Md. Yusuf S/o Md. Habib, Aged about 25 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

o. Parvin Begam D/o Md. Habib, Aged about 20 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

p. Kaniz Begam D/o Habib, Aged about 43 years, R/o Gurunank Chowk, Torwa, P.S. Torwa, Bilaspur, Distt. Bilaspur, Chhattisgarh.

3. Smt. Bindabai (died and deleted).

---Appellants/Defendants

Versus

1. Smt. Laxminbai W/o Jangbahadur Singh

2. Chandrabhan Singh (died) through Lrs. :-

a. Manoj Singh, Aged about 32 years, S/o Late Chandrabhan Singh R/o Barridih, Post Manjhwar, P.S. Ratanpur, Tahsil and Distt. Bilaspur, Chhattisgarh.

b. Mukesh Singh, Aged about 27 years, S/o Late Chandrabhan Singh R/o Barridih, Post Manjhwar, P.S. Ratanpur, Tahsil and Distt. Bilaspur, Chhattisgarh.

c. Subhash Singh S/o Late Chandrabhan Singh, Aged about 35 years.

d. Ku. Sushma D/o Late Chandrabhan Singh, Aged about 33 years

Respondents No. 2(C) and 2(D) are R/o Village Barideeh, Tahsil and Distt. Bilaspur, Chhattisgarh.

3. Smt. Bipat Kunwar (died) through Lrs. :-

a. Savitri W/o Sunder Singh D/o Phool Singh, Aged about 47 years, R/o Village and Post Tinkhar, Police Station Atarra, Distt. Banda, U.P.

--- Respondents/Plaintiffs

For Appellants :- Mr. J.K. Shastri, Advocate

For Respondents :- Mr. H.S. Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board (Through Video Conferencing)

15/07/2021

1. This second appeal preferred by the appellants/defendants (now their Lrs.) was admitted for hearing on 04/04/1996 by

formulating the following two substantial questions of law :-

"1. Whether Ex. P-1 dated 28/3/64 is void for uncertainty as no specific piece of land was sold in favour of Phool Singh and Chandrabhan Singh ?

2. Whether the suit filed by the respondents for declaration and possession is maintainable in view of the decision rendered by this Court in Ramdayal v. Manaklal (1973 M.P.L.J. 650) ?"

[For the sake of convenience, the parties will hereinafter be referred to as per their status and ranking given in the plaint before the trial Court.]

2. Plaintiffs filed a suit for declaration of title and recovery of possession stating inter alia that they have purchased the suit land bearing Khasra No. 342/1 area 6.00 acres from defendant No. 1 by sale deed dated 28/03/1964 (Ex. P/1) for cash consideration of Rs. 2,000/- and thereby came in possession of the said suit land and continued to remain in possession until they were dispossessed by defendant No. 2 in June, 1976 on the premise that he has purchased the suit land from defendant No. 1, as such, they are entitled for decree for declaration of title and recovery of possession.

3. Resisting the suit, defendant No. 1 filed his written statement stating inter alia that suit land was originally held by his ancestor namely Maan Singh and after his death it was held by his widow Nankusiya Bai which was then passed on to defendant No. 1 and his mother defendant No. 3 who are joint title-holders of the suit land and their names have been recorded in the revenue records, as such, defendant No. 1 has no independent right to alienate the suit land in favour of plaintiffs. It was further pleaded that he had taken loan from the plaintiffs and in order to pay that loan, he executed nominal sale deed in favour of plaintiffs for the purpose of security of loan and the said sale deed does not confer any title upon the plaintiffs, as such, their suit deserves to be dismissed.
4. Defendant No. 2 filed his written statement and stated that he has purchased 2.87 acres of Khasra No. 342/1 from defendant No. 1 and his mother defendant No. 3 by sale deed dated 19/04/1974 for cash consideration of Rs. 2,000/- and thereafter came to be in possession of the said land.

5. Defendant No. 3, mother of defendant No.1, filed her separate written statement and supported the case of defendants No. 1 and 2 stating that plaintiffs' suit deserves to be dismissed.
6. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 02/05/1983 holding that plaintiffs have purchased the suit land from defendant No. 1 by sale deed dated 28/03/1964 (Ex. P/1) for cash consideration of Rs. 2,000/- and defendant No. 1 has executed the said sale deed without authority of law and defendants have failed to prove that the sale deed (Ex. P/1) was a nominal sale deed executed for the purpose of security of loan, as such, plaintiffs are entitled for decree for declaration of title and recovery of possession. Feeling aggrieved, defendants preferred an appeal wherein the first appellate Court affirmed the findings recorded by the trial Court and allowed the appeal vide impugned judgment and decree dated 07/01/1995 which has resulted into filing of this second appeal by the appellants/defendants (now their LRs.) under Section 100 of CPC which has been admitted by

formulating the two substantial questions of law set out in the opening paragraph of this judgment.

7.Mr. J.K. Shastri, learned counsel for the appellants/defendants, would submit that both the Courts below have erred in granting decree in favour of the plaintiffs by ignoring the fact that neither defendant No. 1 was competent to sell the suit land in favour of plaintiffs nor the sale deed (Ex. P/1) has been proved in accordance with law. The sale deed (Ex. P/1) is void for uncertainty as no specific details of the land which has been sold in favour of plaintiffs has been mentioned in the sale deed and the area of the sold land has also not been shown therein and since the suit land was joint family property of defendant No. 1 and his mother defendant No. 3, plaintiffs could have brought the suit for partition as held by the Madhya Pradesh High Court in the matter of Ramdayal v. Manaklal¹, as such, the judgment and decree passed by both the Courts below deserves to be set aside.

8.Mr. H.S. Patel, learned counsel for the respondents/plaintiffs, would submit that no

¹ 1973 M.P.L.J. 650

such pleading that the sale deed (Ex. P/1) is void for uncertainty has been taken by either of the defendants in the three written statements filed by them separately and thus the said pleading cannot be permitted to raised directly in the second appeal for the very first time. Similarly, defendants did not make out any case in the first appeal by making submission that suit for partition ought to have been filed by the plaintiffs in line with the decision rendered by the M.P. High Court in Ramdayal (supra) and it is for the first time that this plea has been raised by the defendants, as such, the aforesaid pleas deserve to be rejected and the appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

Answer to substantial question of law No. 1 :-

10. It is the case of the plaintiffs that they have purchased the suit land bearing Khasra No. 342/1 area 6.00 acres from defendant No. 1 by sale deed dated 28/03/1964 (Ex. P/1) to which defendant No. 1 firstly denied in his written

statement stating that he was not competent to alienate the suit land in favour of plaintiffs as the suit land is joint family property of his and his mother's i.e. defendant No. 3 and simultaneously, he also took the plea that the said sale deed (Ex. P/1) was a nominal sale deed as it was executed only for the purpose of security of loan and in order to make payment of loan, he has taken Rs. 2000/- from the plaintiffs in lieu of the sale deed (Ex. P/1). This plea of sale deed having been executed only for the purpose of security of loan was not accepted by the two Courts below.

11. A careful perusal of the written statement particularly filed by defendant No. 1 would show that he has clearly taken the plea that sale deed (Ex. P/1) was executed by him in favour of plaintiffs for security of loan and no such plea was taken that the said sale deed is void or uncertainty as no specific description of the land which has been sold has been mentioned in the sale deed. The said plea that sale deed (Ex. P/1) is void for uncertainty ought to have been taken in the written statement itself and in that case the sale deed could have been proved

by the plaintiffs. Once the two Courts below have held that sale deed has transferred title in favour of plaintiffs and that sale was not a nominal sale rather it was a real and outright sale, the defendants cannot be permitted to take a new plea altogether before this Court which has not been taken before the two Courts below to say that the sale deed is void for uncertainty particularly when defendant No. 1 himself has taken a specific plea that the sale so made was not real and outright sale rather it was nominal sale intended only for the purpose of security of loan. Even otherwise, the parties went to trial fully understanding that the dispute is with regard to the 6 acres of land over which plaintiffs are claiming title and defendants are disputing their title. As such, the first substantial question of law is answered in favour of plaintiffs and against the defendants and it is held that defendants have failed to establish that sale deed (Ex. P/1) is void for uncertainty.

Answer to substantial question of law No. 2 :-

12. This substantial question of law is based on the decision rendered by the M.P. High Court in

Ramdayal (supra) wherein it has been held by the Full Bench of the M.P. High Court that remedy of a purchaser from a co-parcener of his undivided co-parcenary property is to file a suit for general partition. In the instant case, it has not been proved that suit land was joint family property of defendant No. 1 and his mother defendant No. 3 and defendant No. 1 had no right or title to alienate the suit land in favour of plaintiffs. It is the case of defendant No. 1 that he has alienated the suit land in favour of defendant No. 2 with the consent of her mother defendant No. 3. As such, this substantial question of law that plaintiff ought to have filed the suit for general partition as held in **Ramdayal** (supra) has neither been taken expressly in the written statement by the defendants nor it has been taken before the two Courts below and therefore, it cannot be permitted to be canvassed for the first time before this Court. Accordingly, this question of law is also answered in favour of plaintiffs and against the defendants.

13. As a fallout and consequence of the aforesaid discussion, this second appeal, being devoid of

merits, deserves to be and is accordingly
dismissed leaving the parties their own cost(s).

14. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet