

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)
SECOND APPEAL No. 2543 of 2023**

BETWEEN:-

- 1. SANTU @ SANTOSH S/O LATE SHRI UJAAR LODHI, AGED ABOUT 49 YEARS, OCCUPATION- FARMER**
- 2. SARLA BAI D/O LATE SHRI UJAAR LODHI W/O SHRI PANCHAM LODHI, AGED ABOUT 44 YEARS, OCCUPATION -HOUSEWIFE**
- 3. NEERAJ S/O SHRI SANTU @ SANTOSH, AGED ABOUT 25 YEARS, OCCUPATION- FARMER**

ALL R/O GRAM DHANSANWADA, TEHSIL AMARWARA, DISTRICT CHHINDWARA (M.P.)

.....APPELLANTS

(BY PRAVESH NAVERIYA - ADVOCATE)

AND

- 1. LAKSHMAN S/O SHRI SHAMBHU LODHI, AGED ABOUT 74 YEARS,**
- 2. RADHE S/O SHRI LAKSHMAN LODHI, AGED ABOUT 49 YEARS;**
- 3. JEETLAL S/O SHRI LAKSHMAN LODHI, AGED ABOUT 56 YEARS;**
- 4. MAHESH S/O SHRI LAKSHMAN LODHI, AGED ABOUT 44 YEARS;**

ALL R/O PANJRA, TEHSIL AND POLICE STATION CHAURAI, DISTRICT CHHINDWARA (M.P.)

5. **RAMOBAI W/O SHRI DHANNA VERMA,
AGED ABOUT 60 YEARS, R/O GRAM SEJA,
TEHSIL AMARWARA, DISTRICT CHHINDWARA
(M.P.)**

6. **STATE OF MADHYA PRADESH THROUGH
COLLECTOR, CHHINDWARA, DISTRICT
CHHINDWARA (M.P.)**

.....RESPONDENTS

**(SHRI D.S. PARIHAR – PANEL LAWYER FOR RESPONDENT
NO.6/STATE)**

(Heard on : 21/02/2024)

(Passed on: 15/05/2024)

This Second Appeal having been heard on admission and reserved for orders, coming on for order today, **Justice Amar Nath (Kesharwani)** passed the following:

ORDER

This Second Appeal has been preferred by the appellants under Section 100 of the Code of Civil Procedure, 1908 being aggrieved by the judgement and decree dated 04/10/2023 passed in Regular Civil Appeal No. 50/2019 by Court of District Judge, Amarwara, District Chhindwara (M.P.), whereby learned District Judge dismissed the appeal and affirmed the judgement and decree dated 24/09/2019 passed by Civil Judge Class-I, Amarwara, District Chhindwara (M.P.) in RCS-A No. 300008/2016, whereby suit filed by respondents/plaintiffs for declaration of title, delivery of possession after getting partition and for declaration of sale-deed dated 11/01/2016 as null and void and was not binding upon them was allowed and suit was decreed in their favour.

2. Brief facts of the case are that the father of respondents/plaintiffs Ujaar Singh performed two marriage during his life time. Smt. Kerabai

is his first wife and Ujaar Singh is having two daughters from Kerabai namely, Shyamo @ Jamvati and Ramobai. Smt. Shayama is second wife of Ujaar Singh and she is having two children from Ujaar Singh namely Santu @ Santosh and Sarlabai. Ujaar Singh was having land bearing Khasra No.152 ad-measuring area 0.279 hectare, Khasra No. 164 ad-measuring 0.304 hectare, Khasra No. 165/2 ad-measuring area 0.089 hectare, Khasra No. 167 ad-measuring area 0.777 hectare, Khasra No. 168 ad-measuring area 0.425 hectare, Khasra No.171 ad-measuring area No. 0.502 hectare, Khasra No.180/3 ad-measuring area 0.024 hectare, Khasra No. 180/4 ad-measuring 0.069 hectare (total 8 Khasra and total land ad-measuring area of 2.461 hectare) situated at village Paunar and land bearing Khasra No. 177 ad-measuring area 0.376 hectare and Khasra No. 178 ad-measuring 1.076 hectare total ad-measuring area 1.352 hectare at Village Dhanswada. Ujaar Singh had died 25 years before from institution of suit. After death of Ujaar Singh, defendant No.1 gave assurance to the plaintiffs that the suit lands jointly recorded in every ones name and individual share will be given at the time of the partition of the suit land, however, defendant Nos. 1 and 2 did not get partition of the said land and in the year 2015, when plaintiff asked for partition, then defendants refused to do so then some dispute arose between the parties in this regard and defendant No.1 executed a sale-deed in favour of his son defendant No.4 for the land bearing Khasra No. 177/2 area 0.100 hectare and Khasra No. 178 area 1.076 hectare B.No. 139 Patwari Halka No. 62, R.N. Mandal, Tehsil Amarwada, District Chhindwara (M.P.). Thereafter, respondents/plaintiffs have filed a suit against the defendants/appellants for declaration of 1/5th- 1/5th share in suit property, delivery of possession after partition and also for declaration of sale-deed dated 11/01/2016 (Ex. P/7) as null and void and was not binding upon them.

3. Defendants/appellants (Except Defendant No.5 State) have filed their written statement jointly and denied the averments mentioned in the plaint and stated that the plaintiffs are not their family members and they have no relationship with them. It is also pleaded that they are in possession of the suit land since last 40 years and they have been doing agricultural work. It is also pleaded that during his life time, late Shri Ujaar Lodhi gave the land situated at Dhasanwada to defendant No.1 and land situated at Village Paunar was recorded in revenue record in the name of defendant Nos. 1 and 2 and after death of Shri Ujaar Lodhi, names of the plaintiffs were not recorded in any revenue records. Ujaar Singh died before the year 2005, hence, daughters are not entitled to claim share in fathers property, under Hindu Succession Act and prays for dismissal of the suit.

4. After framing of the issues and recording of the evidence adduced by the parties, learned trial Court decreed the suit in favour of respondents/plaintiffs, against which appellants preferred an appeal, which was also dismissed by the impugned judgement. Being aggrieved by the impugned judgement, present second appeal has been filed.

5. Appellants have filed this appeal challenging the concurrent findings of the trial Court as well as findings of the learned First Appellate Court on the following substantial questions of law as mentioned in page No. 5 of the memo of appeal, which are reproduced as below :-

“1. Whether the Learned First Appellate Court is justified in affirming the judgment and decree passed by the Learned Civil Court?

2. Whether the Learned First Appellate Court as well as the Learned Civil Court are justified in coming to the wrong conclusion that the burden of providing the case upon the Appellants/Defendants ?

3. Whether the Learned Civil Court as well as the First Appellate Court have rightly applied the concept of Burden of proof

as enumerated under Sections 101 and 102 of Indian Evidence Act, 1872?

4. *Whether the Learned Civil Court is justified in wrongly deciding the issue that the suit was not barred by limitation?*

5. *Whether the Learned Civil Court is justified in wrongly deciding the issue that the suit suffered from non-joinder of necessary parties.?*

6. *Whether the Learned Civil Court is justified in wrongly deciding the issue that the plaintiffs/respondents have established that they are Legal Heirs of Late Shri Ujaar Lodhi ?*

7. *Whether the Learned Civil Court as well as the Learned First Appellate Court have failed to appreciate the evidence in respect of non-joinder of necessary parties as well as suit being barred by limitation?*

8. *Whether the Learned Civil Court as well as the Learned First Appellate Court have failed to appreciate the evidence adduced by the Appellants/Defendants.?"*

6. Learned counsel for appellants has submitted that the trial Court as well as learned First Appellate Court have wrongly decreed the suit in favour of respondents/plaintiffs. It is also submitted that the learned trial Court as well as First Appellate Court have erred in law by coming to the wrong conclusion that the burden of proof is upon the appellants/defendants. Learned courts below have erred in law in overlooking the written statements as well as the evidence adduced by the appellants/defendants. On the strength of above, it is submitted that substantial questions of law as mentioned in the appeal memo arise for determination before this Court and appeal be admitted for final hearing.

7. I have considered the contentions of learned counsel for appellants and perused the record and impugned judgement.

8. It reveals from the record of the trial Court that defendants have not adduced any evidence in support of their pleadings. Though chief-examination of appellant No.1- Santu @ Santosh and witnesses Mahar Singh and Rajesh were filed on affidavit under Order 18 Rule 4 of CPC but they have not turned up before the trial Court to prove

their statements given on affidavits and since defendant No.1 Santu @ Santosh and his witnesses did not appear before the trial Court for cross-examination, therefore, the statements of Santu @ Santosh-appellant No.1 and witnesses Mahar Singh and Rajesh given on affidavits does not deserves to be taken into consideration. Hence, there is no legal evidence on record on behalf of appellants to support their pleadings and to rebut the case of the plaintiffs. Whereas, the respondents/plaintiffs Shyamo Bai @ Jamvati (PW 1) and Ramo Bai (PW 2) have appeared before the trial Court to support their pleadings and in support of their pleadings, they have also examined Chamru (PW 3), Ashok (PW 4), Roopchand (PW 5) and Balaram (PW 6) and exhibited documentary evidence as Ex. P/1 to Ex. P/16.

9. It reveals from the judgment of trial Court as well as First Appellate Court that both the Courts have considered the pleadings of the parties and evidence placed on record and after marshalling the entire evidence, the issues involved in the case were properly decided by the trial Court as well as First Appellate Court. There are concurrent findings of fact by both the Courts. Learned counsel for the appellants/defendants is unable to show that those findings are either contrary to record or perverse. Learned counsel for the appellants/defendants is also not able to point out any substantial question of law, which needs adjudication in this Second Appeal.

10. In the case of *Kondiba Dagadu Kadam vs Savitkibai Sopan Gujar And Ors., (1999) 3 SCC 722* Hon'ble Apex Court held that the High Court must satisfy itself that substantial question of law is involved and must then formulate the question of law on which the appeal could then be heard. It is also held that the concurrent findings

of fact however erroneous cannot be disturbed under Section 100 of the CPC.

11. In the case of *Suresh Lataruji Ramteke Vs. Sau. Sumanbai Pandurang Petkar & Others, 2023 LiveLaw (SC) 821* Hon'ble Apex Court has held that a Court sitting in second appellate jurisdiction in ordinary course, the High Court in such jurisdiction does not interfere with finding of fact.

12. As discussed above, in view of concurrent findings of the fact and in absence of any substantial question of law, I find no reason to entertain this appeal. Hence, appeal sans merit and is hereby dismissed.

13. Cost of the appeal will be borne by the appellants themselves.

14. Let the record of the trial Court as well as First Appellate Court be sent back to the concerned Courts alongwith the copy of this order.

(AMAR NATH (KESHARWANI))

JUDGE

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