

(2020) 01 CHH CK 0117
In the Chhattisgarh High Court
Case No : Second Appeal No. 322 Of 2018

Kailash And Ors

APPELLANT

Vs

Revti Wd/O Late Trilochan Mahkul And Ors

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2020) 01 CHH CK 0117

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : R.N. Jha, Harish Khuntia, Anshuman Rabra

Final Decision : Dismissed

Judgement

1. Heard this second appeal preferred by the appellants/plaintiffs on admission and formulation of substantial question of law questioning the impugned judgment and decree passed by the Additional District Judge, Kunkuri affirming the judgment and decree of the trial Court, by which the plaintiffs' suit for declaration of title, confirmation of possession and permanent injunction was dismissed finding no merit.

2. Mr.R.N.Jha, learned counsel appearing for the appellants/plaintiffs, would submit that both the Courts below were absolutely unjustified in not holding that the suit property shown in Schedule-A of the plaint situated at village Katangjor was coparcenary property held by the plaintiffs and defendant No.2 by recording a finding which is perverse to record and both the Courts below further erred in holding that the suit was barred by limitation and ought to have allowed the application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, as such, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

3. The suit property was originally held by Punaram, he had four sons namely, Sonuram, Samaru, Jugeshwar and Jagdish. Plaintiffs No. 1 to 6 are sons and

daughters of Sonuram and Samaru, and plaintiff No.7 is son of Punaram. Dispute mainly relates to the suit land held by Punaram at village Katangjor, Tehsil Patthalgaon admeasuring 10.313 hectares. Punaram had alienated the said land in favour of defendant No. 2 on 02.07.1980 vide Ex.P-5. The plaintiffs instituted a suit on 18.12.2014 for declaration of title, confirmation of possession and permanent injunction and also seeking declaration that sale deed dated 02.07.1980 (Ex.P-5) executed by Punaram, father of defendant No.2 in favour of defendant No.1 is null and void stating that the suit property shown in Schedule-A of the plaint situated at village Katangjor was coparcenary property of the plaintiffs and defendant No.2, which has been fraudulently got registered in name of defendant No.1 and alleged sale deed executed by Punaram in favour of defendant No.1. By filing written statement, it was pleaded by defendant No. 1 and 2 that the suit land was self-acquired property of Punaram which he had sold in favour of defendant No.1 by registered sale deed dated 02.07.1980 on case consideration of Rs. 18,000/- and the suit was barred by limitation as it was filed after 34 years of execution of sale deed. The trial Court upon appreciation of oral and documentary evidence available on record dismissed the suit on merits as well as on the ground of delay as it was barred by limitation, which was affirmed by the first appellate Court in appeal preferred by plaintiffs, against which, this second appeal has been preferred.

4. The trial Court relying upon the statement of plaintiff No.2-Kisan Yadav has clearly held that during lifetime of Punaram, property held by Punaram at village Mudabahla and Kadro was partitioned and holdings were separated and property held by Punaram at village Katangjor was his self-acquired property to which he has sold to defendant No.1 vide Ex.P-5 and to other persons vide Ex.D-25 and Ex. D-26 and as such, the suit property was not coparcenary property of the plaintiffs and defendant No.2, which the first appellate Court has also accepted, as such, concurrent finding recorded by two Courts below holding that the suit property is self- acquired of Punaram is finding of fact based on evidence available on record, it is neither perverse nor contrary to the record. Likewise, sale deed executed by Punaram, father of defendant No.2, in favour of defendant No.1 on 02.07.1980 (Ex.P-5) was challenged by the plaintiffs by filing suit after lapse of 34 years on 18.12.2014, which was barred by limitation. The plaintiffs have not indicated as to what date they came to know about the sale deed executed by Punaram in favour of defendant No.1, as such, both the Courts below have rightly come to the conclusion that the suit was barred by limitation as sale deed was not challenged within the period of limitation. The first appellate Court has rightly held that no substantial cause has been shown for granting the application under Order 41 Rule 27 CPC. The discretion exercised by the first appellate Court cannot be said to be arbitrary.

5. I do not find any substantial question of law for determination of this second appeal. It is accordingly dismissed in limine without notice to the other side.