



2026:CGHC:4090



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 262 of 2019**

Madhusudan Majumdar S/o Manoranjan Majumdar Aged About 46 Years R/o Subhashnagar, (Sannapara) Ambikapur Police Station Gandhinagar Tashil Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

... Appellant**versus**

1 - Jagdish Sarkar S/o Late Dharendra Sarkar Aged About 56 Years R/o Sannapara Gali No.2, Ward No.2, Subhas Nagar Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

2 - Vijay Sarkar S/o Late Dharendra Sarkar Aged About 50 Years R/o Sannapara Gali No.2, Ward No.2, Subhas Nagar Ambikapur District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

3 - Manoranjan Majumdar S/o Late Pulin Bihari Majumdar Aged About 72 Years R/o Sannapara Gali No.2, Ward No.2, Subhas Nagar



Ambikapur District Surguja Chhattisgarh., District : Surguja
(Ambikapur), Chhattisgarh

4 - State Of Chhattisgarh Through The Collector Surguja Distict
Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

... Respondent(s)

(Cause title taken from CIS)

For Appellant : Shri A.N. Pandey, Advocate.

For Respondent(s) No. 3 : Shri Sandeep Patel, Advocate

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

23.01.2026

1. By the present appeal under Section 100 of the CPC, the appellant/plaintiff challenging the impugned judgment and decree dated 13.03.2019 passed by the Learned District Judge, Ambikapur District Surguja (C.G.) in Civil Appeal No. A/121/2018 (Madhusudan v. Jagdish Sarkar & Others) arising out of the judgment and decree dated 22.10.2018 passed by the learned Civil Judge, Class- I, Ambikapur District Surguja (C.G.) in Civil Suit 180-A/2016 (Madhusudan v. Jagdish Sarkar & Others) For the sake of convenience, the parties would be referred as per their status before the learned trial Court.



2. (a) The plaintiff preferred the suit seeking specific performance and permanent injunction pleading, inter alia, that the plaintiff entered into an agreement to sell dated 22.04.1993 with the then owner, Amela Sarkar (daughter of Ashwini Mandal and wife of Dhirendra Nath Sarkar), in respect of 0.132 hectare of land out of Plot No. 273/23, part of total land bearing old Plot Nos. 273/23 and 273/22 admeasuring 2.75 hectares, for a consideration of ₹20,000/-. The said agreement was executed in presence of witnesses and possession of the suit land was delivered to the plaintiff. Since then, the plaintiff has been in continuous, peaceful possession of the suit land and has constructed a pucca house, shops, toilet, bathroom, installed a tubewell and raised a boundary wall around the land. Subsequently, Amela Sarkar died in the year 1996, whereafter her legal heirs, namely defendant Nos. 1 and 2, were granted land ownership patta by the Tahsildar, Ambikapur, in the year 1999. The plaintiff has always been ready and willing to get the registered sale deed executed in his favour and repeatedly requested Amela Sarkar during her lifetime, but due to her ill health and the fact that land ownership patta had not been issued at that time, registration could not be completed.



- (b) The plaintiff further contends that after the death of Amela Sarkar, defendant Nos. 1 and 2 executed a registered sale deed dated 01.04.2010 in favour of defendant No. 3 in respect of 0.14 are land out of Plot No. 257, which is different from the suit land. The boundaries mentioned in the said sale deed clearly show that the suit land and the land purchased by defendant No. 3 form different portions of the same larger plot. The cause of action arose from the order of the Revenue Board dated 02.09.2016, thereafter the order of this Court dated 05.10.2016 and subsequently the legal notice dated 17.10.2016 issued by the plaintiff to defendant Nos. 1 and 2, and their reply dated 20.10.2016. The suit has been valued at ₹20,000/- for specific performance of contract and ₹1,000/- for permanent injunction, on which appropriate court fee has been paid. Accordingly, the plaintiff prays for a decree directing defendant Nos. 1 and 2 to execute a registered sale deed in favour of the plaintiff in respect of the suit land, and in case of their failure, for execution of the sale deed through the Court, along with a decree of permanent injunction restraining the defendants from causing any interference in the plaintiff's possession over the suit land.
3. (A) The Defendant Nos. 1 and 2, in their written statement, contended that the suit land was not recorded in the revenue



records as the property of Amela Sarkar, nor did she have ownership or title over the same. The plaintiff has filed the present suit on the basis of an unauthorized and forged agreement, solely with the intention to harass the defendants and create an artificial dispute. It is averred that in the year 1993 the plaintiff was about 20 years of age, was a student, and had no independent source of income, and further failed to clearly identify the suit land by specific boundaries. The defendants further state that Ashwini Mandal, the maternal grandfather of defendant Nos. 1 and 2, had no male issue and only one daughter, namely Amela, who was a woman of unsound mind and incapable of understanding or taking rational decisions. It is further pleaded that Amela Sarkar had suffered severe burn injuries and had been under medical treatment since 1992, was unable to move independently, and thereafter died. It is further submitted that the Government of India, Rehabilitation Department, had issued directions in the year 1990 for removal of unauthorized occupants from rehabilitation land and for issuance of patta in favour of the actual allottees. During the process of issuance of patta, land ownership patta was granted to defendant Nos. 1 and 2. The possession of the suit land has always remained with the defendants. As no patta was ever



issued in the name of Amela Sarkar, the alleged agreement to sell is not valid or acceptable in law. The defendants further contend that the plaintiff's father, Manoranjan Majumdar, after obtaining due permission from the Collector, executed and registered a sale deed dated 01.04.2010, and got the same duly mutated in the revenue records

(B) The defendants further contend that the plaintiff suppressed material facts and misrepresented the case before trial Court by concealing the true facts, proper parties, and an existing family dispute between father and son. The genealogy stated in the plaint is incomplete, as Bhadr Mandal had four sons Lalchand, Phoolchand, Ashwini, and Sanyasi, who have not been impleaded, rendering the suit not maintainable. It is further pleaded that no valid cause of action has been disclosed, the suit has not been properly valued, and the claim is based on forged documents. The suit is barred by limitation, and in respect of Government rehabilitation land, exclusive jurisdiction lies with the Collector, and the Civil Court has no jurisdiction. Mandatory notice to the Government was not issued prior to filing the suit.

4. (I) The Defendant No. 3, while denying the averments of the plaintiff, submits that the plaintiff himself has admitted in the



plaint that the land ownership patta was granted to defendant Nos. 1 and 2 in the year 1999. In view of such admission, the plaintiff's assertion that Amela Sarkar was the owner of the suit land and competent to execute an agreement to sell is false and self-contradictory. Amela Sarkar was never the owner of the suit land and, therefore, no agreement was executed by her. It is further contended that the land described in the boundaries of the plaint was under the ownership and possession of defendant Nos. 1 and 2, part of which was sold to defendant No. 3 after obtaining due permission from the Collector dated 31.03.2010, by a registered sale deed dated 01.04.2010. After purchase, defendant No. 3 got his name duly mutated in the revenue records. Defendant No. 3 further states that after the death of Amela Sarkar, he purchased the disputed land from defendant No. 1, Jagdish Sarkar, and constructed a house thereon in the year 2002. At present, defendant Nos. 1 and 2 are no longer the owners of the suit land, and defendant No. 3 is the lawful owner and in possession thereof, and is legally entitled to protect and recover possession of his land and the house standing thereon.

(II) The Defendant No. 3 further contends that the alleged agreement dated 1993 is time-barred, as the suit for specific



performance has been filed after about 23 years, far beyond the prescribed limitation period of three years. The plaintiff has made false averments only to claim ownership over costly constructions without any legal right. It is further submitted that the suit land is Government land and Amela Sarkar had no authority to execute any agreement to sell. In absence of prior permission as mandated under Section 165(7-B)(1) of the Chhattisgarh Land Revenue Code, the alleged agreement is void ab initio and confers no enforceable right. The plaintiff has also failed to properly value the suit by not assessing the residential and commercial constructions standing on the land, rendering the suit not maintainable.

5. After appreciating the evidence available on record and after framing the issues, the learned trial Court by the judgment and decree dated 22.10.2018 dismissed the suit of the plaintiffs holding that the burden to prove the issue relating to limitation was upon the plaintiff. On examination of the plaint, the learned trial Court categorically observed that the plaintiff had pleaded different dates for accrual of cause of action, firstly from the order of the Revenue Board dated 02.09.2016, secondly from the order of this Court dated 05.10.2016, and thirdly upon refusal by defendant Nos. 01 and 02 to execute the sale deed



after receipt of notice dated 17.10.2016, culminating in refusal on 20.10.2016. The Court further held that under Article 54 of the Schedule to the Limitation Act, 1963, a suit for specific performance is required to be filed within three years from the date fixed for performance, or where no such date is fixed, from the date when the plaintiff has notice of refusal of performance. Since the agreement to sell dated 22.04.1993 (Ex.P/1) did not specify any date for execution of the sale deed, the Court held that the second part of Article 54 was applicable, and accordingly determined the commencement of limitation from the date of refusal to execute the sale deed.

6. In the said suit, the agreement to sell was executed on 22.04.1993, whereas the plaintiff instituted the suit for specific performance on 01.11.2016. The plaintiff, Madhusudan Majumdar (PW-1), in paragraph 37 of his cross-examination, categorically admitted that Jagdish Sarkar had applied before the Court of the Collector seeking permission to sell the suit land to his father, Manoranjan Majumdar. He further admitted that he had acquired knowledge of the said proceedings and had filed an objection before the Collector; however, the Collector granted permission in favour of his father to purchase the land. Pursuant



thereto, his father purchased the suit land and got his name duly recorded in the revenue records.

7. Learned counsel for the appellant/plaintiff submits that the judgment and decree passed by the learned both the courts are illegal, perverse and contrary to the material evidence on record and thus liable to be set aside, as the suit has been erroneously dismissed on the ground of limitation without proper appreciation of the substantive evidence. It is contended that since no specific date was fixed in the agreement to sell for execution of the sale deed, the limitation, as per Article 54 of the Limitation Act, 1963, would commence only from the date of denial or refusal to execute the sale deed, and from such date the suit was filed well within time. Learned counsel further submits that the learned Trial Court itself decided Issue Nos. 2 and 7 in favour of the appellant by holding that late Amela Sarkar had duly executed the agreement after receiving the entire consideration, delivered possession of the suit land to the plaintiff, and that the plaintiff continues to remain in possession thereof; hence, the dismissal of the suit on the ground of limitation is unsustainable in law and deserves interference by this Court.



8. I have heard learned counsel for the appellant, perused the material available on record.
9. Upon due consideration, it is evident that the Trial Court has rightly held that the burden to prove limitation lay upon the plaintiff. The agreement to sell dated 22.04.1993 did not fix any specific date for execution of the sale deed; therefore, the second limb of Article 54 of the Limitation Act, 1963 was correctly applied. The Trial Court, on appreciation of pleadings and evidence, particularly the categorical admission of the plaintiff (PW-1) in paragraph 37 of his cross-examination, recorded a finding that the plaintiff had prior knowledge of the proceedings before the Collector, had actively participated therein by filing objections, and was fully aware that permission to sell the land had been granted in favour of his father, who thereafter purchased the suit land and got his name mutated in the revenue records. Despite such knowledge, the plaintiff instituted the suit for specific performance only on 01.11.2016, i.e., after an inordinate and unexplained delay. These findings, being based on admissions and documentary evidence, have been concurrently recorded and suffer from no perversity or legal infirmity. Accordingly, the suit is clearly barred by limitation and is liable to be dismissed.



7. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.
8. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the basis of evidence available on record, that the appellant/plaintiff failed to establish their case by placing cogent and sufficient material. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.
9. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
10. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.



11. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal***

and another, reported in ***(2019) 8 SCC 637***, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

12. Be that as it may, the argument advanced by learned counsel for the appellant and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellant failed to raise any substantial question of law which is required under Section 100 of the CPC in. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellant herein. The judgments impugned passed by the learned trial Court as well as First Appellate Court are just and proper and there is no illegality and infirmity at all.



13. Accordingly, the present appeal is liable to be and is hereby
dismissed.

Sd/-

(Bibhu Datta Guru)
Judge

Shoaib/Gowri