

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 41 of 2014**

- Savitri Bai D/o Late Jhilangi Satnami aged about 65 years, agriculturist, R/o village Kharsola, Tah. and Thana- Mungeli, Distt. Bilaspur (C.G.)

---- Appellant**Versus**

1. Bhuneshwar @ Bhoi S/o Surja Seth aged about 65 Years R/o village Dhardeyi, Thana and Tah. Mungeli, Distt. Bilaspur C.G.
2. State Of Chhattisgarh Through- the Collector, Distt. Bilaspur (C.G.)

---- Respondents

For appellant	: Mr. Pallav Mishra, Adv.
For Respondent No. 1	: None.
For Respondent No. 2/State	: Ms. Sangita Mishra, PL.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****17/07/2015**

1. Instant second appeal under Section 100 of the Code of Civil Procedure (in brevity 'CPC') is directed against the judgment and decree dated 28-10-2013 passed by the Additional Distt. Judge, Mungeli, CG in CA No. 96-A/11 whereby and whereunder the appeal filed by defendant No. 1/appellant has been dismissed affirming the judgment and decree dated 17-4-2009 passed by the Civil Judge Class -I, Mungeli in CS No. 13-A/2006.
2. Facts of the case in brief necessary for disposal of this appeal are that plaintiff/ respondent No. 1 filed a civil suit before the trial Court for declaring the order passed by the Sub Divisional Officer dated 26-9-1994 and the order passed by the Additional Collector, Bilaspur dated 13-12-1996 void and illegal as regards restoring the vacant possession of the suit land to defendant No. 1 as the matter falls under provisions of Chhattisgarh Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambhandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (in brevity 'the Act of 1976') and also for mesne profit. The trial Court on a

close scrutiny of the evidence led, submission made and material placed on record, allowed the suit and held that defendant No. 1 has not proved the pleading that the sale deed dated 31-7-1959 (Ex. P-1) executed by Jhilangi in favour of Mangila is a security for the loan and also held that the impugned order passed by the Sub Divisional Officer and the Additional Collector for the suit land is illegal and void and the Act of 1976 is not applicable for the transaction made on 31-7-1959. The trial Court ordered that the defendant No. 1 shall hand over vacant possession of the suit land within two months to the plaintiff. Against the said judgment and decree, appellant/defendant No. 1 preferred first appeal before Additional Distt. Judge, Mungeli. The first appellate Court after re-appreciating the entire evidence available on record dismissed the appeal and affirmed the findings recorded by the trial Court vide judgment and decree dated 28-10-2013 which is impugned in the instant second appeal by defendant No. 1 inter alia on the ground that looking to the facts and circumstances of the case, the finding arrived at by both the courts below is erroneous. The decree drawn in favour of the respondent No. 1 is perverse and deserves to be set aside. The impugned sale deed was a forged one and liable to be set aside. Both the Courts below have failed to appreciate that the transaction between the ancestors of the parties was that of loan. Hence the appellant prayed that the appeal may be allowed and the decree of both the courts below be set aside.

3. I have heard learned counsel for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of CPC and perused the judgments and decree including the records of both the courts below.
4. Learned counsel for the appellant supported the ground raised in the second appeal and submitted that substantial question of law needs to be formulated along with admission of appeal. He would further submit that as substantial question of law mentioned in the memo of appeal is involved in the appeal, the appeal may be admitted for hearing and be disposed of accordingly.
5. A perusal of entire material available on record goes to show that admittedly there was sale deed duly executed and registered by the ancestors of the parties namely Jhilangi and Mangilal on 31-7-1959

Ex. P-1. It is further admitted that after execution of sale deed, the land in question was recorded in the name of Mangilal. It is also admitted that the Sub Divisional Officer and Additional Collector passed the impugned order for the suit land that the transaction was in lieu of security of loan.

6. As mentioned in Section 2-A of the Act of 1976, appointed day of the Act is 1-1-1971. There is no such provision which says that the act shall be applicable with retrospective effect meaning thereby the transaction made on 31-7-1959 or prior to 1-1-1971 would not attract the provision of the Act of 1976. Learned counsel for the appellant could not demonstrate any provision which goes to show that the above mentioned finding of the Courts below is perverse or against the law. Except this, no other point for substantial question of law is demonstrated. In the opinion of this Court, both the Courts below have not committed any illegality or perversity or any lapses so as to formulate substantial question of law.
7. As per above discussion, in the considered view of this Court, upon perusal of entire evidence, no substantial question of law is required to be formulated for hearing of second appeal.
8. This Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Existence of substantial question of law is the sine-qua-non for the exercise of the jurisdiction under the amended Section 100 of the Code. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.
9. In view of above, since no substantial question of law arises for determination in the instant case, this is not a fit case for admission.
10. Consequently the appeal is dismissed at motion stage itself under the provision of Order 41 Rule 11 read with Order 42 Rule 1 of CPC. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge