

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 180 of 2015

1. Niyamat S/o Jabbar Aged About 38 Years R/o Village Dokada, P.S. Kansabel, Tahsil-Kansabel, District Jashpur, Civil & Revenue District Jashpur Chhattisgarh
2. Ajamat S/o Jabbar Aged About 34 Years R/o Village Dokada, P.S. Kansabel, Tahsil-Kansabel, District Jashpur, Civil & Revenue District Jashpur Chhattisgarh
3. Rantu S/o Jabbar Aged About 32 Years R/o Village Dokada, P.S. Kansabel, Tahsil-Kansabel, District Jashpur, Civil & Revenue District Jashpur Chhattisgarh
4. Imran S/o Jabbar Aged About 25 Years R/o Village Dokada, P.S. Kansabel, Tahsil-Kansabel, District Jashpur, Civil & Revenue District Jashpur Chhattisgarh

---- Appellants

Versus

1. Gabrela S/o Jaipal Aged About 45 Years, Caste Uraon R/o Village Dokada, Tahsil Kansabel, District Jashpur, Civil & Revenue District Jashpur Chhattisgarh
2. Baleshwar S/o Bajru Aged About 60 Years R/o Village Dokada, Tahsil-Kansabel, District Jashpur, Civil & Revenue District Jashpur Chhattisgarh
3. State Of Chhattisgarh Through : The Collector, Jashpur, District Jashpur Chhattisgarh

---- Respondents

For appellants- Shri A.K. Prasad, Advocate.
For respondent No.1 – Shri Harish Khuntiya, Advocate.
For State/respondent No.3 – Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

4/03/2016

1. This instant appeal is against the judgement and decree dated 13/02/2015 passed by the court of Additional District Judge, Jashpur in Civil Appeal No.18-A/2014. The said appeal was preferred against the judgement and decree dated 31/03/2014 passed in Civil Suit No. 18-A/2013 by the court of Civil Judge, Class-II, Bagicha wherein decree for permanent injunction, declaration and possession was passed.
2. The instant appeal is by the defendants against whom the

judgement and decree was passed. Suit was filed by one Gabrela widow of Jaipal against the defendants and one Baleshwar. It was pleaded by the plaintiff that a land bearing khasra No.918/01 admeasuring 0.922 hectare situated at Bagicha was sold to Jaipal i.e. husband of the plaintiff on 3/06/96 by a registered sale deed for valuable consideration of Rs.50,000/-. It was pleaded that said sale deed was left with the seller Baleshwar as the purchaser went to join his duties. Along with the sale deed the possession of the land was handed over. Subsequently, after death of the purchaser Jaipal the plaintiff Gabrela widow of Jaipal requested for mutation of the name in respect of the land in the revenue record of Baleshwar but it was avoided on some pretext or the other. In the year 2012 the appellants dispossessed the plaintiff by force and when mutation proceedings were started by the plaintiff, the appellants/defendants came out with a fact that Baleshwar has again sold the same subject land by sale deed dated 16/02/2001. It was further stated that earlier sale deed was dated 3/06/96 and therefore sale in respect of the same property in the year 2001, the defendants/appellants herein cannot become absolute owner of the said property.

3. Defendants resisted the suit that suit land was purchased for valuable consideration of Rs.70,000/- on 16/02/2001 from the seller Baleshwar by Jabbar, the father of the defendants/appellants, subsequently, after death of Jabbar land were recorded in the name of defendants. It was further stated that when earlier sale deed dated 3/06/96 was executed out of the total sale consideration of Rs.50,000/- only Rs.30,000/- was paid and a separate agreement was also executed that within period of one year, the remaining amount would be

paid otherwise sale would come to an end. It was stated that remaining part of the sale consideration was not paid, therefore original registry was returned to Baleshwar the seller. Consequently, Baleshwar could not have sold the property on 16/02/2001.

4. On the basis of the pleading and the evidence trial court decreed the suit. Thereafter, the same was assailed in appeal. The appellate court too dismissed the appeal, therefore this second appeal.

5. Shri A.K. Prasad, learned counsel appearing for the appellants would submit that original sale deed dated 3/06/96 was without consideration as original sale deed dated 3/06/96 which is exhibited as Ex.P-1 same document is exhibited as Ex.D-4 as the original document was retained with the seller Baleshwar. He submits that this fact goes to prove that original sale was without complete consideration and therefore it cannot amount to sale. He further submits that Ex.D-2 therefore should have been held to be valid sale which was subsequent sale which was dated 16/02/2001 and was for valuable consideration. He contended that finding of both the court below are perverse, therefore appeal be admitted for hearing.

6. I have perused the case file, documents and the evidence. Facts of this case would show that the sale deed dated 3/06/96 was/is in existence which is marked as Ex.P-1. Ex.P-1 and Ex.D-4 are one and same. Ex.P-1 is certified copy whereas Ex.D-4 is the original. According to Ex.P-1 sale deed was executed by Baleshwar in favour of Jaipal i.e. husband of the plaintiff on 3/06/96. Reading of the Ex.P-1 would show that it records the fact that entire sale consideration has been paid. Endorsement of the sale consideration would also show that entire consideration of Rs.50,000/- was paid. In such sale deed one Mohd.

Rafiq Ansari was an attesting witness. Mohd. Rafiq Ansari was examined on behalf of the defendants/appellants. He admitted his signature on the document and further stated in the cross examination that subject land was purchased by Jaipal from Baleshwar in the year 1996. It is case of the plaintiff that suit land was purchased by her husband Jaipal from Baleshwar in the year 1996. Therefore, reading the document Ex.P-1 and Ex.D-4 along with statement of the plaintiff and Mohd. Rafiq Ansari witness of the defendants/appellants this fact is established that sale deed was executed on 3/06/96.

7. Plaintiff had further stated in her statement that said sale deed was left in possession of the Baleshwar and Mohd. Rafiq Ansari in order to get land mutated. However, in respect of the same subject land a sale was executed on 16/02/2001 which is marked as Ex.D-1. Therefore, evidence which is on record leads to show that in respect of the same land initial sale deed dated 3/06/96 was executed and in respect of the same land another sale was executed on 16/02/2001. There is no document on record which shows that sale deed dated 3/06/96 was annulled by decree of the competent court. Therefore, by mere submission which is contained in another document that sale consideration was not paid cannot be appreciated for evidence, since sale deed itself contains endorsement of payment of full consideration money.

8. Learned court below further has not relied upon Ex.D-3 which is an purported agreement, wherein admission contains that part of the sale consideration was not paid. In any case such sale when earlier sale deed having being in existence this cannot be nullified by unilateral act of a party/seller who has already sold the property and

divested himself out of the ownership. Consequently, finding arrived at by both the court below do not need re-consideration.

9. In the result, after perusal of the record and appreciation of evidence, I am of the opinion that no substantial question of law arises for consideration in this second appeal. Accordingly, second appeal is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE