

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 398 of 2015**

1. Keshav Lal, S/o. Malik Ram Jaiswal, aged about 42 years, R/o. Village -Bhanta, Tahsil- Malkharoda, District – Janjgir-Champa (C.G.)

----Appellant**Versus**

1. Lochan Prasad, S/o. Kashi Ram, aged about 25 years,
2. Set Kumar, S/o. Kashi Ram, aged about 26 years,
Both are R/o. Village – Bhanta, Tahsil – Malkharoda, District- Janjgir-Champa (C.G.)
3. Ishwar Prasad, S/o. Chait Ram, Caste- Brahman, aged about 78 years, R/o. Kharsia, District- Raigarh (C.G.)
4. State of Chhattisgarh, Through : The Collector, District- Janjgir-Champa (C.G.)

----Respondents

For Appellant : Mr. Indra Sen Sahu, Advocate

For State/Respondent No.4 : Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25/04/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 27.04.2015, passed by First Additional District Judge, Sakti, District Janjgir-Champa (C.G.), in Civil Appeal 8-A/2014, whereby the judgment and decree dated 29.04.2014, passed in Civil Suit No.32-A/2009, passed by Civil Judge, Class-II, Malkharoda, District - Janjgir-Champa, was affirmed.
2. The appeal is by the defendant No.2 against the concurrent finding of fact by both the Courts Below.

3. Brief facts of this case as pleaded by the plaintiffs is that the land bearing Kh.No.297/2, admeasuring 1.30 acres, situated at Village-Bhata, P.C. No.10, Tahsil – Malkharoda, District - Janjgir-Champa, belonged to the original defendant No.1, Ishwar Prasad. The said land was purchased by the plaintiffs by registered sale deed dated 28.07.2003, however, the original defendant No.2, Keshav Lal in connivance with the revenue officer, got the order of mutation of his name by an order dated 18.09.2003, thereby was trying to mutate his name. It was further pleaded that initially the suit land was held by Ishwar Prasad, who acquired the land by sale deed dated 22.01.1958 and the plaintiff has purchased the land from Ishwar Prasad, the defendant No.1. Therefore, the suit for declaration was filed.
4. The original defendant No.1, Ishwar Prasad from whom the property was stated to be purchased admitted the plaint. The defendant No.2, Keshav Lal, who is the appellant herein refuted the entire plaint averment and stated that the land was initially recorded in the name of Mohit, S/o. Lati Kalar from whom the appellant/defendant No.2 had purchased the said land by registered sale deed dated 06.05.1972 and consequently on the basis of said purchase, the name of defendant No.2 was mutated in the revenue records. It was further contended by the defendant No.2 that purchase so made by the defendant No.1, Ishwar Prasad on 22.01.1958 is sham and bogus. It was stated that initially the land was mortgage with Than Singh. Subsequently with the intervention of the State, the entire mortgage land was returned to the original owner of the land and the said land was handed over to Mohit from whom the defendant/appellant has purchased.

5. After evaluating the pleadings and the evidence, the Trial Court decreed the suit in favour of the plaintiffs, which was assailed in appeal before the Appellate Court and the Appellate Court also affirmed the finding of fact by the Trial Court. Hence, this second appeal.
6. Learned counsel for the appellant submits that the finding of both the Courts below are completely perverse as against the evidence on record. It is submitted that original owner of the land was Mohit from whom the appellant/defendant No.2, Keshavlal has purchased in the year 1972 and he was placed in possession, therefore, by ignoring the evidence on record, perverse finding has been arrived at by both the Courts below, therefore, submits that the appeal be admitted for hearing.
7. Heard the counsel for the appellant.
8. Perused the judgments and the decree, pleadings and the evidence.
9. Plaintiff No.1 was examined as P.W.-1. In his statement, boundaries of the land has been shown. It was stated that the land was owned and was in possession of one Ishwar Prasad, which was purchased by the plaintiff alongwith his brother Setkumar by a registered sale deed dated 28.07.2003 and Ishwar Prasad in turn had initially purchased the land on 22.01.1958 from Than Singh, which is supported by the P.W.-2, Narayan and P.W.-3, Mitthu Lal. The sale deed dated 28.07.2003 is marked as Ex.P/2 and the original sale deed which was executed by the Than Singh in favour of Ishwar Prasad dated 22.01.1958 is marked as Ex.P/4. Ishwar Prasad, the defendant No.1 also admitted the fact that he sold the land to the plaintiffs by a registered sale deed dated 28.07.2003.

10. The appellant/defendant No.2 had contended that he had purchased the suit land by registered sale deed dated 06.05.1972 from one Mohit Ram. It was stated that the land was initially mortgaged to one Than Singh by Mohit and with the intervention of the member of parliament of the area, the entire mortgage lands were returned to their original owners. Thereafter, the appellant had purchased the said land from original owner. Certain sale deeds were marked as Ex.D/1 to Ex.D/19, however the subject land is not included in such sale deeds. Perusal of sale deed further do not contain the fact about any mortgage. Neither the evidence has been placed on record to show that subject land was mortgaged with Than Singh by Mohit and after payment of loan, the land was returned. Virtually no evidence or the document has been placed on record to prove such facts or to sustain the defence, whereby it can be stated that the land was mortgaged by Mohit Ram, and after release on mortgage, land was purchased by defendant from the original owner. The evidence to this effect are absent.
11. Therefore, entire reading of the records shows that the finding arrived at by both the Courts below are finding of fact which do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.
12. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE