

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 480 of 2015

1. Shanker Ram S/o Nanduwa Ram, Aged About 42 Years Caste- Chik, R/o Village- Basantala, P.H. No. 11, R. I. C. And Tahsil- Kunkuri, District- Jashpur (Chhattisgarh)
2. Fulmani Wd/o Nanduwa, Aged About 65 Years, R/o Village- Basantala, P.H. No. 11, R. I. C. And Tahsil- Kunkuri, District- Jashpur (Chhattisgarh), (Plaintiffs)

---- Appellants

Versus

1. Najariyus Toppo S/o Joseph Toppo, Aged About 50 Years Caste- Uraon, R/o Jarhatoli, Tahsil- Bagicha, District- Jashpur (Chhattisgarh)
2. State Of Chhattisgarh Through- Collector, Jashpur, District- Jashpur (Chhattisgarh), (Defendants)

---- Respondents

For Appellants	:	Shri H.B. Agrawal, Sr. Advocate with J.K. Saxena, Advocate
For Respondent No.1	:	Shri Akhilesh Kumar, Advocate
For Respondent/State	:	Shri Neeraj Sharma, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/01/2016

Heard on admission.

1. This appeal is directed against the impugned judgment and decree dated 13th April, 2015 passed in Civil Appeal No.6-A/2012 by learned lower appellate Court by which the judgment and decree of the trial Court has been reversed and suit dismissed by allowing the appeal.

2. Learned counsel for the appellants argues that the learned lower appellate Court committed gross illegality and perversity in reversing the judgment and decree of the trial Court by holding that the plaintiffs failed to prove that the sale deed dated 22.6.2002 (Ex.D-1) was bogus and false. It is argued that shaky evidence of attesting witness of the sale deed namely Gopal and Santuram was rightly appreciated by learned trial Court to hold that those witnesses having stated that Nanduwa was suffering from partial paralysis, the execution of sale deed becomes doubtful. It is also argued that there is contradiction in the evidence of the witnesses with regard to place of execution of deed of sale and on the issue as to whether the deceased Nanduwa was so crippled that he was completely disabled to put his signature. In view of the evidence having come on record that Nanduwa was an educated person and used to sign the documents, in the absence of clinching evidence that paralysis disabled Nanduwa to put his signature, affixation of thumb impression on the sale deed, rendered the sale deed highly doubtful. Learned lower appellate Court ignored to consider this serious discrepancy and mechanically accepted the evidence of attesting witnesses.
3. Though trial Court recorded a finding that sale deed is doubtful, the lower appellate Court has re-appreciated the evidence. Upon analysis of evidence of the attesting witnesses namely Gopal and Santuram, learned lower appellate Court has recorded finding that execution of sale deed in favour of defendants by Late Nanduwa has been proved. It has to be seen that son of Nanduwa, during lifetime of Nanduwa, did not raise any dispute, but dispute was raised after death of Nanduwa by the son/plaintiff. Both the attesting witnesses have supported the case of the defendant. Even if the evidence of one attesting witness Gopal is ignored, the evidence of other witness Santuram proves the fact of execution of sale deed.

Evidence has come on record that Nanduwa, at the time of execution of sale deed, was suffering from partial paralysis and, therefore, he could not put his signature.

4. Both the attesting witnesses of the sale deed have stated that the Registrar had come to house of Nanduwa and there, the sale deed executed. The sale deed, a registered document, which bears the signature of Registrar, the presumption therefore is of due execution of sale deed unless it is rebutted by clear and clinching evidence. Learned lower appellate Court having relied upon the evidence of the two attesting witnesses to hold that sale deed was proved, further re-appreciation of evidence without there being any perversity or patent illegality in the finding is not permissible in the second appellate stage. Therefore, no substantial question of law is involved in this appeal.
5. The appeal is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge