

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 703 of 2015

1. Naresh S/o Ramratan Dhobi, Aged About 30 Years,
 2. Mahesh S/o Ramratan Dhobi, Aged About 21 Years,
 3. Ramratan Dhobi S/o Sadhuram, Aged About 47 Years,
- All are R/o Village- Chhichhor, Umariya, Tahsil And District- Raigarh,
Chhattisgarh

---- Appellants

Versus

1. Sewakram Sahu S/o Neelmani Sahu, Aged About 38 Years R/o
Village- Chhichhor, Umariya, Tahsil And District- Raigarh,
Chhattisgarh
2. Smt. Gayatri W/o Ramratan Dhobi, Aged About 47 Years, R/o
Village Chhichhor, Umariya, Tahsil And District- Raigarh,
Chhattisgarh
3. State Of Chhattisgarh, Through The Collector, Raigarh,
Chhattisgarh

---- Respondents

For appellants– Shri Manoj Kumar Jaiswal, Advocate.
For Respondents No. 1 & 2 – Shri Chandresh Shrivastava, Advocate.
For State- Shri Anil S. Pandey, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

18/04/2016

1. The instant appeal is against the judgement and decree dated 29th September, 2015 passed in Civil Appeal No.84/2013 by the court of Fourth Additional District Judge, Raigarh. By such judgement and decree, judgement and decree dated 18/07/2013 passed in Civil Suit No. 54-A/2013 has been affirmed whereby the suit was dismissed.
2. Suit was filed by Naresh S/o Ramratan Dhobi, Mahesh S/o Ramratan Dhobi and Ramratan Dhobi itself against Sevakram Sahu and Gayatri W/o Ramratan Dhobi. It was pleaded that in the month of October 2007 plaintiff No.2 Mahesh in order to prosecute his study required money. As such he approached defendant No.1 Sevakram Sahu and in order to provide amount Rs.15,000/- loan was granted. Therefore, a

mortgage was executed by defendant No.2 who is mother of plaintiffs No.1 and 2 and wife of plaintiff No.3. It was stated that defendant No.2 Gayatri was an illiterate lady and though loan was taken of Rs.15,000/-, sham and bogus sale deed was executed for Rs.15,000/-. It was stated that after execution of such sham and fabricated sale deed on 7/01/2008 name was also mutated in the revenue record. Sale deed dated 7/01/2008 therefore was without any consideration and was not binding on the plaintiffs. It was stated that defendant No.2 mother of plaintiffs No.1 and 2 and wife of plaintiff No.3 did not have any right to execute the sale deed. Defendant No.1 contended that property owned by defendant No.2 Smt. Gayatri wife of Ramratan Dhobi was purchased for valuable consideration and sale deed was executed on 7/01/2008 and after purchase of the land name was mutated in the revenue records. It was further stated that since sale was executed exclusively by defendant No.2 i.e. Gayatri as such during the life time of Smt. Gayatri, Naresh, Mahesh and Ramratan sons and husband of defendant No.2 Gayatri the seller do not have any right to file any suit.

3. Trial court after evaluating the evidence, pleading and the facts dismissed the suit on 18/07/2013 which was subject of appeal. Appellate court too also affirmed the finding of the trial court, therefore this second appeal.

4. Learned counsel for the appellants would submit that finding arrived at by both the court below are completely perverse and the sham sale deed was executed which could be ascertained from the fact that value of the property was much more at the time when it was purchased. It is contended that earlier purchase was made for higher sale consideration, however subsequent purchase was done at very low consideration,

therefore it would lead to show that it was not a sale deed. He therefore submits that under the facts of this case appeal be admitted for hearing.

5. I have heard learned counsel for the appellants and perused the record of the court below.

6. Record would show that sale deed is on record which is marked as Ex.P-2 which shows that land in question was purchased exclusively by Gayatri W/o Ramratan from one Kartikram. One of the part of the property i.e. khasra No.28 was one and same. Perusal of the Ex.P-2 which is placed on record by the plaintiffs shows that property was exclusively purchased by Gayatri and not in joint name of the plaintiffs. Ex.P-3 is also on record which is the impugned sale deed wherein it purports that sale is executed by Gayatri in favour of Sevakram Sahu for sale consideration of Rs.54,000/- on 7th January, 2008. Similar document is placed on record Ex.D-4 which is original copy of the sale deed Ex.P-3. Perusal of Ex.P-3 would show that it do not contain the fact that transaction was a mortgage. Further more the earlier sale deed which was executed by Gayatri on 27th February, 2006 i.e. Ex.P-2 shows that property was exclusively purchased by Gayatri and the sale consideration was shown as Rs.90,950/- for two lands bearing khasra Nos.28 and 32. The sale deed i.e. Ex.P-3 and Ex.D-4 subsequent sale which is under challenge shows that one of the khasra No.28 was sold for Rs.54,000/- by Gayatri. Therefore, contention of the appellants/plaintiffs cannot be accepted that it was a mortgage as for very low sale consideration the land was purchased. The earlier sale deed was of two lands i.e. of khasra Nos. 28 & 32. The subsequent sale deed is for only one land i.e. land bearing khasra No.28 and sale consideration is shown to be Rs.54,000/-. So sale consideration prima facie cannot be said to be meager. Further more no

statement are contained in sale deed to hold that it is mortgage as per Section 58 (c) proviso clause of Transfer of Property Act, 1882. More so record would show that property was exclusively acquired by Gayatri and Gayatri has not filed suit. Therefore, while Gayatri was alive, plaintiffs did not have any locus to file suit to challenge the sale.

7. In the result, considering the evidence and the pleadings, I am of the opinion that finding of both the court below do not require any interference and no substantial question of law arises for consideration in this second appeal. Accordingly, second appeal is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE