

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 559 of 2015

- Smt. Jankunwar W/o Ishwar Singh, Aged About 49 Years
Caste- Kanwar, R/o Village- Bhodkachhar, Tahsil- Pali,
Revenue And Civil District- Korba, Chhattisgarh (Plaintiff)
--- **Appellant**

Versus

1. (A) Shiv Kunwar W/o Late Parmeshwar, Aged About 40 Years
Caste- Kanwar, R/o Eraf Bhodkachhar, Tahsil- Pali, Revenue
and Civil District- Korba, Chhattisgarh
1. (B) Minor Rajesh Male Age - 15 S/o Parmeshwar, Through
Legal Guardian Mother Shiv Kunwar W/o Late Parmeshwar,
Aged About 40 Years, Caste- Kanwar, R/o Eraf Bhodkachhar,
Tahsil- Pali, Revenue And Civil District- Korba, Chhattisgarh
1. (C) Minor Ramesh Male Age - 12 S/o Parmeshwar, Through
Legal Guardian Mother Shiv Kunwar W/o Late Parmeshwar,
Aged About 40 Years, Caste- Kanwar, R/o Eraf Bhodkachhar,
Tahsil- Pali, Revenue and Civil District- Korba, Chhattisgarh
1. (D) Minor Reena Kumar Male Age - 10 S/o Parmeshwar,
Through Legal Guardian Mother Shiv Kunwar W/o Late
Parmeshwar, Aged About 40 Years, Caste- Kanwar, R/o Eraf
Bhodkachhar, Tahsil- Pali, Revenue & Civil District- Korba,
Chhattisgarh.
2. Suklal Singh S/o Ratan Singh, Aged About 53 Years Caste-
Kanwar, R/o Eraf Bhodkachhar, Tahsil- Pali, Revenue And
Civil District- Korba, Chhattisgarh.
3. State of Chhattisgarh, Through: Collector, Korba, District-
Korba, Chhattisgarh **Respondent /defendants**

For the Appellant	:	Mr. Pushpendra Kumar Patel, Adv.
For Respondent No.1	:	Mr. B. Madhava Rao with Mr. Basant Kaiwartya, Advocates
For the State/R-3	:	Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

15.02.2016

1. The appeal is against the judgment and decree dated
24.08.2015 passed by the Additional District Judge,
Katghora, Distt. Korba in Civil Appeal No.28-A/2013 whereby

the judgment and decree dated 28.10.2013 passed in Civil Suit No.100-A of 2009 by the Civil Judge, Class II, Pali has been affirmed. The appellant having lost in both the courts below has filed this appeal.

2. Brief facts of the case are that out of the land bearing Khasra No.190 admeasuring 0.243 hectares, plaintiff Smt. Jankunwar was given 0.37 hectares of land by her mother Budiya Bai on the basis of an agreement and as such she was placed in possession and enjoyment of the said land and was allowed to cultivate the land. However on 17.03.2004, deceased Budiya Bai mother of the plaintiff executed a sale deed in favour of Sukhlal, respondent No.2 and a part of the land which was given to plaintiff was also sold to Sukhlal. Therefore, the suit was filed for declaration and injunction. During the pendency of the suit, Smt. Budiya Bai, mother of plaintiff died and thereafter the other legal heirs were brought on record. The trial Court dismissed the suit on the ground that the right which was claimed on the basis of agreement dated 14.07.2002 was neither registered one nor it has created any right in favour of the plaintiff which would over ride the sale deed dated 17.03.2004 executed in favour of sukhlal by Budiya Bai. Consequently the suit for injunction and declaration was dismissed which was further affirmed in appeal. Hence this appeal.
3. Perused the documents, pleadings and evidence. It is orally stated that the land bearing Kh.No.190 admeasuring 0.243 hectares was recorded in the name of Budiya Bai and out of love and affection, certain portion of land was given to the plaintiff 16 – 17 years back and she was in peaceful possession and was in enjoyment of such land. Thereafter, in order to confirm such title on 14.07.2002 an agreement was

executed which affirmed such grant. The agreement purports that the plaintiff would be entitled to such fruits of land. Subsequently admittedly the sale was executed by Budiya Bai in favour of Sukhlal vide Ex.P-4 dated 17.03.2004 in respect of the entire land bearing Kh.No.190. Nothing is placed on record by the plaintiff to show that any proprietary/ownership right was created in favour of the plaintiff. It was only on the basis of agreement which is not registered the plaintiff had claimed her right over such land. Subsequently Budiya Bai who was owner executed the sale deed dated 17.03.2004 which is registered one in favour of Sukhlal. There is no question to the fact that Budiya was owner. Therefore, when the sale deed was executed by Budiya Bai on 17.0-3.2004, the said sale deed was executed in exercise of her right of ownership.

4. A perusal of the evidence, pleadings and the documents do not show that any perversity has been committed by the courts below, therefore, the concurrent finding arrived at by the courts below cannot be faulted with. No substantial question of law arises for consideration in this appeal.
5. In the result, the appeal has no merit and is dismissed at the admission stage itself.

Sd/-

**GOUTAM BHADURI
JUDGE**