

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 10 of 2013**

1. Laxmin Bai, D/o Heera Ram Aged About 40 Years W/o Amar Das Binjwar, R/o Bikona, Bakimongra, Katghora, Distt. Korba (C.G.)
2. (a) Ram Das S/o Late Harihar Das R/o Village- Bikona, Bankimongra, Tah. Katghora, Distt. Korba C.G.

(b) Itwar Das S/o Late Harihar Das R/o Village- Bikona, Bankimongra, Tah. Katghora, Distt. Korba C.G.

(c) Amar Das S/o Late Harihar Das R/o Village- Bikona, Bankimongra, Tah. Katghora, Distt. Korba C.G.

---- Appellants

Versus

1. Balkunwar, W/o Hulas Singh Kanwar Aged About 60 Years R/o Bikona, Bakimongra, Katghora, Distt. Korba (C.G.)
2. State Of Chhattisgarh Through- District Magistrate Korba, (C.G.)

---- Respondents

For Appellants	:	Shri M.K. Bhaduri, Advocate
For Respondent No.1	:	Shri B.M. Rao with Shri Basant Kaiwartya, Advocates
For Respondent No.2/State	:	Shri Neeraj Sharma, Dy. Govt. Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11/01/2016**

1. In view of order dated 9.12.2014, no further orders are required to be passed on I.A.No.8, as delay has already been condoned and abatement has been set aside.
2. Heard on admission.
3. Learned counsel for the appellants argues that the Courts below have perversely

recorded concurrent finding of fact that the transaction was essentially a loan transaction and not a sale transaction, by holding that no consideration passed to plaintiff under the sale deed, Ex.D-1. He submits that there is ample evidence on record led by Laxmin Bai (D.W.1), the purchaser and her husband Harihar (D.W.3) that sale deed was executed, registered and consideration also passed. Learned counsel for the appellants further argues that the fact that decree of possession was granted in favour of plaintiff proves that at the time of execution of deed, the possession was also parted with. Therefore, the sale was completed with handing over the possession. In these circumstances, finding of the Courts below that as no consideration passed, therefore, it was a nominal sale deed is highly perverse, illegal and unsustainable in law.

4. The Courts below have recorded concurrent fact of finding with regard to non-payment of consideration to the plaintiff. The evidence of Laxmin Bai (D.W.1) and her husband Harihar (D.W.3) has been rejected by holding that their evidence with regard to payment of consideration is contradictory with regard to time, place and amount. In the absence of there being any other clinching evidence of payment of consideration, the Courts below have recorded concurrent finding that the sale deed was nominal one. Therefore, merely because a decree of possession was also sought, the concurrent finding cannot be interfered with in the second appellate stage in the absence of there being any perversity or illegality in the finding.
5. In view of the above, I do not find any substantial question of law involved in this appeal. The appeal is therefore dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge