

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 685 of 2015**

1. Brijesh Kanwar, S/o. Late Mukut Ram, aged about 26 years
2. Chameli, Wd/o. Mukutram Kanwar, aged about 49 years,
Both R/o. Village Regada, Tahsil and District – Raigarh, Civil and Revenue District-Raigarh (C.G.)

----Appellants**Versus**

1. Jailal, S/o. Baiha Kanwar, aged about 54 years, R/o. Village-Sambalpuri, Tahsil and District-Raigarh, Civil and Revenue District-Raigarh (C.G.)
2. State of Chhattisgarh, Through : Collector, Raigarh (C.G.)

----Respondents

For Appellant : Mr. M.K. Sinha, Advocate
 For Respondents No.1 : Mr. Jeet Patel, Advocate
 For State/Respondent No.2. : Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****06/04/2016**

Heard on admission.

1. This is an appeal against the judgment and decree dated 29.10.2015, passed by the IIIrd Additional District Judge, Raigarh, District - Raigarh, in Civil Appeal Class-A, C.I.S. No.04280000192/2012, whereby the judgment and decree dated 28.03.2012, passed in Civil Suit No.4-A/2011, passed by IIIrd Civil Judge, Class-II, Raigarh, was affirmed.
2. The appeal is by the plaintiffs against the concurrent finding of fact by both the Courts Below.

3. Brief facts of this case as pleaded by the plaintiffs are that a suit was filed for declaration and permanent injunction and declaration was sought for cancellation of sale deed dated 14.08.1980. It was pleaded that father of the plaintiff No.1, Mukutram and husband of plaintiff No.2, Chameli Bai owned a land bearing Kh.No. 26/2, admeasuring 1.214 hectares and after death of Mukutram, the land was recorded in the name of plaintiffs. The defendant No.1 claimed that out of such land, 0.405 hectares was purchased by the defendant No.1, Jailal from Mukutram. It was contended that an application for mutation of name was filed in the year 2009, then the appellant came to know such fact, and enquired and it was revealed that Mukutram had obtained loan of Rs.1,000/- from the defendant No.1 and in lieu thereof, a sham & bogus sale deed was executed in favour of the defendant, Jailal. It was stated that the plaintiffs were in possession of the said land and suit for declaration and permanent injunction was filed.
4. The defendant contended that by a sale deed dated 14.08.1980, the suit land was purchased, though the mutation was not carried out but the purchase was made by the defendant. It was further contended that the defendant was illiterate person, consequently, mutation proceeding were not carried out. It was further stated that during the lifetime of Mukutram, the sale deed was not put to any challenge and after 30 years of the sale deed, the suit was filed, therefore, the suit deserves dismissal.
5. After evaluating the pleadings and the evidence, the Trial Court dismissed the suit by holding that the defendant No.1 is in

possession of the suit land. It was further held that, the sale deed dated 14.08.1980 was valid sale deed and with such finding of facts, the suit was dismissed. The same was subject of 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 appellants submits that subject land was lease hold land, therefore, without permission of the government that could not be sold. It was further stated that sale deed was executed on 14.08.1980 but mutation proceedings were not carried out, consequently, it could not be sustained that sale deed was actually executed. He further submits that it was not a sale and was a mortgage, therefore, the same could not have been accepted to be a sale deed since only an amount of Rs.1,000/- was availed by way of loan by the father of the plaintiffs. Therefore, the counsel submits that finding of both the Courts below are completely perverse and the appeal be admitted for hearing.
7. Heard the counsel for the appellants.
8. Perused the judgments and the decree, pleadings and the evidence.
9. The sale deed which is sought to be cancelled is marked as Ex.D/2, which is the original sale deed and certified copy of it is also marked as Ex.P/2. The said documents i.e. sale deed purports that sale was made for sale consideration of Rs.1,000/- on 14.08.1980 in favour of Jailal by Mukutram. In the plaint, the plaintiffs contended that said transaction was not intended for sale and was only a mortgage for a loan of Rs.1,000/-. The fact of

mortgage is specifically pleaded at para-10 of the plaint. The plaintiff, Chameli Bai has also deposed the similar facts in her deposition that said transaction was not a sale but was mortgage. In the cross-examination at para-5 also these facts have been affirmed. At para-6, it is further admitted that no separate transaction in writing was recorded to show that such transaction was not a sale but was a mortgage. Perusal of the document Ex.D/2, which is a sale deed do not record any admission that it was a mortgage and not sale.

10. Mortgage is defined under Section 58 of the Transfer of Property Act, 1882. Proviso to Section 58(c) of Transfer of Property Act mandates that mortgage by conditional sale can not be accepted unless the transaction affects the sale the conditions of mortgage are incorporated in the same documents. In other word, it can not be treated to be mortgage by conditional sale. The document Ex.D/2 do not satisfy to the proviso clause of section 58(c) of Transfer of Property Act as no such conditions of mortgage are incorporated in sale transaction. Therefore, in such case, the argument advanced by the learned counsel for the appellant can not be appreciated as it would be against the provisions of Section 58(c) proviso clause of Transfer of Property Act, 1882.
11. The defendant, Jailal in his statement has stated that he has purchased the land on 14.08.1980. The mutation proceedings were not carried out in the year 1980 and the notices were issued for mutation in the year 2009. In any case, the proceeding for mutation would not decide the title of the parties when the registered

documents exists on the subject. Therefore, after survey of evidence the finding of Trial Court can not be faulted that the defendant is in possession of the suit land after sale was executed. Such finding of fact according to the opinion of this Court has rightly been arrived at, which can not be faulted. The suit was filed in the year 2010. Therefore, taking into such fact that the defendant is in possession of the suit land from 1980, the suit prima-facie appears to be barred under Article 65 of the Limitation Act.

12. So 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.
13. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE