

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.5 of 2017**

Sampatram S/o Rambhanu Gond, Aged About 32 Years R/o Village-
Risewada, Tahsil- Narharpur, District- North Bastar Kanker,
Chhattisgarh(Plaintiff)

---- Appellant

Versus

1. Chintaram S/o Bisnath, Aged About 30 Years R/o Village- Dhaurabhatha,
Tahsil- Narharpur, District- North Bastar Kanker, Chhattisgarh
2. Smt. Shambati W/o Sheetal Ram Gond, Aged About 60 Years R/o Village-
Risewada, Tahsil- Narharpur, District- North Bastar Kanker, Chhattisgarh
3. State Of Chhattisgarh, Through The Collector, District- North Bastar Kanker,
Chhattisgarh(Defendants)

-----Respondents

For Appellant:	Shri DN Prajapati, Advocate.
For Respondent No.3/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

03.07.2017

1. This is the Plaintiff's Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 by questioning the judgment and decree dated 5.10.2016 passed by the Additional District Judge, Kanker in Civil Appeal No.11-A/2015 by which the lower appellate Court, while affirming the judgment and decree dated 1.5.2015 passed by the 1st Civil Judge, Class-1, North Bastar in Civil Suit No.40-A/2005, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff Sheetalram (since deceased now represented through his legatee Sampatram) instituted a suit for declaration of title and injunction by submitting *inter alia* that a registered deed of sale executed on 7.7.1992 in favour of Defendant No.1-Chintaram be

declared as null and void. It is pleaded by Plaintiff Sheetalram that he is 'Gond' by caste and an illiterate person and that by taking undue advantage of it, Defendant No.1 with the help of Defendant No.2 had obtained the said registered deed of sale on the pretext of obtaining the will deed. It is pleaded further that since he was an illiterate person and therefore he was not aware with regard to the execution of the alleged sale executed in the year 1992. However, he came to know the said fact only in the year 2001 when Defendant No.1 informed him that he had purchased the suit property total admeasuring 3.71 acres as described detailed in Plaint paragraph-12. It is pleaded further that since the alleged deed of sale was obtained by playing fraud upon him, therefore, he has been constrained in filing the suit in the instant nature instituted on 15.12.2003. During the pendency of suit, Plaintiff Sheetalram had expired therefore, in his place, one Sampatram was impleaded on the basis of the Will deed dated 09.07.2003 executed by said original Plaintiff in his favour.

3. Defendants have contested the aforesaid claim of the Plaintiff and stated that the alleged sale was executed by obtaining the entire sale consideration by said Sheetalram from Defendant No.1. They denied further that the alleged sale was executed by playing fraud upon Plaintiff Sheetalram. They further pleaded that the suit as framed and instituted is barred by time.

4. In order to establish the claim, the Plaintiff has examined as many as 4 witnesses while the Defendants have examined two witnesses in their defence including the attesting witness of the alleged deed of sale dated 7.7.1992.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the original Plaintiff Sheetalram had executed a registered deed of sale on 7.7.1992 in favour of Defendant No.1.Chintaram

after obtaining the entire sale consideration of it. It held further that the suit was instituted well within the period of limitation. As a consequence, the trial Court has dismissed the Plaintiff's claim.

6. The aforesaid finding of the trial Court has been affirmed by the lower appellate Court by modifying further that the suit as instituted by the Plaintiff in the year 2003 by questioning the registered deed of sale which was executed in the year 1992 is not within the period of limitation. In consequence, the lower appellate Court, while affirming the validity of the alleged sale dated 7.7.1992 (Ex.D-1), has dismissed the Appeal.

7. Being aggrieved, the Plaintiff's have preferred this Appeal. Shri Prajapati, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below is apparently contrary to law. He submits that the original Plaintiff Sheetalram was an illiterate person and was not aware with regard to the execution of the alleged sale and in fact the said sale was obtained by playing fraud upon him on the pretext of execution of Will by Defendants No.1 & 2. He therefore submits further that the Courts below ought to have come to the conclusion that the alleged sale was executed by playing fraud upon him. Lastly, he submits further that the evidence adduced by the parties was not considered in its proper perspective vitiates entire findings and consequent upon the judgment.

8. I have heard learned Counsel for the Appellant and perused the entire record carefully.

9. From perusal of the entire Plaint averment, it is evident that the suit was filed on 15.12.2003 by questioning the validity of the registered deed of sale executed on 7.7.1992 by original Plaintiff Sheetalram in favour of Defendant No.1 – Chintaram. The main contention of the Plaintiff was that since the

alleged sale was obtained by playing fraud upon him, therefore, the sale as executed cannot be upheld. The burden in order to prove the said fact was heavily upon the Plaintiff. However, from perusal of the entire evidence, it is evident that the Plaintiff has failed completely to establish the fact that any fraud was ever committed upon him at the time of execution of the alleged registered deed of sale dated 7.7.1992 (Ex.D-1). Besides, the attesting witness of the said document namely Sagru who was examined as Defendant witness No.2 has stated very specifically in his statement paragraph-4 that the registered deed of sale was duly executed by original Plaintiff Sheetalram after receiving the sale consideration in a week prior to its execution. He deposed further that at the time of its execution, another attesting witness namely Jethram was also present. If we examine the entire evidence of its attesting witness, it would lead to an irresistible conclusion that not a single question was put by the Plaintiff in order to establish the fact that the alleged registered deed of sale was obtained by Defendants by playing fraud upon the original Plaintiff Sheetalram. Thus, the Plaintiff has failed to establish this material fact. Consequently, the findings of the Courts below with regard to the execution of the sale (Ex.D-1) cannot be held to be perverse. It is to be noted here that the Plaintiff has filed the suit on 15.12.2003 by questioning the validity of sale (Ex.D-1) which was executed on 07.07.1992 much beyond the prescribed period of 3 years as provided under Article 59 of the Indian Limitation Act, 1963, therefore, cannot be held to be instituted in time. I therefore, affirm the findings of the Court below.

10. In view of the foregoing observations, I do not find any infirmity in the judgment and decree passed by the trial Court as well as by the lower appellate Court as the same was passed by considering the entire evidence

led by the parties in its proper perspective. The findings so arrived are the pure findings of fact and the same cannot be held to be a perverse one.

11. In view of above, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya