

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 143 OF 2017**

1. Shri Dev Narayan Parihar S/o Late Laxmi Narayan Parihar, Aged About 59 Years R/o Qtr No. 1540, Motipur Mohalla, Thandi Sadak Hisar, District Hisar (Haryana).
2. Shri Prem Narayan Parihar, S/o Late Laxmi Narayan Parihar, Aged About 52 Years R/o Foremen Randhish Industrial Corporation, Nirankari Kripa No. 03, Milarganj, District Ludhiana, Punjab, Presently Resident At Gully No. 24, Near Medki Chakki, Guru Govind Singh Nagar, District Ludhiana (Punjab).
3. Ashirwad Group, Through Their Partners:
3 . (i) Dilip Singh Tikariha, S/o Shri J. R. Tikariha, C/o Ashirwad Group, Near Dr. Hingora, Tikrapara, Tahsil And District Raipur (Chhattisgarh).
3 . (ii) Khemlal Sahu, S/o Shri J. L. Sahu, C/o Ashirwad Group, Near Dr. Hingora, Tikrapara, Tahsil And District Raipur (Chhattisgarh).
3 . (iii) Yashwant Sahu, S/o Shri Trilochan Sahu, C/o Ashirwad Group, Near Dr. Hingora, Tikrapara, Tahsil And District Raipur (Chhattisgarh).....Defendants.

---- Appellants**Versus**

1. Smt. Krishna Devi W/o Shri Pappu Chandra Chauhan, Aged About 45 Years R/o Mehta City, District Nagaur, Rajsthan..... Plaintiff.
2. State of Chhattisgarh Through The District Collector, Raipur (Chhattisgarh).....Defendant.

---- Respondents

For Appellants	:	Mr. Pushpendra Kumar Patel and Ms. N. K. Kashyap, Advocates
For Respondent No. 2/State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****11/12/2017**

Heard on admission.

1. This is defendants' second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment

and decree dated 20/01/2017 passed by the 7th Additional District Judge, Raipur District Raipur (C.G.) in Civil Appeal No. 38-A/2014, by which, the lower appellate Court while reversing the judgment and decree dated 17/02/2014 passed by the 9th Civil Judge Class-2, Raipur (C.G.) in Civil Suit No. 145-A/2012, has decreed the plaintiff's claim.

2. The undisputed facts of the case, are that, plaintiff Smt. Krishna Devi, instituted a suit claiming declaration of title, injunction and also claiming that the registered deed of sale dated 05/10/2010 as executed by her brothers (defendants No. 1 & 2) in favour of defendant No. 3 be declared as null and void. It is pleaded in the plaint that the suit property was originally held by her father Laxmi Narayan Parihar who expired on 13/03/1972 and after his death she has also inherited the suit property along with her brothers. It is pleaded further that after the death of Laxmi Narayan Parihar, the revenue papers were recorded accordingly in the name of all his legal representatives and pleaded further that after the death of mother Rukhmani Bai, the defendants No. 1 & 2 have obtained the revenue papers recorded in their own names and executed a registered deed of sale as such in favour of defendant No. 3, therefore, she has been constrained to file the suit in the instant nature.

3. The Defendants have contested the aforesaid claim on the ground that the plaintiff is not the owner of the suit property and pleaded further that their mother Rukhmani Bai had executed the registered deed of will on 03/03/1998 and therefore, they are the exclusive owner of the suit property and are entitled to execute the alleged registered deed of sale in favour of defendant No. 3. The suit is therefore, liable to be dismissed.

4. The trial Court after considering the evidence led by the parties has dismissed the suit by holding *inter alia* that by virtue of provision to Section 34 of the Specific Relief Act, 1963, the suit as framed is not maintainable. It held

further that the plaintiff is not the owner of the suit property and defendants No. 1 and 2 have rightly executed the registered deed of sale dated 05/10/2010 in favour of defendant No. 3. As a consequence, the trial Court has dismissed the suit.

5. Being aggrieved, the plaintiff has preferred an appeal under Section 96 of the CPC. The lower appellate Court, in turn, has held that after the death of Laxmi Narayan Parihar, the plaintiff was also entitled to inherit the property in question along with her brothers and mother Rukhmani Bai. It held further that though the registered deed of sale was executed by the defendants No. 1 & 2, in favour of defendant No. 3, but the plaintiff would not be bound by the same as she has not sold her interest. Accordingly, the lower appellate Court has held that the alleged registered deed of sale would be valid only to the interest of defendants No. 1 & 2, the executors and same cannot be upheld to the extent of plaintiff's interest. In consequence, the lower appellate Court while reversing the finding of the trial Court has held that the plaintiff is entitled to 1/3rd share over the suit property and would not be bound by the alleged registered deed of sale to the extend of her share as executed by her brothers in favour of the defendant No. 3.

6. Being aggrieved, the defendants have preferred this appeal. Mr. Pushpendra Kumar Patel, learned counsel for the appellants submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court is apparently contrary to law. He submits further that after the death of Laxmi Narayan Parihar, his widow Rukhmani Bai had executed the registered deed of will on 03/03/1998, therefore, the plaintiff has no right whatsoever to claim as such over the suit property and is not entitled to question the validity of the alleged registered deed of sale executed on 05/10/2010. He submits lastly that the judgment and decree as passed by the

lower appellate Court deserves to be set aside and, instead the decree of the trial Court be restored.

7. I have heard learned counsel for the appellants and perused the entire records carefully.

8. The plaintiff's case is mainly on the ground that she is one of co-owners of the suit property and therefore, not bound by the alleged registered deed of sale dated 05/10/2010 as executed by her brothers i.e. defendants No. 1 & 2 in favour of defendant No. 3. I have examined the record and perusal of the record would show that Laxmi Narayan Parihar has expired intestate on 13/03/1972 therefore, after his death the property in question was inherited by his legal representatives in equal share. The contention of defendants No. 1 & 2 that their mother Rukhmani Bai had executed the registered deed of will on 03/03/1998, therefore, the plaintiff has no right whatsoever is noted to be rejected as none of the attesting witnesses of the said will was examined. In absence of examination of any of the attesting witnesses, the due execution, attestation and validity of the alleged will cannot be upheld by virtue of Section 68 of the Indian Evidence Act, 1872.

9. Besides, perusal of the record would show further that the registered deed of sale though executed by defendants No. 1 & 2 in favour of defendant No. 3 but plaintiff, being one of the co-owners of the suit property cannot be held to be bound by the same as she was not the party to the alleged sale. Consequently, the lower appellate Court has rightly held that the registered deed of sale as executed by defendants No. 1 & 2 on 05/10/2010 (Ex. P-5) is valid only to the extent of the interest of defendants No. 1 & 2 and plaintiff is not bound by the registered deed of sale to the extent of her 1/3rd share. The finding, so recorded by the lower appellate Court was based upon due and proper appreciation of the evidence and, therefore, deserves to be and is hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Yogesh