

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 33 of 2003**

(Arising out of judgment/order dated 26.08.2002 in Civil Appeal No. 150--A/2002 of the learned Additional District Judge, Bemetara)

1. Pratap Singh, aged about 40 years, S/o Jagdish, Occupation : Labour/weaver, R/o Vill. Saigona, Tahsil ; Saza, Dist. Durg (CG)
2. Tularam, aged about 12 years, Minor, Guardian Mother Ramkunwar, Occupation : Labour, Household work, R/o Vill. Saigona, Tahsil : Saza, Dist. Durg (CG) **---- Appellants**

Versus

1. Bharat Singh, S/o Jagdish Sahu, Aged about 21 years,
2. Shatrughan, S/o Jagdish Sahu, aged about 26 years,
3. Pardeshi Sahu, S/o Jagdish Sahu, Aged about 32 years,

All three by occupation : Labour/R/o Vill. Saigona, Tahsil : Saza, Dist. Durg (CG)

4. State of C.G. Through Collector, Durg. **--- Respondents**

For Appellants	:	Shri Vimlesh Bajpai, learned Advocate
For Respondent No.4/State	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****09/11/2017**

1. Heard on admission.
2. This is the second appeal preferred by defendants No. 1 & 2 under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 26.08.2002 in Civil Appeal No. 150--A/2002 passed by the Additional District Judge, Bemetara, by which, the lower appellate Court, while affirming the judgment and decree dated 30.01.1999 passed by the Civil Judge, Class-1, Bemetara in Civil Suit No.3-A/98, has dismissed the appeal.
3. The undisputed facts of the case are that the plaintiffs Bharat Singh and Shatrughan instituted a suit claiming partition, separate possession and for

injunction by submitting, inter alia, that the suit property bearing Kh.No.158 admeasuring 0.38 acres and Kh.No.175 admeasuring 1.75 acres situated at village Saigona, Tahsil Saza, Dist. Durg was purchased from one Kashiram by virtue of the registered deed of sale dated 25.05.1971 (Ex.P.1) for a consideration of Rs.2000/- It is pleaded further that after purchasing the suit property as such, the plaintiffs and their brothers, namely, Pratap Singh (defendant No.1) and Pardeshi (defendant No.3) started cultivating the said suit property jointly. At the time of Bandobast, the said property was re-numbered as Kh.No.271 admeasuring 0.14 hectares and Kh.No.292 admeasuring 0.49 hectares. It is pleaded further that when plaintiffs have demanded the partition with regard to the said property described in detail in plaint Schedule-A, the same was refused by defendant No.1, therefore, the plaintiffs have been constrained to file the suit in the instant nature.

4. The defendants, particularly, defendant No.1 Pratap Singh, has contested the claim of the plaintiffs by saying that after alienating his property situated at village Bhedni he alone had purchased the suit property under the alleged registered deed of sale, dated 25.05.1971. It is contested further on the ground that at the time of execution of the said registered deed of sale, the plaintiffs and defendant No.3, in collusion with the document writer, have also recorded their names in the alleged sale and thus by playing fraud upon him, the plaintiffs have obtained the registered deed of sale as such in the name of all the brothers.

5. The trial Court, after considering the evidence led by the parties and that by considering the registered deed of sale executed on 25.05.1971 (Ex.P.1), has come to the conclusion that the suit property was purchased by the plaintiffs and defendants No. 1 & 3 from one Kashiram and started cultivating the suit property jointly. It held further that defendant No.1 has failed to prove that the plaintiffs and defendant No.3 have obtained the alleged registered deed of sale by playing fraud upon him, as alleged by defendant No.1. As a consequence, the trial Court has decreed the suit, as claimed by the plaintiffs.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by defendants No. 1 & 2/appellants. The appellate Court, in turn, has also examined the registered deed of sale and after considering the evidence of both the parties, has come to the conclusion that the registered deed of sale was executed in the name of all the brothers and defendant No.1 alone was not the owner of the property in question. As such, the lower appellate Court, while affirming the finding of the trial Court, has dismissed the appeal.

7. Being aggrieved, defendants No. 1 & 2 have preferred this appeal. Shri Vimlesh Bajpai, learned counsel for the appellants submits that the judgment and decree as passed by the Courts below by holding that defendant No.1 alone was not the owner of the property in question was apparently contrary to law. He submits further that without considering the evidence of the parties in its proper perspective, the Courts below have erred in holding that plaintiffs, defendant No.1 Pratap Singh and defendant No.3 Pardeshi were joint owners of the property in question on the strength of the registered deed of sale executed on 25.05.1971. He, therefore, submits that the judgment and decree be set aside.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. The plaintiffs have instituted the suit on the ground that by virtue of the registered deed of sale, dated 25.05.1971, all the sons of Jagdish, i.e., plaintiffs and defendants No. 1 & 3 have acquired their right, title and interest jointly over the suit property as described in plaint Schedule-A. Perusal of the registered deed of sale (Ex.P.1) would show unequivocally that it was purchased by all the sons of Jagdish. The contention of defendant No.1 that he alone had purchased the suit property after alienating his property at village Bhedni is noted to be rejected as under such circumstances, the burden was heavily upon him to establish the said fact. However, he himself has admitted at para 5 of his evidence that the property was purchased by all the brothers from one Kashiram. In such circumstances, it cannot be held that he alone had purchased the suit property. The lower appellate Court has also examined the evidence and came to conclusion that defendant No.1 has failed to prove that the alleged sale deed was obtained by playing fraud upon him. In consequence, the lower appellate Court has affirmed the finding of the trial Court. The findings so recorded by the Courts below are based upon due and proper appreciation of the evidence led by the parties, and therefore, it cannot be held to a perverse one. Consequently, the findings so recorded by the Courts below deserve to be and are hereby affirmed.

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

Sd/-

(Sanjay Agrawal)
Judge