

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 274 of 2004**

- Bramha, son of Shri Purna Mahkool, aged about 35 years, occupation – agriculturist, resident of – Mathapahar, Pathalgaon, Dist. Jashpur (Chhattisgarh)

---- Appellant

Versus

1. Manbodh, son of Shri Ratoo Mahkool, aged about 60 years.
2. Trilochan, son of Baadi Mahkul, aged about 30 years.

Both are agriculturists, resident of Mathpahar, Tah. Pathalgaon, Distt. Jashpur (Chhattisgarh)

3. The State of Chhattisgarh, through : The District Collector, Distt. Jashpur (Chhattisgarh)

---- Respondents

For Appellant	:	Shri A.N.Bhakta, Advocate
For Respondent No.3/State	:	Shri V.B.Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****26/09/2017**

1. Heard on admission.
2. This is the plaintiff's second appeal preferred 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 21.02.2004 passed by the District Judge, Jashpur, in Civil Appeal No. 23-A/2003, by which, the lower appellate Court, while affirming the judgment and decree dated 11.10.2001 passed by the 1st Civil Judge, Class-1, Raigarh (place Dharamjaigarh) in Civil Suit No.313-A/1998, has dismissed the plaintiff's claim.
3. The undisputed facts of the case are that the plaintiff Bramha instituted a suit for declaration and for possession by submitting, *inter alia*, that the suit property

described in plaint Schedule-A was the joint family property. It is pleaded further that the said property was not partitioned between his father Purno Mahkool and his uncle Manbodh (defendant No.1), therefore, the registered deed of sale, as executed by his uncle (Manbodh) in favour of defendant No.2 Trilochan on 05.02.1997 with regard to the part of the property admeasuring 0.611 hectares of Kh.No.173/1 mentioned in the said Schedule-A be declared as null and void. It is pleaded further that since the alleged sale was executed illegally without his consent, therefore, the plaintiff has been constrained in filing the suit in the instant nature, instituted on 06.01.1998.

4. The defendant No.1 Manbodh, in his written statement, has stated that the alleged sale was executed by him with regard to his share in favour of defendant No.2, but the entire sale consideration was not paid to him. It is pleaded further by him that by suppressing the material facts, the defendant No.2 has obtained the revenue papers mutated in his name, therefore, the alleged sale is not a genuine sale, while the defendant No.2, the purchaser, has contested the plaintiff's claim on the ground that defendant has sold the suit property, which has fallen in his share, by executing the registered deed of sale, upon receiving the entire sale consideration, therefore, it cannot be declared as null and void and the plaintiff's suit is liable to be dismissed.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the partition had already effected between the plaintiff's father and his uncle Manbodh. It held further that the alleged sold property bearing Kh.No.173/1 has fallen in share of defendant No.1 and not in favour of plaintiff as deposed by him in his evidence. In consequence, the trial Court has dismissed the plaintiff's claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff under Section 96 of the Code of 1908. The lower appellate Court, in turn, has also held that the partition has already taken place as the said fact was admitted by the plaintiff in his evidence and by relying upon the evidence of both the parties, it was held so by the lower appellate Court and held further that the suit property has fallen in share of defendant No.1, who in turn, had validly sold the same to defendant No.2 by executing the alleged registered deed of sale, dated 05.02.1997.

7. Being aggrieved, the plaintiff has preferred this appeal. Shri A.N.Bhakta, learned counsel for the appellant submits that the judgment and decree as passed

by the Courts below are apparently contrary to law. He submits further that defendant No.1 Manbodh himself admitted in his evidence that the suit property has fallen in share of the plaintiff, however, by ignoring the said fact, the Courts below have committed an illegality in holding that the same has fallen in share of defendant No.1 and defendant No.1 has validly sold the same to defendant No.2 by executing the alleged registered deed of sale.

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

9. The plaintiff's entire case is based upon the premises that the suit property, described in plaint Schedule-A, was never partitioned between his father Purno Mahkool and his uncle Manbodh (Defendant No.1), therefore, the alleged registered deed of sale, as executed by his uncle Manbodh in favour of defendant No.2 on 05.02.1997 (Ex.P.3), cannot be upheld. However, from perusal of the record and the evidence adduced by the parties, it is evident that the suit property was partitioned between the father of the plaintiff and his uncle Manbodh. The said fact was also admitted by the plaintiff in his evidence and tried to say that it has, in fact, come in his share. However, the said fact could not have been established by him. Even otherwise, the plaintiff cannot adduce any evidence contrary to his own pleadings. Once it was pleaded by him that no partition was ever taken place between his father and his uncle, then he cannot say that the suit property has fallen in his share. The Courts below, while considering the evidence of both the parties, have rightly come to the conclusion that the alleged registered deed of sale dated 05.02.1997 (Ex.P.3) was validly executed by defendant Manbodh in favour of defendant No.2 Trilochan and the said findings, therefore, 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 arises for determination of 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