

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 124 of 2014**

- Indlal S/o Bahoran Verma Aged About 52 Years R/o Village- Lolesara, Tah. And P.S. Bemetara, Civil And Revenue Distt. Bemetara C.G.

---- Appellant**Versus**

- Jiyan Sahu S/o Jethuram Sahu Aged About 38 Years R/o Village- Lolesara, Tah. And P.S. Bemetara, Civil And Revenue Distt. Bemetara C.G.

---- Respondent

For Appellant : Shri P.P.Sahu, learned Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****11/05/2017**

Heard on admission.

2. This is defendant'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 22.01.2014 passed by the District Judge, Bemetara, Dist. Bemetara (C.G.) in Civil Appeal No. 03-A/2013 whereby the lower appellate Court, while reversing / modifying the judgment and decree dated 30.06.2010 passed by the 1st Civil Judge, Class-1, Bemetara, in Civil Suit No.10-A/2009, has dismissed the appeal.

3. The undisputed facts of the case are that the plaintiff Jiyan Sahu instituted a suit for declaration of title, injunction and for possession by submitting, inter alia, that by virtue of the registered deed of sale dated 08.08.2001, he acquired the valid title over the property in question bearing Kh.No.381 admeasuring 1650 sq.ft. described in detail in plaint Schedule – 'A'. After purchasing the suit property as such, revenue papers were also mutated in his favour, however, in the year 2004, he has been dispossessed illegally by the defendant, giving rise to an instant action, instituted on 07.03.2009.

4. The defendant Indlal has contested the aforesaid claim by saying that though the sale was executed on 08.08.2001, but, sale consideration was not given by the plaintiff, therefore, the possession was not delivered to him. It is contested further on the ground that in absence of sale consideration, the alleged sale cannot be held to be validly executed by him.

5. The trial Court, after considering the evidence led by the parties, has held that the registered deed of sale dated 08.08.2001 was executed by the defendant Indlal in favour of the plaintiff. However, the trial Court has dismissed the suit by holding that the suit as framed by the plaintiff is barred by time as he failed to prove that he was in possession over the property in question for continuously three years.

6. The aforesaid finding of the trial Court is reversed by the lower appellate Court in an appeal preferred by the plaintiff. The lower appellate Court, after considering the alleged sale deed (Ex.P.1), has come to the conclusion that the sale deed was validly executed by the defendant in favour of the plaintiff and in consequence, while reversing the finding of the trial Court, has decreed the plaintiff's claim.

7. Being aggrieved, the defendant has preferred this appeal. Shri P.P.Sahu, learned counsel appearing for the appellant submits that since the sale consideration has not been passed as per the agreement between the parties at the time of the execution of the alleged sale deed, therefore, findings as recorded by the lower appellate Court while upholding the validity of the alleged sale deed cannot be held to be sustainable in the eye of law.

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

9. Undisputedly, the defendant Indlal has executed the registered deed of sale on 08.08.2001 in favour of the plaintiff Jiyan Sahu. When the plaintiff was dispossessed in the year 2004, the plaintiff has instituted the suit claiming declaration of title, injunction and for its possession. While contesting the plaintiff's claim, it was stated by the defendant that since the sale consideration has not been given by the plaintiff to him, as agreed, therefore, the possession was not delivered to the plaintiff and, under such circumstances, the alleged sale cannot be held to be validly executed for want of passing of the sale consideration.

10. The contention, as made in this regard, is not sustainable in view of the provision prescribed under Section 54 of the Transfer of Property Act. The said provision very specifically provides that if the value of the property is more than Rs.100/-, then the sale could be executed only by executing the registered deed of sale. As far as the execution of the alleged sale deed is concerned, the same is not disputed, however, it was disputed only on the ground for want of passing of sale consideration. That is not the requirement under the aforesaid provision while executing the registered deed of sale, therefore, the contention of the learned counsel for the appellant is not acceptable. The findings, as recorded by the lower appellate Court in this regard, cannot be held to be a perverse one, therefore, the same deserve to be and are hereby affirmed.

11. In view of foregoing discussions, no question of law, much less, the substantial questions of law involved in this appeal. Accordingly, this appeal, being devoid of merit, is liable to be and is hereby dismissed at the stage of admission itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge