

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.589 of 2016**

Susheel Rao Dhote S/o Late Tanchanrao, Aged About 40 Years R/o Village-Dunda, Police Station- Tikrapara, Tahsil And District- Raipur, Chhattisgarh(Plaintiff)

----Appellant**Versus**

1. Smt. Jagamatbai W/o Shri Ishwar Lal, Aged About 43 Years R/o Village-Dunda, Police Station- Tikrapara, Tahsil And District Raipur, Chhattisgarh
2. Pardeshi Ram S/o Shri Ishwar Lal, Aged About 23 Years R/o Village-Dunda, Police Station- Tikrapara, Tahsil And District Raipur, Chhattisgarh
3. Ishwar Sahu S/o Shri Bauwa Lal, Aged About 46 Years R/o Village- Dunda, Police Station- Tikrapara, Tahsil And District Raipur, Chhattisgarh
4. Premjee Rao Dhote S/o Late Balchand, Aged About 63 Years R/o Nandi Chowk, Tikrapara, Police Station- Tikrapara, Tahsil And District- Raipur, Chhattisgarh
5. The State Of Chhattisgarh, Through The District Collector, Raipur, Chhattisgarh(Defendants)

-----Respondents

For Appellant:	Shri Malay Kumar Bhaduri, Advocate.
For Respondent Nos.1 to 3:	Shri Pushkar Sinha, Advocate.
For Respondent No.4;	Shri Vinod Kumar Tekam, Advocate
For Respondent No.5/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

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

21.06.2017

1. This is the Plaintiff's Appeal against the judgment and decree dated 12.5.2016 passed by the Additional District Judge, Raipur in Civil Appeal No.4-A/2012 by which the lower appellate Court, while affirming the judgment and decree dated 8.2.2012 passed by IVth Civil Judge, Class-II, Raipur in Civil Suit No.153-A/2010, has dismissed the Plaintiff's claim.
2. The undisputed facts of the case are that the Plaintiff Susheel Rao has

instituted a suit claiming declaration of title, permanent injunction and also praying for declaration with regard to the fact that the sale deed executed on 3.3.1997 by Defendant No.4-Premjee Rao in favour of Defendants No.1 to 3 be declared as null and void. It is pleaded that the Plaintiff's grandfather Kushal Rao was the erstwhile owner of the property in question bearing Khasra No.266 measuring area 14,656 sq.ft. It is pleaded further that after the death of his grandfather, the said property was acquired by his father Tanchan Rao and upon his death, the Plaintiff acquired the property in question by way of inheritance. It is pleaded further that since the Defendants are trying to interfere with their peaceful possession, therefore, the Plaintiff has been constrained to file a suit in the instant nature.

3. The Defendants have contested the Plaintiff's claim by stating the Plaintiff's grandfather was not the owner of the property in question and therefore, the Plaintiff is not entitled to question the sale executed in the year 1997 in their favour by Defendant No.4.

4. After considering the evidence led by the parties, the trial Court has come to the conclusion that the Plaintiff has failed to establish the fact that his grandfather was the owner of the property in question. The trial Court held further that since the Plaintiff's father had earlier instituted a suit for injunction on 16.4.1997 against Defendants No.1 to 3 and after the dismissal of the said suit on 31.7.1997, the present suit is specifically barred by principles of *res judicata* as provided under Section 11 CPC, 1908. It held further that the suit as instituted on 12.5.2010 by questioning the sale executed in the year 1997 is barred by time. As a consequence, the trial Court has dismissed the Plaintiff's suit for declaration and injunction.

5. The aforesaid finding of the trial Court has been affirmed further by the

lower appellate Court in an Appeal preferred by the Plaintiff.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Bhaduri, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are not at all sustainable in the eye of law. He submits further that since he has inherited the property after the death of his predecessor in interest of the suit property therefore, he was entitled to question the sale executed on 3.3.1997 by Defendant No.4 in favour of Defendants No.1 to 3. He submits further that the findings as recorded by the lower appellate Court that being a third party, the Plaintiff was not competent to assail the validity of the alleged sale executed on 3.3.1997 is also not sustainable in the eye of law. He submits further that since the sale which was executed in the year 1997 was an unregistered deed of sale, therefore, by virtue of Section 54 of the Transfer of Property Act, no title or interest could confer upon Defendants No.1 to 3. Without considering the said fact, the Courts below have erred in dismissing his claim.

7. I have heard learned Counsel for the parties and perused the entire record carefully.

8. Undisputedly, the Plaintiff has instituted a suit in the instant nature on the premises that he acquired the property by way of inheritance after the death of his predecessor in interest. In order to question the validity of the sale executed in the year 1997 by Defendant No.4 to Defendants No.1 to 3, it is the duty of the Plaintiff to establish first the ownership of his grandfather with regard to the property in question. However, no document as such was produced by him so as to presume that his grandfather Kushal Rao had purchased the property in question. Even otherwise, the Plaintiff's father Tanchan Rao had earlier instituted a suit for injunction against Defendants

No.1 to 3 on 31.7.1997 by submitting *inter alia* therein that he had acquired the property by virtue of adverse possession. In the said suit, the trial Court had come to the conclusion that the Plaintiff's father had failed to establish the fact that he had prescribed his right, title and interest by way of adverse possession. The said judgment and decree had attained its finality by efflux of time.

9. If we examine the contention of the Plaintiff as made herein in the instant suit vis-a-vis the contention as made by his father in an earlier instituted suit, it would be clear that both the pleas are in fact contrary to each other. In view of this fact also, the Plaintiff has failed completely to establish the fact that his predecessor in interest was ever the owner of the property in question. Since the Plaintiff had failed to establish this material fact, therefore, the suit was rightly dismissed by both the Courts below.

10. In view of the foregoing discussions, I do not find any infirmity in the findings recorded by the Courts below. The findings so recorded are pure findings of facts which even otherwise, cannot be interfered at this stage particularly, when it was passed after proper and due appreciation of the evidence of both the parties. The Appeal is accordingly dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE