

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 399 of 2017**

- Romanlal S/o Late Jadhav Prasad Sharma, Aged About 55 Years
R/o Mathpara, Durg Tahsil And District Durg,
Chhattisgarh(Defendant)

---- Appellant**Versus**

- Kalindri Bai W/o Late Hari Prasad Sharma, R/o Near The House
Of Parasram Sahu, Beneath Turnip Tree, Babu Talab Saraswati
Nagar, Nayapara-Road, Durg, Tahsil And District Durg,
Chhattisgarh(Plaintiff)

---- Respondent

For Appellant : Shri Somnath Verma, Advocate.

For Respondent : None.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****30.11.2017**

1. Heard on admission.
2. This is defendant's appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short referred to as 'the CPC') against the judgment and decree dated 29/04/2017 passed by 3rd Additional District Judge, Durg, in Civil Appeal No.25-A/2016, by which, the lower appellate Court, while affirming the judgment and decree dated 18/02/2016 passed by 6th Civil Judge Class-2, Durg, in Civil Suit No.4-A/2010, has dismissed the appeal.
3. The undisputed facts of the case are that the plaintiff Kalindri Bai instituted a suit claiming declaration of title and possession with regard to the suit property described in plaint Schedule-A by submitting *inter alia* that her husband Hari Prasad had purchased suit property by virtue of a registered deed of sale dated 30/07/1974 from his brother Jadhav

and had thus, acquired the valid right, title and interest upon it. It is pleaded further that Romanlal, the son of Jadhav had illegally obtained the possession of the said suit property from her, therefore, she has been constrained to file the suit in the instant nature.

4. The defendant, while filing the counter claim, has denied the aforesaid claim and pleaded that the alleged deed of sale was executed for security of the loan amount and pleaded further that since the suit property was not sold to Hari Prasad, therefore, no right, title or interest would confer upon Kalindri Bai after the death of her husband Hari Prasad.

5. The trial Court, after considering the evidence led by the parties and that by considering the documentary evidence, i.e. registered deed of sale dated 30/07/1974, has come to the conclusion that the plaintiff's husband Hari Prasad had validly purchased the suit property. In consequence, the trial Court has decreed 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 defendant.

7. Being aggrieved, the defendant has preferred this appeal. Shri Somnath Verma, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by holding that the plaintiff's husband Hari Prasad had acquired the valid interest over the suit property by virtue of the alleged registered deed of sale, is bad in law. He further submits that without considering the counter claim, the Courts below have erred in holding that the alleged sale was executed by his father Jadhav in favour of his brother Hari Prasad. He submits further that mere marking the alleged document would not be sufficient to hold that the alleged sale was executed by his father as such.

Without considering the material facts in its proper perspective, the Courts below have erred in decreasing the plaintiff's claim

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

9. The plaintiff's claim was essentially based upon the registered deed of sale dated 30/07/1974, purported to have been executed by Jadhav in favour of her husband Hari Prasad. By virtue of Section 54 of the Transfer of Property Act, 1882, the immovable property could be sold by virtue of the registered document, if the value of the property is more than hundred rupees. Here in the instant case, the registered deed of sale was executed by Jadhav in 1974 and as per the evidence of his son Romanlal-the defendant herein, would show that he expired on 19/11/1993 and during his lifetime he never questioned the authenticity of alleged registered deed of sale. Since the executor had never questioned its authenticity, therefore, under such circumstances, the defendant Romanlal, being his son, is not entitled to question the authenticity of the said document. Besides, what is pleaded by the defendant Romanlal in his written statement was that the alleged sale was executed for the security of the loan amount. In order to establish the said fact, the burden was heavily upon the defendant. However, perusal of the entire record would show that the defendant has failed to produce any reliable and cogent evidence to establish the said fact. In such an eventuality, the Courts below have rightly come to the conclusion that by virtue of the registered deed of sale dated 30/07/1974, the plaintiff's husband Hari Prasad had acquired the right, title and interest over the suit property. The findings so recorded are based upon due and proper appreciation of evidence led by the parties and therefore, the same cannot be held to be perverse. Consequently,

the findings so recorded in this regard, deserve to be and are hereby affirmed.

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

Sd/-
(Sanjay Agrawal)
Judge