

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.69 of 2017**

Kaushal Suryavanshi S/o Kartik Ram Suryavanshi, Aged About 49 Years R/o Suryavanshi Mohalla Village Paad Tahsil Takhatpur, District Bilaspur, Chhattisgarh(Plaintiff No.1)

---- Appellant**Versus**

1. Sandeep Chandel S/o Ram Singh, Aged About 31 Years R/o Near Gurudwara, 27 Kholi, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh(Defendant No.1)
2. Madan Suryavanshi (Dead) Through Lrs
2 . (a) Smt. Krishna Bai Aged about 50 Years W/o Madan Suryavanshi, R/o Village Tahsil Takhatpur, District Bilaspur, Chhattisgarh
2 . (b) Sunil Suryavanshi Aged about 24 Years S/o Madan Suryavanshi, R/o Village Tahsil Takhatpur, District Bilaspur, Chhattisgarh
2 . (c) Naval Suryavanshi Aged about 21 Years S/o Madan Suryavanshi, R/o Village Tahsil Takhatpur, District Bilaspur, Chhattisgarh
2 . (d) Jawala Suryavanshi Aged about 15 Years S/o Madan Suryavanshi, Minor Through His Mother Krishna Bai, R/o Village Tahsil Takhatpur, District Bilaspur, Chhattisgarh
2 . (e) Parvati Bai Aged about 18 Years D/o Madan Suryavanshi, R/o Village Tahsil Takhatpur, District Bilaspur, Chhattisgarh
2 . (f) Sakun Bai Aged about 20 Years D/o Madan Suryavanshi, R/o Village Tahsil Takhatpur, District Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through Its Collector, Bilaspur, Chhattisgarh(Plaintiffs)

-----Respondents

For Appellant:	Shri Pusupendra Kumar Patel along with Smt NK Kashyap, Advocate.
For Respondent No.3/State:	Shri VB Singh, Panel Lawyer.

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

18.09.2017

1. This is the Appeal preferred by Plaintiff No.1 under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 08.09.2016 passed by the Additional District

Judge, Bilaspur in Civil Appeal No.14-A/2015 whereby the lower appellate Court, while reversing the judgment and decree dated 05.01.2015 passed by the Civil Judge, Class-II, Takhatpur, District Bilaspur in Civil Suit No.31-A/2010, has dismissed the Plaintiff's suit.

2. Briefly stated, the undisputed facts of the case are that the Plaintiffs Kaushal and Madan instituted a suit for declaration of title by submitting *inter alia* that they are the owners of the property in question bearing Khasra No.216/24 admeasuring 1 acre situated at village Pand (Sakri), Tahsil Takhatpur, Distt. Bilaspur. According to the Plaintiffs, the suit property was agreed to be sold to Defendant No.1-Sandeep Chandel for a consideration of Rs.3,25,000/- and as per the agreement, Defendant No.1 has paid them only a sum of Rs.1,11,000/- as an earnest amount and assured them to deposit the rest of the amount, i.e. Rs.2,14,000/- at the time of registration of the said deed. It is pleaded further that as per the assurance given by Defendant No.1, they have signed the blank stamp paper in this regard. It is pleaded further that out of the said rest sale consideration, Defendant No.1 has paid them only a sum of Rs.46,000/- and has failed to deposit the rest of the sale consideration amount of Rs.1,68,000/- despite the issuance of the demand notice dated 31.3.2010. It is pleaded further that subsequently, they came to know that Defendant No.1 has obtained the registered deed of sale on 21.10.2008 even without depositing the entire sale consideration giving rise to an instant action.

3. Defendant No.1 has contested the aforesaid claim by submitting *inter alia* that he has purchased the suit property by depositing the entire sale consideration amount of Rs.1,99,500/- and has obtained the valid title over the suit property. It is denied very specifically that the alleged

property was agreed to be sold by the Plaintiffs for consideration amount of Rs.3,25,000/-. He denied further that any rest amount was required to be deposited by him as pleaded by the Plaintiffs. He contested further on the ground that after purchasing the property in question as such, has obtained the revenue papers mutated in his name by moving an application before the Additional Tahsildar, Sakri who has ordered for mutation vide order dated 22.09.2009.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the entire sale consideration was not paid by Defendant No.1 to the Plaintiffs. As a consequence, the trial Court has decreed the Plaintiffs' claim by holding that the Plaintiffs are the owners of the suit property bearing Khasra No.216/24 admeasuring 1 acre.

5. Being aggrieved, Defendant No.1 has preferred an Appeal as per the provisions prescribed under Section 96 of the CPC. The appellate Court, in turn, has examined oral as well as the documentary evidence and came to the conclusion while maintaining the findings of the trial Court in relation to issue No.1 regarding payment of entire sale consideration that since the suit was not for the cancellation of alleged registered deed of sale, therefore, under such circumstances, the Plaintiffs cannot be held to be declared as the owner of the suit property. In consequence, the Plaintiffs' suit was dismissed by allowing the Appeal.

6. Being aggrieved, Plaintiff No.1-Kaushal alone has preferred this Appeal. Shri Pushpendra Kumar Patel, learned Counsel for the Appellant submits that the judgment and decree as passed by the lower appellate Court by reversing the findings of the trial Court is apparently contrary to law even upon holding that the entire sale consideration was not paid by

Defendant No.1. He submits that though the registered deed of sale was executed on 21.10.2008, but the entire sale consideration was not paid by Defendant No.1 as held by both the Courts below, therefore, under such circumstances, the lower appellate Court ought not to have reversed the finding of the trial Court. He therefore submits that the judgment and decree passed by the lower appellate Court be set aside.

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

8. The Plaintiffs have instituted a suit mainly on the ground that though the registered deed of sale was executed on 21.10.2008 but the entire sale consideration was not paid by Defendant No.1, therefore, under such circumstances, no right, title or interest would confer upon him on the basis of the alleged registered deed of sale, is noted to be rejected. The Plaintiffs while instituting a suit claiming exclusive ownership over the suit property was required to seek the relief of cancellation of alleged registered deed of sale. In absence of such a relief, the Plaintiffs cannot claim their ownership. Be that as it may, Section 54 of the Transfer of Property Act, 1882 provides very specifically that if the value of immovable property is more than Rs.100/, then the interest could be transferred upon the execution of its registration. Pertinently to be noted here that execution of the alleged registered deed of sale dated 21.10.2008 (Ex.D-7) has not been disputed by the Plaintiffs. What was pleaded by the Plaintiffs that since the entire sale consideration was not paid by Defendant No.1, therefore, no right, title or interest would confer upon him. However, based upon the provisions mentioned above, it cannot be held that defendant No.1 has not acquired any interest over the suit property on the strength of

the alleged registered deed of sale dated 21.10.2008 (Ex.D-7).

9. Consequently, 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

Priya