

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 182 OF 2011**

Dukhiram Kori (Dead) Through Lrs

(A) Govind Prasad Kori Aged about 47 Years S/o Late Dukhiram Kori

(B) Pramila Kori Aged about 42 Years D/o Late Dukhiram Kori, W/o Surendra Kori, R/o Nutan Chowk Sarkanda, Bilaspur, Tah. & Distt. Bilaspur, Chhattisgarh

(C) Pramod Kori Aged about 39 Years S/o Late Dukhiram Kori

(D) Parvati Kori Aged about 36 Years D/o Late Dukhiram Kori, R/o Nutan Chowk Sarkanda, Bilaspur, Chhattisgarh

(E) Manoj Kori Aged about 33 Years S/o Late Dukhiram Kori

(F) Vinod Kori Aged about 26 Years S/o Late Dukhiram Kori

(G) Ravina Kori Aged about 24 Years D/o Late Dukhiram Kori, W/o Gopi Kori, R/o Ramtala Chowk, Koni, Tah. & Distt. Bilaspur, Chhattisgarh

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1. Ramnarayan @ Raju S/o Shyamlal Kori, Aged About 47 Years R/o Village Sakari Tah. Takhatpur, Distt. Bilaspur, Chhattisgarh
2. Smt. Premlata Dubey W/o R.K. Dubey, Aged About 49 Years House Wife, R/o J.P.Bihar Colony, Bilaspur, Tah. & Distt. Bilaspur, Chhattisgarh
3. Abhya Shardchandra Randine S/o Shard Chand Randive Kayash Aged About 47 Years R/o Subham Bihar Mungeli Road, Distt. Bilaspur, Chhattisgarh
4. P. K. Pandey S/o B. P. Pandey, Aged About 51 Years Agricultural R/o Subham Bihar Colony, Mungeli Road, Distt. Bilaspur, Chhattisgarh
5. Chhattisgarh State Through Collector Bilaspur, Chhattisgarh
6. Subhash Yadav S/o Ganesh Yadav, Aged About 41 Years R/o Rajendra Nagar Ward Behind Head Post Office, Bilaspur, Chhattisgarh

---- Respondents

For Appellants	:	Mr. H. V. Sharma, Advocate
For Respondents No. 1 to 4	:	Mr. Kripesh G. Kela, Advocate
For Respondent No. 5/State	:	Mr. R. K. Jaiswal, P. L.
For Respondent No. 6	:	None, though served.

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****25/08/2017**

1. This is plaintiff's second appeal preferred under Section 100 of the Code of Criminal Procedure, 1908 (hereinafter referred to as 'CPC') against the judgment and decree dated 12/01/2011 passed by 9th Additional District Judge (F.T.C.), Bilaspur (C.G.) in Civil Appeal No. 06-A/2010 by which, the lower appellate Court while affirming the judgment and decree dated 29/06/2009 passed by the Civil Judge Class-II, Takhatpur in Civil Suit No. 143-A/2009, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiff Dukhiram (since deceased now represented by his legal representatives) instituted a suit for declaration of title and injunction by submitting *inter alia* that by virtue of sale deed (agreement) dated 25/05/2002, he has purchased the suit property bearing Kh. No. 783 admeasuring 0.28 acres and Kh. No. 803/2 admeasuring 0.24 acres, total admeasuring 0.52 acres situated at village Sakri Tahsil Takhatpur District Bilaspur from his brother (Ramnarayan alias Raju), the defendant No. 1.

3. According to the plaint averments, the defendant No. 1 even upon alienating the suit property to the plaintiff as such has sold the suit property bearing Kh. No. 783 admeasuring 0.28 acres to defendant No. 3 Abhay Sharadchandra by executing a registered deed of sale dated 16/10/2002 and likewise by yet another deed of sale dated 11/11/2002 sold Kh. No. 803/2 admeasuring 0.24 acres to defendant No. 2 Smt. Premlata Dubey. It is therefore pleaded further that the defendant No. 1 was not at all entitled to alienate further the suit property as such to the defendants. It is pleaded further that further sale as made by defendant No. 3 with regard to Kh. No. 783 admeasuring 0.28 acres to defendant No. 6 Subhash Yadav would also not confer any right, title or

interest upon him. It is pleaded further that since the suit property has been sold by defendant No. 1 as such to defendants even after alienating the same to him, therefore the plaintiff has been constrained to file the suit in the instant nature for declaration of title and injunction.

4. The aforesaid claim has been contested by the defendants. It is contested on the ground that the defendant No. 1 was competent to execute the registered deed of sales in their favour as no title whatsoever was conferred upon the plaintiff by virtue of the alleged unregistered deed of sale/agreement, dated 25/05/2002.

5. The trial Court after considering the evidence of both the parties has come to the conclusion that by virtue of deed of sale (agreement) dated 25/05/2002, no title would confer upon the plaintiff as the said document is unregistered document and therefore, by virtue of an unregistered deed of sale the plaintiff cannot claim any right as such. As a consequence, the trial Court has dismissed the suit. 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 CPC.

6. Being aggrieved, the plaintiff has preferred this appeal. Mr. H. V. Sharma, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by holding that the plaintiff has not acquired any interest or title on the basis of alleged document are required to be interfered by this Court. He further submits that a bare perusal of the alleged document (Ex. P-3) executed on 25/05/2002 would show that the possession was delivered by his brother Ramnarayan alias Raju (defendant No. 1) in his favour therefore, he is entitled to get protection of the suit property. Without considering this material fact, the Courts below have erred in dismissing the plaintiff's claim.

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

8. The only contention as pleaded by the plaintiff that since he has purchased the suit property by virtue of sale dated 25/05/2002, therefore, has become the owner of it and under such circumstances his brother Ramnarayan alias Raju, the defendant No. 1 has no right to alienate the suit property further to the defendants. The burden is, therefore, heavily upon the plaintiff to establish this fact that by virtue of the alleged document (Ex. P-3) he has acquired the valid title upon it. However, upon bare perusal of the said document would show that it is an unregistered one and, therefore on the basis of it, particularly when the value of it is more than Rs.100/- no title as such could pass upon the plaintiff. Pertinently to be noted here further that instead of filing the suit for Specific Performance of Contract based on this document, the plaintiff has filed the suit in the instant nature by claiming his ownership on the basis of the said unregistered document therefore, under such circumstances, it cannot be held that the plaintiff has acquired any interest whatsoever with regard to the suit property.

9. In view of the forgoing submissions, the plaintiff cannot claim any interest over the suit property on the basis of the alleged unregistered document. Consequently, the findings as recorded by the trial Court as well as lower appellate Court cannot be held to be perverse one as the same were based upon due and proper appreciation of oral as well as documentary evidence, as discussed above. The findings so recorded are therefore, deserves 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 question of law which arise for determination in this

appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Yogesh