

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 35 OF 2014**

Smt. Daljeet Kaur W/o Shri Surjeet Singh, aged about 45 Years R/o Danteshwari Ward, Jagdalpur, District Bastar (C.G.)

---- Appellant**Versus**

1. Hardev Singh S/o Harbhajan Singh, aged about 60 years, R/o Danteshwari Ward, Jagdalpur, District Bastar (C.G.)
2. Saji Vargis S/o T.N. Vargis, aged about 60 years, caste Isai, R/o Dharampura, Jagdalpur, District Bastar (C.G.)
3. State of Chhattisgarh, through Collector, Jagdalpur, District Bastar (C.G.)

---- Respondents

For Appellant	:	Mr. H.B. Agrawal, Senior Advocate with Ms. Meera Jaiswal, Advocate
For Respondent No. 1	:	Mr. Ram Kumar Tiwari, Advocate
For Respondent No. 2	:	Mr. Keshav Dewangan, Advocate
For Respondent No. 3/State	:	Mr. Lav Sharma, Panel Lawyer

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

1. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') against the judgment and decree dated 03/01/2013 passed by the District Judge, Bastar at Jagdalpur (C.G.) in Civil Appeal No. 49-A/2012, by which, the lower Appellate Court while affirming the judgment and decree dated 23/06/2010 passed by the First Civil Judge Class-1, Jagdalpur in Civil Suit No. 2-A/2005, has dismissed the plaintiff's appeal.

2. Undisputed facts of the case are that the plaintiff Smt. Daljeet Kaur has instituted a suit for declaration of title and also for cancellation of registered deed of sale dated 15/10/2004 executed by respondent No. 1 Hardev Singh in favour of the respondent No. 2 namely Saji Vargis. It is pleaded that the partition as made by the Tahsildar vide its order dated 13/03/2003 was not proper and therefore, the registered deed of sale executed after such partition, was also not proper. It is pleaded further that after the alleged partition, the plaintiff had filed another application under Section 178 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'Code') before the Tahsildar, who in turn vide its order dated 18/11/2004 has passed the another partition order. It is pleaded further that since the alleged sale deed was executed on 15/10/2004 prior to the said subsequent partition order, therefore, it cannot be held to be validly executed.
3. The defendant has contested the aforesaid claim of the plaintiff on the ground that once the partition has already been effected on the basis of the application filed by the plaintiff herself, then the subsequent application for the said purpose was in fact not at all sustainable in the eyes of law. It is pleaded further that only after the partition as passed by the Tahsildar, Jagdalpur on 13/03/2003, the alleged registered deed of sale dated 15/10/2004 was executed, therefore, the same cannot be held to be invalid.
4. The trial Court after considering the evidence led by the parties, has come to the conclusion that the property in question, described in plaint Schedule "A" was not come in the share of the plaintiff and, held further that defendant No. 1/respondent No. 1- Hardev Singh has alienated the property which came in his share to the respondent No. 2 by virtue of the alleged registered deed of sale dated 15/10/2004 only after passing of the said partition order, dated 13/03/2003. In consequence, the trial Court has dismissed the plaintiff's claim.

5. The aforesaid findings of the trial Court has been affirmed further by the lower Appellate Court by its impugned judgment and decree dated 03/01/2013 in an appeal preferred by the plaintiff.
6. Being aggrieved, the plaintiff has preferred this appeal. Mr. H.B. Agrawal, learned Senior Advocate with Ms. Meera Jaiswal, Advocate for the appellant submits that the judgment and decree as passed by both the Courts below is apparently contrary to the law. He submits further that after passing the order of the Tahsildar, Jagdalpur on 13/03/2003, another partition order was made by the Tahsildar on the basis of the application submitted by the plaintiff on 14/01/2004 (Exhibit P-10), therefore, the registered deed of sale executed on 15/10/2004 prior to passing of the subsequent partition order dated 18/11/2004, cannot be held to be validly executed.
7. I have heard the learned counsel for the appellant and perused the entire record carefully.
8. Plaintiff- Smt. Daljeet Kaur instituted a suit claiming declaration of title and also for cancellation of the alleged registered deed of sale dated 15/10/2004 purported to have been executed by respondent No. 1 Hardev Singh in favour of the respondent No. 2 namely Saji Vargis as the same is null and void.
9. From perusal of the record, it is evident that a revenue case being Revenue Case No. 15/A-27/2001-2002 was registered on the basis of an application filed by the plaintiff herself under Section 178 of the Code. After considering the said application, the Tahsildar, Jagdalpur has passed the partition order on 13/03/2003 (Exhibit P-1). After the said partition, defendant No. 1 has alienated the property in question in favour of defendant No. 2 by executing a registered deed of sale dated 15/10/2004.
10. It is pertinent to be mentioned here that after the passing of the alleged partition by the Tahsildar, Jagdalpur vide its order dated 13/03/2003, an application was

again submitted by the plaintiff Smt. Daljeet Kaur on 14/01/2004 (Exhibit P-10) under Section 178 of the Code before the Tahsildar, Jagdalpur, who in turn, has again passed the partition order on 18/11/2004. It is worth to be noted here that when a partition order was already passed by the Tahsildar on 13/03/2003 (Exhibit P-1), affirmed further by the Sub-Divisional Officer vide its order dated 22/07/2003, then under such circumstances, it was not open for the Tahsildar to entertain the said application again under Section 178 of the Code while passing the another partition order on 18/11/2004.

11. The entire exercise as made by the Tahsildar, Jagdalpur was totally without jurisdiction in view of the above facts and circumstances. The subsequent partition order as passed by the Tahsildar, Jagdalpur on 18/11/2004, under such circumstances, cannot be held to be a valid one. The same is therefore set aside. The trial Court as well as the lower Appellate Court has rightly upheld the earlier order as passed by Tahsildar on 13/03/2003 while upholding the registered deed of sale dated 15/10/2004 executed by the defendant No. 1 in favour of the defendant No. 2. The findings so recorded deserves to be and are hereby affirmed.
12. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law involved in this second appeal. Consequently, the second appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge