

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 9 of 2013

- Baijnath S/o Ramcharan, Aged about 46 Years, R/o Kera Road, Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa (C.G.)

---- Appellant

Versus

1. Ram Charan S/o Ramgulam, Aged about 75 Years, Caste Kahara, R/o Kera Road, Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa (C.G.)
2. Gopal Ram S/o Ram Charan, Aged about 38 Years, R/o Kera Road, Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa (C.G.)
3. Mukesh Sharma S/o Duli Chand Sharma, Aged about 31 Years, R/o B.D. Mahant Up Nagar, Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa (C.G.)
4. Divya Bajaj, D/o Ashok Bajaj, Aged about 37 Years, R/o Kera Road, Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa (C.G.)
5. Smt. Sakuntala Swarnkar, W/o Heera Lal Swarnkar, Aged about 65 Years, R/o Jarhabhata, Bilaspur, P.S. Civil Line, Bilaspur, Tahsil Bilaspur, District Bilaspur (C.G.)
6. State of Chhattisgarh Through : Collector, Janjgir, District Janjgir-Champa (C.G.)

---- Respondents

And

FA No. 10 of 2013

1. Divya Bajaj D/o Ashok Bajaj, Aged about 37 Years, R/o Kera Road, Janjgir, P.S. Janjgir, Tahsil and District Janjgir-Champa (C.G.)
2. Smt. Sakuntala Swarnkar W/o Heera Lal Swarnkar, Aged about 65 Years, R/o Jarhabhata, Bilaspur, P.S. Civil Line, Bilaspur, Tahsil Bilaspur, District Bilaspur (C.G.)

---- Appellants

Versus

1. Ram Charan S/o Ramgulam, Aged about 75 Years, R/o Kera Road, Janjgir, P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)
2. Baij Nath S/o Ram Charan, Aged about 46 Years R/o Kera Road, Janjgir, P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)

3. Gopal Ram S/o Ram Charan, Aged about 38 Years, R/o Kera Road, Janjgir, P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)
 4. Mukesh Sharma S/o Duli Chand Sharma, Aged about 31 Years, R/o B.D. Mahant Up Nagar, Janjgir, P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)
 5. State of Chhattisgarh Through : Collector, Janjgir, Distt. Janjgir-Champa (C.G.)
- Respondents**

For Appellants	:	Shri Sanjay Dewangan, Advocate.
For Respondents	:	Shri Manoj Paranjape & Shri Vikram Dixit, Advocates

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board By

Prashant Kumar Mishra, J.

03-07-2017

1. These two first appeals under Section 96 of the Code of Civil Procedure (for short 'CPC') are arising out of the judgment and decree dated 30-11-2012 passed by the trial Court allowing the suit preferred by plaintiff Ramcharan for setting aside and declaring the sale deeds to be void which was executed by defendant No.1 Baijnath in favour of defendant No.3 Mukesh Sharma, defendant No.4 Divya Bajaj and defendant No.5 Shakuntala Swarnkar.
2. First Appeal No.9 of 2013 has been preferred by defendant No.1 – Baijnath whereas First Appeal No.10 of 2013 has been preferred by defendant No.4 Divya Bajaj and defendant No.5 Shakuntala Swarnkar.
3. Facts of the case, briefly stated, are that plaintiff Ramcharan filed the

present suit for declaration that the sale deed dated 20-08-2009 executed by defendant No.1 Baijnath in favour of defendant No.3 Mukesh Sharma for area ad-measuring 1 acre bearing Khasra No.4453/2 and area ad-measuring 22 dismil bearing Khasra No.4453/3 is null, void and not binding on the plaintiff. Similarly, he prayed that the sale deed executed by defendant No.1 Baijnath in favour of defendant No.4 Divya Bajaj on 20-08-2009 for an area ad-measuring 6 dismil bearing Khasra No.2769/1 and the sale deed dated 08-06-2009 executed by defendant No.1 Baijnath in favour of defendant No.5 Smt. Shakuntala Swarnkar for the same area from the same Khasra Number be also declared null, void and inoperative against the plaintiff.

4. The plaintiff claimed above stated reliefs with a specific plea that he has purchased the properties involved in the sale deeds from his personal income, therefore, the properties being self acquired the same could not have been sold by defendant No.1 in favour of other defendants. The plaintiff also averred that a part of Khasra No.4453 and Khasra No.2448/13 area 10 dismil was purchased by his mother on 10-06-1957 and 22-02-1956 respectively out of which 23 dismil land bearing Khasra No.4453/1 and 5 dismil from Khasra No.2448/1K has fallen in appellant's share in family partition. Thus, these two pieces of land are ancestral properties. However, it is to be seen that in the present appeals, the decree has not been sought in relation to Khasra No.4453/1, 2448/3K. Therefore, there being no decree in relation to ancestral property we shall not advert to the issue concerning these two pieces of land.

5. It is further stated by the plaintiff that his son defendant No.1 Baijnath had procured an *ex-parte* order of partition and got recorded his name in the revenue record pertaining to Khasra No.4453/2, 4453/3 and 2769/1 and thereafter sold the area falling in his share in these two Khasra numbers in favour of defendants No.3,4 and 5. It is stated that the plaintiff went in appeal and revision before the superior Revenue Officer, however, since the sale deeds are affecting his title, therefore, he is required to prefer the suit as the partition proceedings were done in a illegal manner. It was also stated that despite there being an interim order in his favour passed by the Commissioner, Bilaspur Division and Board of Revenue restraining Baijnath to alienate the properties, the subject sale deeds were executed. Therefore, for this reason also, it became necessary for the plaintiff to file the suit for declaration and recovery of possession.
6. The suit was contested by defendant No.1 Baijnath and defendant No.5, Shakuntlala Swarnkar. Defendant No.3 Mukesh Sharma and defendant No.4 Divya Bajaj remained *ex-parte* and they have suffered an *ex-parte* decree. Mukesh Sharma has not preferred any appeal before this Court, therefore, the trial Court decree against him has become final. The two appeals have been preferred by Baijnath, Divya Bajaj and Shakuntala Swarnkar. Divya Bajaj has not preferred any application under Order 9 Rule 13 of the CPC for setting aside *ex-parte* decree and strait-away preferred the appeal under Section 96 of the CPC.
7. Before the trial Court, the plaintiff examined himself as PW-1 and filed

an affidavit under Order 18 Rule 4 of CPC sworn by Mukund Suryawanshi but he was not presented for cross-examination. Therefore, his statement cannot be read in evidence. Defendant No.1 Baijnath examined himself as DW-1 and defendant No.2 Gopal Ram also appeared as a witness for defendant No.1. Similarly, defendant No.5 Shakuntala Swarnkar also examined herself as witness. The plea raised by defendant No.5 Shakuntala Swarnkar is that she is a bonafide purchaser whereas the contention of Baijnath and Gopal Ram is that their names were recorded in the revenue record pursuant to an order of partition by Tahsildar, Janjgir-Champa.

8. The trial Court has decreed the suit on the basis of oral evidence of plaintiff Ramcharan duly supported by documentary evidence in form of the sale deed, the Khasra entries and record of right in favour of Ramcharan vide Ex. P-1 to P-13.
9. It is argued by learned counsel for the appellants that after partition between the plaintiff and defendants No. 1 & 2 under the orders of Tahsildar, defendant No.1/appellant became lawful owner of the property and his name being also entered in the revenue record vide Ex. D-1 to D-22, the sale deeds executed by defendant No.1 does not suffer from any legal infirmity. Learned counsel would further submit that the plaintiff has utterly failed to prove that the property was purchased from his own income, therefore, the trial Court should have dismissed the suit. For the subsequent purchaser Divya and Shakuntala, it is argued that they are bonafide purchasers for the value paid, therefore, the sale deeds cannot be declared illegal and

void. No other point has been urged by learned counsel for the appellants.

10. Per contra, learned counsel for the respondent/plaintiff Ramcharan would submit that the plaintiff has fully proved its case by producing documentary evidence, therefore, no interference in these appeals are called for.
11. The trial Court has framed an issue as to whether the plaintiff is the sole owner of the suit land ad-measuring 3.50 acre or the same was purchased from the income of the joint family. On issue No.3 as to whether defendants No.1 and 2 have obtained an order of partition without notice to the plaintiff, the trial Court has concluded that the plaintiff was aware of the partition proceedings. The trial Court eventually decreed the suit by declaring the sale deed as null and void and directed defendants No. 1 to 5 to deliver possession of the suit property to the plaintiff.
12. We have heard learned counsel for the parties and perused the record.
13. Apart from the oral statement made by the plaintiff that he has purchased the property from his own income which he earned by way of salary as a teacher, he had also filed the sale deed dated 18-04-1985 (Ex. P-8) wherein he has purchased 12 dismil land bearing Khasra No.2769/1 from one Sonuram S/o Deena. Similarly, the plaintiff has filed a copy of the sale deed executed by Haricharan in favour of Mukunda on 07-03-1958 for 1.30 acre of land being part of Khasra No.4453. This land was later on exchanged from Mukunda

vide Ex. P-11 on 24-05-1961. Thus, in relation to both the suit properties for which the suit has been decreed and the sale deeds have been declared void, the plaintiff has proved that the same was possessed by him. Although Ex. P-11 is not a registered instrument yet none of the defendants have contested the suit on this count nor they could succeed to establish their lawful acquisition of property if the acquisition of property by Ramcharan is disputed. In any case, the issue of validity of deed of exchange between Mukunda and plaintiff Ramcharan have not been raised in this suit. The said issue is left open.

14. In these appeals, we are only concerned as to whether Baijnath was entitled to execute the sale deed in favour of defendants No.3,4 and 5 by virtue of acquisition of property in a partition which was directed by the Tahsildar on the premise that the suit property is the joint property or ancestral property in the hands of Ramcharan. The trial Court has recorded the finding on the basis of revenue record in form of sale deeds in favour of Ramcharan. We have perused the record and are satisfied that the trial Court had read the documentary evidence in its true perspective to hold that Ramcharan had acquired land bearing Khasra No.4453/2 and 4453/3 in exchange from Mukunda, the validity of which is not an issue in this suit and the other Khasra No.2769/1 from Sonuram by sale deed dated 18-04-1985.
15. The defendants came out with a plea that the suit property is an ancestral property in the hands of Ramcharan. However, *prima facie* the revenue record is favouring the plaintiff, therefore, the burden to

prove that the suit property was ancestral property was on the defendants, who have averred the properties to be ancestral. Further the defendants have not produced any documentary or other evidence to prove their case that the decreed land in fact belonged to their fore-fathers wherein they have acquired right and title by birth and were therefore, entitled to seek partition before the Tahsildar. They have not led any evidence either to the effect that the suit land was purchased by Ramcharan from the income of joint family property. Apart from bald statement that the properties are ancestral, Baijnath has not produced any document to substantiate his statement. On the contrary, he would admit in para 7 of which cross-examination that his father was a teacher as also a postmaster. He further admits that their father had taken pains in their bringing up and their house has also been constructed by the plaintiff. He also admits that he had seen the sale deed in favour of Ramcharan. He also admits that before partition the properties were entered in the name of his father, plaintiff Ramcharan. Defendant No.1's witness Gopal Ram (DW-2) who is also defendant No.2 also has admitted that the plaintiff had purchased the property from his own earning while working as postmaster.

16. Defendant No.5 has raised a plea of bonafide purchaser. However, the present being a suit on the basis of title, the plea of bonafide purchaser is not available to defendant No.5. It is ordinarily available to a subsequent purchaser who is defending a suit of specific performance brought by the prospective purchaser. If the seller had no title to convey it to defendant No.5, she is not entitled to defend the

sale deed on the plea of bonafide purchaser.

17. In view of the evidence available on record which has been considered by the trial Court in its true perspective, we do not find any error in recording the finding by the trial Court and decreeing the suit declaring the sale deeds executed by defendant No.1 Baijnath as null, void and inoperative and as also directing delivery of possession of the suit property to the plaintiff. Both the appeals being bereft of merits are dismissed.

A decree be drawn-up accordingly in both the appeals.

Sd/-
JUDGE
(Prashant Kumar Mishra)

Sd/-
JUDGE
(Arvind Singh Chandel)