

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.52 of 2016**

Shailendra Agnihotri S/o C. B. Agnihotri, Aged About 45 Years R/o C/o Sanjay Rai Near Block Education Officers Office, Tahsil Marwahi, Distt. Bilaspur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Smt Binita Agnihotri, W/o Shailendra Agnihotri, Aged About 43 Years R/o C/o Shri Gaurishankar Tiwari, High School Road, Sarbahal, Jharsuguda, Odisha
2. State Of Chhattisgarh, Through Collector, Korba, Chhattisgarh(Defendents)

-----Respondents

For Appellant:	Shri Saleem Kazi, Advocate.
For Respondent No.1:	Shri Ashutosh Shukla, Advocate.
For Respondent No.2/State:	Smt Shobha Kashyap, Dy. G.A.

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

18.08.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 13.10.2015 passed by the 2nd Additional District Judge, Korba in Civil Appeal No.2-A/2015 by which, the lower appellate Court, while affirming the judgment and decree dated 21.10.2014 passed by the Civil Judge, Class-II, Korba in Civil Suit No.63-A/2014, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff-Shailendra Agnihotri instituted a suit claiming declaration of title and injunction by submitting *inter alia* that the suit property was purchased by him in the name of his wife Smt Binita Agnihotri. It is pleaded that although both the alleged sale deeds were executed on 6.9.2006 and 29.12.2006 in the

name of his wife but the entire sale consideration was paid by him. It is pleaded further that even prior to the execution of those sale deeds, an agreement to sale was executed in his favour on 9.8.2006 for purchasing the said property. It is pleaded further that he alone is the owner of the property in question and therefore, he be declared the sole owner of the suit property purchased under the alleged sale deeds dated 6.9.2006 and 29.12.2006 in the name of his wife. It is pleaded further that his wife has tried to alienate the suit property in the month of November, 2010, therefore he has been constrained in filing the suit in the instant nature.

3. The Defendant No.1 has contested the claim and denied very specifically that the suit property was purchased by her husband. It is pleaded that in fact the entire sale consideration was paid by her and only after that the alleged sale deeds were executed in her favour.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the Plaintiff has failed to prove that he has purchased the suit property by paying the entire sale consideration. As a consequence, the trial Court has dismissed the Plaintiff's claim.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Plaintiff.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Saleem Kazi, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below by holding that the entire sale consideration was paid by his wife is apparently contrary to law. He submits further that even prior to the execution of the alleged sale deeds (Exs.P-2 & P.3), an agreement to sale (Ex.P.1) was executed in his favour on 9.8.2006. Without considering the said material fact, the Courts below

have wrongly come to the conclusion that the property was purchased by his wife.

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

8. The main contention of the Plaintiff is that although the suit property was purchased in the name of his wife/Defendant under the alleged sales (Ex.P-2 and ExP-3), but in fact the entire sale consideration was paid by him only and the agreement to sale was also executed in his favour much prior to execution of alleged sales, therefore, he alone is the owner of the suit property.

9. In order to appreciate the aforesaid contention of the Appellant, I have examined the said agreement to sale (Ex.P-1) executed on 9.8.2006. A perusal of the sale agreement would however show that it was executed by one Sharadanand Rathore in favour of the Plaintiff Shailendra Agnihotri with regard to the suit property owned by Nityanand Sharma and his wife Smt Narmada Devi Sharma. The said agreement was not executed by him as a power of attorney holder of those owners. In view of this fact, it cannot be held that the alleged agreement to sale was executed by these vendors in favour of the Plaintiff. In fact, it was executed by a person having no interest whatsoever in respect of the suit property. Under such circumstances, the execution of alleged agreement to sale executed prior to alleged sales (Ex.P-2 and Ex.P-3) cannot be held to be relied upon in order to ascertain the fact that the Plaintiff was the real owner of the suit property purchased under those alleged sales. Besides, I do not find anywhere that the sale consideration was paid by the Plaintiff and the pass book (Ex.P-8) would also be of no use as it is in the joint names of Plaintiff

and his wife. Therefore, from any angle, it cannot be held that the entire sale consideration was paid by the Plaintiff. Examination of the registered sale deeds which were executed on 06.09.2016 and 29.12.2006 would demonstrate the fact that the entire sale consideration was paid by his wife Smt Binita Agnihotri, the purchaser of the suit property. After considering the entire documentary evidence, vis-a-vis the oral evidence adduced by the parties in this regard, it is difficult to hold that the entire sale consideration was paid by the Plaintiff. Therefore, the findings as recorded by the trial Court as well as by the lower appellate Court by holding that the suit property was purchased by the Plaintiff's wife do not suffer from any infirmity. This finding is a pure finding of fact based upon due consideration of documentary and oral evidence of the parties, which cannot be held to be a perverse one. The findings so recorded, therefore, 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