

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.359 of 2016**

Bhupendra Kumar Sharma S/o Atmaram Sharma, Aged About 38 Years R/o Pendri, P. O. Rajpur, P. S. & Tehsil Takhatpur, District Bilaspur, Chhattisgarh.....(Appellant Before Court / Defendant No. 2)

---- Appellant**Versus**

1. Kalandi Bai W/o Giridharilal Mishra, Aged About 55 Years R/o Village & P. O. Kuaan, P. S. & Tehsil Takhatpur, District Bilaspur, Chhattisgarh.... (Plaintiff)
2. Rukhmin Bai W/o Mohanlal Tiwari, R/o Village Ghutarkudi, P. O. & Tehsil Pandria, District Kabirdham, Chhattisgarh.....(Defendant No. 3)
3. State Of Chhattisgarh Through Collector, Bilaspur, District Bilaspur, Chhattisgarh.....(Defendant No. 4)

-----Respondents

For Appellant:	Shri DK Swain, Advocate.
For Respondent No.3/State:	Smt Shobha Kashyap, Dy. G.A.

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

04.09.2017

1. This is the Appeal filed by Defendant No.2 under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 21.04.2016 passed by the 5th Additional District Judge, Bilaspur in Civil Appeal No.04-A/2013 by which, the lower appellate Court, while affirming the judgment and decree dated 30.07.2012 passed by the Civil Judge, Class-II, Takhatpur, District Bilaspur in Civil Suit No.150-A/2009, has dismissed the Appeal.

2. Briefly stated, the undisputed facts of the case are that the Plaintiff Kalindi Bai instituted a suit for declaration of title and injunction by submitting *inter alia* that the property was originally held by her mother's

father namely Ved Prakash, who expired in the year 1979. After his death, the property was devolved upon his son Ram Kumar and two daughters namely Rahi Bai and Rukmani Bai. It is pleaded further that without the knowledge of her mother, her maternal uncle Ram Kumar-Defendant No.1 has obtained the revenue papers mutated in his name and based on the said entries, executed the registered deed of sale on 30.3.2008 in favour of Defendant No.2-Bhupendra Kumar. It is pleaded further that when Bhupendra Kumar Sharma applied for mutation before the revenue authorities on the basis of alleged registered deed of sale, then only she came to know that her maternal uncle Ram Kumar has sold the property to him without the knowledge of her mother Rahi Bai and her Sister Rukmani Bai and therefore, the Plaintiff has been constrained to file the suit in the instant nature that the registered deed of sale is not binding upon her.

3. The aforesaid claim has been contested by the Defendants by stating that the suit property is the self-acquired property of Ved Prakash and pleaded further that after his death, his son Ram Kumar alone would be entitled to inherit the property. They pleaded further that after obtaining the property as such, Defendant No.1-Ram Kumar has validly executed the registered deed of sale on 30.3.2008 in favour of Defendant No.2 and sold the property accordingly to him.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that after the death of Ved Prakash, the property left by him would be devolved in equal share by his son Ram Kumar and his sisters Rahi Bai and Rukmani Bai. Therefore, the sale deed as executed by Ram Kumar would be in fact only with regard to the interest of said Ram Kumar, who has sold the property. In consequence,

the Plaintiffs' case was decreed in part.

5. The aforesaid finding of the trial Court was not questioned by Defendant No.2-Bhupendra Kumar Sharma, although the same was questioned by the Plaintiff-Kalindi Bai alone as per the provisions prescribed under Section 96 of the CPC. The lower appellate Court in turn, has affirmed the finding of the trial Court and held that the registered deed of sale executed by Ram Kumar in favour of Defendant No.2 on 30.3.2008 would be valid only to the interest of Ram Kumar. In consequence, the lower appellate Court has affirmed the finding of the trial Court.

6. Being aggrieved, Defendant No.2 as preferred this Appeal. Shri DK Swain, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law and therefore, the same deserve to be set aside. He further submits that by virtue of registered deed of sale, he has purchased the suit property validly from Ram Kumar and since the Plaintiffs' mother Rahi and her sister Rukmani Bai have never questioned the revenue entries which were admittedly recorded only in the name of their brother Ram Kumar, therefore, after the execution of the sale as made by Ram Kumar, the same cannot be questioned by the Plaintiff in a belated stage.

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

8. The Plaintiffs' suit for declaration of title and injunction was decreed in part by the trial Court by its judgment and decree dated 30.7.2012, whereby it was observed by considering the evidence of the parties that the property is the ancestral property in the hand of Plaintiff and

Defendants No.1 & 3 as they inherited the same after the death of Ved Prakash. It was held further that since Ram Kumar's interest was only 1/3rd in the suit property, therefore, the registered deed of sale as executed by him would be valid only to the interest of the said Ram Kumar and the Plaintiffs would not be bound by the sale with regard to the property sold in excess by said Ram Kumar. By holding as such, the trial Court has decreed the suit in part.

9. Pertinently to be noted here that the finding of the trial Court has not been questioned by Defendant No.2 before the lower appellate Court and the Appeal was filed only by the Plaintiff-Kalindi Bai. Be that as it may, after considering the Appeal filed by her, it was observed by the lower appellate Court that the findings as recorded by the trial Court were not at all illegal as it was considered that after the death of Ved Prakash, Ram Kumar's interest would be limited and accordingly, the alleged sale was upheld only upto his interest as held by the trial Court. The findings so recorded was based upon due and proper appreciation of evidence led by the parties and I do not find any illegality in arriving to such a conclusion by the Courts below therefore, the said findings 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