

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 517 of 2016**

1. Mahesh Ram S/o Usatram Sao, Aged About 34 Years Occupation- Agriculture, R/o Village- Kandagarh, Police Station & Tahsil- Pussaur, Distt. Raigarh, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Gaurhari S/o Bhagwatiya Sao, Aged About 36 Years Occupation- Agriculture, R/o Village- Supa, P.S. & Tahsil- Pussaur, Distt. Raigarh, Chhattisgarh
2. Nehru S/o Bhajoram Sao, Aged About 41 Years Occupation- Agriculture, R/o Village- Supa, P.S. & Tahsil- Pussaur, Distt. Raigarh, Chhattisgarh
3. State Of Chhattisgarh, Through Collector, Raigarh, Distt. Raigarh, Chhattisgarh
4. Smt. Nonibai W/o Amritlal Patel, Aged About 54 Years R/o Village- Panderipani (Purva) Tahsil And District Raigarh, Chhattisgarh(Defendants)

---- Respondents

For Appellant:	Shri Vivek Kumar Tripathi, Advocate.
For Respondent No. 1:	Shri Manoj Jaiswal, Advocate.
For Respondent No. 3/State:	Smt. Shobha Kashyap, Dy. G. A.
For Respondent No. 4:	Shri N. K. Malaviya, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****30.08.2017**

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 04.10.2016 passed by the 1st Additional District Judge, Raigarh in Civil Appeal No. 54/2016, by which, the lower appellate Court, while affirming

the judgment and decree dated 13.04.2016 passed by the 1st Civil Judge, Class-II, Raigarh in Civil Suit No. 38-A/2013, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff-Mahesh Ram instituted a suit claiming exclusive ownership with regard to the plaint Schedules-'B' and 'C' properties by submitting *inter alia* that he purchased the said property from defendant No. 1 Gaurhari under the documents executed on 19.05.2000 and 29.03.2004. It is pleaded further that since the suit properties were recorded in the joint name, therefore the registered deed of sale of both the documents could not have been executed in his favour. It is pleaded further that defendant No. 1 has approached the Additional Tehsildar Pussaur by filing an application on 15.12.2007 for partition with regard to the suit properties, therefore, the plaintiff has been constrained in filing the suit in the instant nature by claiming exclusive ownership with regard to the suit properties.

3. The defendants have contested aforesaid claim and stated specifically that the suit property was never sold to the plaintiff as alleged by him, by virtue of those documents executed on 19.05.2000 and 29.03.2004.

4. The trial Court, after considering the evidence led by the parties and by considering the documentary evidence has come to conclusion that the alleged documents (Ex. P.1 & Ex.P. 2) have not executed properly and the plaintiff has failed to establish the execution of these documents also. In 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 under Section 96 of the CPC.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Vivek Tripathi, learned Counsel for the Appellant submits that the Courts below while passing the impugned judgment and decree by disbelieving the alleged documents have erred in dismissing the plaintiff's claim. He submits further that since the property was recorded in joint names, therefore, the alleged documents could not have been executed. However, without considering this material fact the Courts below have erred in dismissing his claim.

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

8. The main contention of the plaintiff in order to claim the exclusive ownership with regard to the plaint Schedules-'B' and 'C' property is that since he has purchased the same from defendant No. 1- Gaurhari on 19.05.2000 and 29.03.2004, therefore, he has prescribed his right, title and interest over the suit properties. However, from perusal of both the documents (Ex.P.1 & Ex.P.2) would show that the documents are unregistered and since the documents are unregistered, therefore, no right, title and interest would confer upon the plaintiff. The Courts below have therefore not at all committed any illegality in refusing those documents and have thus not erred in dismissing the claim of the plaintiff. The findings, therefore do not require to be interfered at this stage particularly when the entire claim of the plaintiff is based upon the documents which are unregistered in nature therefore no right, title and interest would confer upon him on the basis of these documents.

9. Consequently, I do not find any 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

Nikita