

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.553 of 2016**

Yadram S/o Vishal Lodhi, Aged About 58 Years R/o Village Sonesarar,
Tahsil Dhamdha, District Durg, Chhattisgarh

---- Appellant**Versus**

1. Rameshar S/o Dhaniram Lodhi, Aged About 59 Years R/o Village Titurdih,
Tahsil Dhamdha, District Durg, Chhattisgarh
2. State Of Chhattisgarh, Through The Collector, Durg, District Durg,
Chhattisgarh

-----Respondents

For Appellant:	Shri BP Singh, Advocate.
Respondent No.2/State:	Shri VB Singh, Panel Lawyer.

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

07.11.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 30.09.2016 passed by the 6th Additional District Judge, Durg, Distt. Durg, in Civil Appeal No.20-A/2016 by which, the lower appellate Court, while affirming the judgment and decree dated 27.01.2016 passed by the 1st Civil Judge, Class-I, Durg, Distt. Durg in Civil Suit No.3-A/2013, has dismissed the Plaintiff's suit.

2. The undisputed facts of the case are that the Plaintiff-Yadram instituted a suit claiming declaration of title and injunction by submitting *inter alia* that the suit property bearing Khasra No.408/2 admeasuring 0.40 hectares situated at village Mahrajpur, Tahsil Dhamdha, Distt. Durg was agreed to be sold by Defendant No.1-Rameshar by executing an agreement to sale dated 15.2.2002. Based upon this document, the claim has been made by the Plaintiff.

3. Defendant No.1 has contested the aforesaid claim by denying very specifically with regard to the execution of the alleged agreement to sale dated 15.2.2002.

4. The trial Court, after considering the evidence led by both the parties, has come to the conclusion that the document as executed by Defendant No.1 in favour of the Plaintiff on 15.2.2002 is a suspicious document. As a consequence, the trial Court has dismissed the Plaintiff's suit.

5. Being aggrieved, the Plaintiff has preferred an Appeal as per the provisions prescribed under Section 96 of the CPC. The appellate Court, in turn, has also come to the conclusion that the alleged document i.e. agreement to sale is a suspicious one. As a consequence, the lower appellate Court, while affirming the judgment and decree of the trial Court has, dismissed the Plaintiff's suit.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri BP Singh, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits further that the Courts below, while considering the alleged agreement to sale dated 15.2.2002 (Ex.P-1), have committed an illegality by holding that the alleged document is a suspicious one. He therefore submits that the judgment and decree as passed by the Courts below be set aside.

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

8. Undisputedly, the Plaintiff's entire claim is based upon the alleged agreement to sale dated 15.2.2002 (Ex.P-1), which is admittedly an

unregistered document. Based upon the said document, the Plaintiff has filed the suit claiming ownership with regard to the property in question bearing Khasra No.408/2 admeasuring 0.40 hectares. Perusal of the entire Plaint averments would show that the Plaintiff is claiming his ownership on the basis of an unregistered document i.e. the alleged agreement to sale. Right, title and interest could confer only on the basis of a registered document as per the provisions prescribed under Section 54 of the Transfer of Property Act, 1882. Based upon such an unregistered document, it cannot therefore be held that Plaintiff has acquired any right or interest over the suit land. The Plaintiff's entire case was even otherwise not at all maintainable on the basis of alleged agreement to sale and the only remedy which was available to him was to file the suit for specific performance of contract. Having failed so, the Plaintiff is not at all entitled to seek such a relief. The suit, as framed therefore, cannot be even held to be maintainable. Besides, the claim for injunction under such circumstances cannot be issued, particularly when efficacious remedy was available to the Plaintiff and his claim for such a relief is specifically barred by Section 41(h) of the Specific Relief Act, 1963. From any angle, it is difficult to hold that the Plaintiff is entitled to claim such a relief on the basis of an unregistered agreement to sale.

9. Consequently, 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