

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 503 OF 2015**

1. Smt. Kusum Diwan W/o Shri Shrikantdhar Diwan, Aged About 45 Years R/o Rajkishore Nagar, Bilaspur Tahsil and District Bilaspur, (Chhattisgarh)
2. Smt. Seema Tiwari W/o Shri Bhola Shanker Tiwari, Aged About 36 Years R/o Behind Water Tank, Janjgir, Tahsil And District- Janjgir-Champa (Chhattisgarh)
3. Rajesh Pandey S/o Madhav Pandey, Aged About 45 Years R/o Janjgir, Tahsil and District Janjgir-Champa (Chhattisgarh)
4. Smt. Prabha Pandey W/o Late Santosh Pandey, aged about 36 years, R/o Rajkishore Nagar, Bilaspur Tahsil and District Bilaspur (Chhattisgarh)
5. Om Pandey S/o Late Santosh Pandey, Aged About 12, being minor, through Legal Guardian Appellant No. 4: R/o Rajkishore Nagar, Bilaspur, Tahsil and District- Bilaspur (Chhattisgarh)

---- Appellants**Versus**

1. Manoj Kumar S/o Motilal, Aged About 28 Years, R/o behind Rest House, Janjgir, District- Janjgir-Champa (Chhattisgarh)
2. Madhav Prasad S/o Govind Prasad, Aged About 55 Years, R/o Janjgir, District : Janjgir-Champa (Chhattisgarh)
3. State of Chhattisgarh, through the Collector, Janjgir, District : Janjgir-Champa (Chhattisgarh)

---- Respondents

For Appellants	:	Mr. Alok Pandey, Advocate
For Respondent No. 1	:	Mr. Vivek Kumar Tripathi, Advocate
For Respondent No. 3/State	:	Mr. V.B. Singh, P.L.
For Respondent No. 2	:	None, though served.

Hon'ble Shri Justice Sanjay Agrawal**Judgment on Board****20/06/2017**

Heard on admission.

1. This is plaintiffs' appeal against the judgment and decree dated 16/04/2015 passed by the 3rd Additional District Judge, Janjgir, District Janjgir (now Janjgir-Champa) in Civil Appeal No. 16-A/2014, by which, the lower appellate Court while affirming the judgment and decree dated 22/08/2009 passed by the First Civil Judge Class-1, Janjgir in Civil Suit No. 74-A/2003, has dismissed the plaintiffs' claim.
2. Undisputed facts of the case, are that, the plaintiff- Annapurna Devi (since deceased now represented by her legal representatives) instituted a suit for declaration on the premise that the registered deed of sale dated 29/04/2003 purported to have been executed in favour of the defendant No. 1- Manoj Kumar in pursuance to the judgment and decree dated 02/08/1999 passed in Civil Suit No. 177-A/1994 be declared as null and void. It is pleaded further that she was not aware with regard to the judgment and decree passed in the said civil suit, therefore, registered deed of sale as executed in pursuance to the said decree is not binding upon her. It is averred further that the alleged suit was decided by a Court having no jurisdiction to entertain the same, therefore also, she is not bound by the decree as passed by the said Court.
3. The defendants have contested the aforesaid claim by submitting *inter alia*, that since they have purchased the suit property in pursuance to the judgment and decree passed earlier in Civil Suit No. 177-A/1994, therefore, the alleged deed of sale dated 29/04/2003 could not be held to be null and void as plaintiff has not questioned that decree as passed in that suit. They pleaded further that the suit as framed, without questioning the earlier judgment and decree passed on 02/08/1999 in the said Civil Suit No.177-A/1994 is apparently barred by time.
4. After considering the evidence led by the parties, the trial Court has come to the conclusion that the alleged registered deed of sale which was executed on 29/04/2003 in pursuance to the said judgment and decree dated 02/08/1999 passed in Civil Suit No. 177-A/1994 cannot be held to be null and void as the

plaintiff has failed to assail the said decree. It was also observed by the trial Court that the plaintiff- Annapurna Devi had earlier assailed the said *ex-parte* judgment and decree dated 02/08/1999 by way of an application filed under Order 9 Rule 13 of the CPC and that after its rejection, the alleged sale was executed in pursuance to the said decree therefore, it cannot be held to be null and void. As a consequence, the trial Court has dismissed the plaintiff's claim.

5. Being aggrieved with the aforesaid judgment and decree, the plaintiffs have filed the appeal. In appeal, the lower appellate Court has also observed that since the alleged registered deed of sale dated 29/04/2003 was executed in pursuance to the execution proceedings initiated in pursuance to the decree passed in said Civil Suit No. 177-A/1994, therefore, without questioning the said decree, the sale deed executed as such cannot be held to be invalid. Accordingly, the lower Appellate Court has affirmed the judgment and decree as passed by the trial Court.
6. Being aggrieved, the plaintiffs have preferred this appeal.
7. Mr. Alok Pandey, learned counsel for the appellants submits that the judgment and decree as passed by the trial Court as well as by the lower appellate Court are not sustainable in the eyes of law. He further submits that since the earlier suit was decided by a Court having no jurisdiction, therefore, the registered deed of sale executed on 29/04/2003 in pursuance to the said decree is absolutely invalid. He lastly submits that the Courts below have erred in holding that the suit as framed is barred by time.
8. I have heard learned counsel for the appellants and perused the entire record carefully.
9. Undisputedly, defendant No. 1-Manoj Kumar had earlier instituted a suit for specific performance of contract on the basis of agreement to sale, which was executed by Madhav Prasad (defendant No. 2) on behalf of present original

plaintiff- Annapurna Devi in his favour. The said civil suit was registered as Civil Suit No. 177-A/1994. The said civil suit was decided *ex-parte* by virtue of judgment and decree dated 02/08/1999. It is not in dispute that the alleged *ex-parte* judgment and decree was questioned by the original plaintiff- Annapurna Devi by filing an application under Order 9 Rule 13 of the CPC. The said application was dismissed in default, therefore, the plaintiff had submitted another application as required under Order 9 Rule 4 of the CPC for restoration of the same. However, the same was also rejected by the trial Court vide its order dated 23/04/2003. After rejection of these applications, the judgment and decree as earlier passed by the Court in said Civil Suit No. 177-A/1994 was not questioned further by the original plaintiff- Annapurna Devi. Consequently, the said *ex-parte* judgment and decree had attained its finality by efflux of time.

10. After delivery of the aforesaid *ex-parte* judgment and decree passed in said Civil Suit No.177-A/1994, the decree holder, i.e. defendant No.1- Manoj Kumar had initiated the execution proceedings and in pursuance to the said execution proceedings, the alleged registered deed of sale dated 29/04/2003 was executed in his favour. In view of these facts, the claim as made by the plaintiff before the trial Court by questioning registered deed of sale dated 29/04/2003 instead of questioning the said *ex-parte* judgment and decree delivered in the said civil suit was apparently barred by time. The plaintiff was in fact required to question the said *ex-parte* judgment and decree within a period of three years as provided under Section 59 of the Indian Limitation Act, 1963. Having failed so, the suit was apparently barred by time. Even otherwise, the plaintiff had failed completely to assail the propriety of the said *ex-parte* decree in regular civil appeal as required under Section 96(2) of the Code of Civil Procedure, therefore, alleged sale deed dated 29/04/2003 executed in pursuance to the said decree passed in Civil Suit No. 177-A/1994, which has already attained its finality, can not be held to be invalid. In such circumstances, I do not find any

infirmity in the judgment and decree as passed by the trial Court as well as by the lower appellate Court, therefore, the same deserves to be and are hereby affirmed.

11. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge