

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.231 of 2001****Judgment reserved on :10.12.2018****Judgment delivered on: 14.12.2018**

Baid Ram S/o. Shri Dharam Das, Age 45 years, Resident of Village – Bundeli, Tahsil – Mungeli, District – Bilaspur (Chhattisgarh)

**---- Appellant****Versus**

1. Rohini Kumar S/o. Shri Dashrath, Age 35 years,

2. Shiv Kumar, S/o. Shri Dashrath, Age 32 years,

Both Resident of village – Bundeli Tahsil – Mungeli, Dist-Bilaspur

3. The State of Chhattisgarh, Through Collector Bilaspur (CG)

**---- Respondents**


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|----------------------------|---|--------------------------------------------------------------------------------------------|
| For Appellant              | : | Mr.R.N.Jha, Advocate                                                                       |
| For Respondents No.1 and 2 | : | Mr.Vivek Kumar Shrivastava, Advocate<br>appears on behalf of Mr.Pallav Mishra,<br>Advocate |
| For Respondent No.3        | : | Mr.Arun Sao, Dy.A.G.                                                                       |

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**Hon'ble Shri Justice Sanjay K. Agrawal****C.A.V. Judgment**

1. The substantial question of law involved, formulated and to be answered in the plaintiff's second appeal is as under:-

“Whether the lower appellate Court was justified in reversing the judgment and decree of the trial Court without any material to show that respondents No.1 & 2 have purchased the land bearing Khasra No.93/6, especially in the light of sale deed (Ex.D-1) bearing Khasra No.336/5 area 1.10 acre and not khasra No.93/6 area 1.57 acre ?”

[For the sake of convenience, the parties would be referred

hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter-alia that he is owner and title-holder of the suit land bearing khasra No.93/6 area 1.57 acre in which defendants No.1 and 2 are interfering in his peaceful possession and therefore they be restrained by way of permanent injunction.
3. Defendants No.1 and 2 filed their written statement stating inter-alia that the plaintiff's mother Leelamati Bai firstly entered into agreement to sale on 25.3.73 for sale of the suit land in their favour bearing khasra No.93/6 area 1.57 acre for a cash consideration of ₹1,500/- and thereafter by registered sale deed dated 30.4.73 sold the suit land to the defendants and delivered peaceful possession, but incorrectly or wrongly mentioned the suit land as part of khasra No.336/5 area 1.10 acre. In fact, the defendants are in possession of the suit land bearing khasra No.93/6 area 1.57 acre and also executed correction deed in their favour in 1980 and as such, the suit is liable to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 4.9.95 held that the plaintiff is title-holder of suit land bearing khasra No.93/6 area 1.57 acres and granted decree for declaration of title and further held that since the plaintiff is not in possession of the suit land, therefore, he is not entitled for decree of permanent injunction.
5. On appeal being preferred by the defendants, the First Appellate

Court reversed the judgment and decree of the trial Court and dismissed the suit of the plaintiff in toto.

6. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.
7. Mr.R.N.Jha, learned counsel for the appellant/plaintiff, would submit that the First Appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court in which the decree for declaration of title has been granted in favour of the plaintiff. Therefore, the impugned judgment and decree passed by the First Appellate Court deserves to be set aside.
8. Mr.Vivek Kumar Shrivastava, learned counsel for respondents No.1 and 2/defendants, would support the impugned judgment and decree.
9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
10. In a suit filed by the plaintiff, the trial Court has recorded a finding that the defendants claimed that the plaintiff's mother Leelamati Bai firstly entered into agreement to sell the suit land bearing khasra No.93/6 area 1.57 acre on 25.3.73 and thereafter registered sale deed is said to have been executed by the plaintiff's mother in favour of defendants No.1 and 2 on 30.4.73. Correction

deed is also said to have been executed in their favour, but none of these documents have been filed and produced to establish that the suit land was transferred in favour of defendants No.1 & 2 and said finding recorded by the trial Court has been reversed by the First Appellate Court.

- 11.** Defendants No.1 and 2 have taken a plea that plaintiff's mother Leelamati Bai firstly entered into agreement to sell the suit land on 25.3.73 in favour of defendants No.1 and 2 and thereafter executed sale deed on 30.4.73, but neither sale deed has been produced nor any of the witnesses of agreement to sale or sale deed has been examined to prove that in fact the suit land was sold in favour of the defendants. Except self-serving statement of defendant No.1-Rohini Kumar, there is no evidence brought on record before the trial Court to substantiate the plea taken by defendants No.1 and 2 before the trial Court. Even in correction deed, it is the case of the defendants that in fact, the suit land bearing khasra No.93/6 area 1.57 acre was sold and in the sale deed incorrectly khasra No.336/5 area 1.10 acre was mentioned and correction deed was executed, but no such correction deed was brought on record to establish the fact of correction deed having been recorded. The First Appellate Court relying upon oral statement of defendant No.1 without meeting with the reasoning recorded by the trial Court for granting declaration of title in favour of the plaintiff, reversed the decree of the trial Court, which is not in accordance with law, which is liable to be set aside.

- 12.** The First Appellate Court is absolutely unjustified in setting aside the judgment and decree of the trial Court. Resultantly, the substantial question of law is answered in favour of the plaintiff and against the defendants. In view of the aforesaid analysis, the judgment and decree passed by the First Appellate Court is hereby set aside and that of the trial Court is hereby restored.
- 13.** The second appeal is allowed to the extent indicated hereinabove. No cost(s).
- 14.** A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-