

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.51 of 1993**

1. Smt. Jot Kunwar Bai Died Through Lrs

1(a) deleted

1(b) Khem Das S/o Tulsi Das, Both R/o Village Nadiya (Math), P.S.
Dongargaon, District Rajnandgaon (CG)

1(c) Mulchand S/o Tulsi Das, R/o Village Kasahi, Tahsil Lohara, Up Tahsil
Deori, District Durg (CG)

2. Smt. Damin Bai Died Through Lrs.

2(a) Hariram, aged about 70 years, Son of late Shri Somaru Sahu,

2(b) Deenaram, aged about 52 years, Son of Hariram,

2(c) Krishna Kumar, aged about 45 years, Son of Hariram,

2(d) Thakur Ram, aged about 42 years, Son of Hariram,

2(e) Gopi Sahu, aged about 38 years, Son of Hariram,

All are resident of Village Usribod, Post Surgi, Tahsil and District
Rajnandgaon (CG)

---- Appellants/Plaintiffs

Versus

• Vidya Saheb Died Through Lrs

(a) Roshan Son of Vidya Saheb, aged about 50 years,

(b) Dharmendra Son of Vidya Saheb, aged about 47 years,

Both are resident of Arang, Tahsil and District Raipur (CG)

---- Respondents/Defendants

For Appellants : Shri D. N. Prajapati, Advocate
None for Respondents, despite repeated calls.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

06/07/2018

1. This appeal is directed against the impugned judgment and decree dated 28-09-1992 passed by the 4th Additional District Judge, Durg in Civil Suit No. 5-A/1992, by which, suit filed by the appellant-plaintiff has been dismissed.

2. The appellants filed a suit seeking declaration of their title in respect of the suit property on the pleadings inter alia that the property in dispute belonged to Late Jhadu Ram, husband of Smt. Indira Bai and father of other two plaintiffs namely Jot Kunwar Bai and Damin Bai. Jhadu Ram was not keeping well and the property was being looked after by the daughters and son-in-laws. Jhadu Ram died on 22-11-1974. Three years prior to his death and particularly few months before his death, Jhadu Ram had become extremely sick and he was willing to offer to the deity, 50 decimal of his land, which was expressed by him to his Guru-the defendant. When the defendant came for getting the documents executed, he played fraud with Jhadu Ram. He took Jhadu Ram to the office of the Registrar. Documents were prepared by stating that it was related to surrender of small piece of land ad measuring 50 decimal in the services of deity, but without disclosing, a document of sale of all the property in dispute was got prepared by the defendants, which according to the plaintiff, was a fraudulent act. When the plaintiffs came to know from the receipt of notice issued by the Revenue Authorities towards mutation of name of defendants in respect of the properties of Jhadu Ram, it was revealed that fraud has been played. Jhadu Ram thereafter, sent complaints in writing to the various authorities including police that he was defrauded by the defendants by saying that signatures of Jhadu Ram are being taken on the deed of surrender of 50 decimal of land for the deity. Further pleading was that on the basis of the forged document of sale, when the defendants started interfering with the possession and orders passed by the Revenue Authorities directing mutation of

name of the defendants, cause of action arose for filing suit.

3. The case of the defendants was that he has not played any fraud. Jhadu Ram had sent a letter expressing his willingness to surrender his both movable and immovable property in the feet of deity. The defendant, however, refused to accept the same by stating that if such offer is accepted, he will have to maintain his wife, which he may not be able to do. Thereafter, the defendants proposed Jhadu Ram to sell his property for a valid consideration to the defendant and may utilize the sale proceeds for getting his own treatment as he was not keeping well. According to the defendant, that proposal was accepted by Jhadu Ram. Thereafter, not only Jhadu Ram, but his wife, daughters (plaintiff No.1 & 2) and son-in-law all went to another place to get the sale deed prepared and executed. Initially, the daughters of Jhadu Ram were not agreeable to sale, therefore, the defendant expressed his inability to purchase, unless the daughters gave no objection. Later on, no objection in writing was given by the wife and two daughters of Jhadu Ram and only thereafter, the sale deed was prepared and executed upon payment of total consideration of Rs.15,000/- paid to him from time to time until date of execution of sale deed. Therefore, no fraud is played.

4. On the basis of the pleadings of the parties, the learned trial Court framed issues. One of the issues was whether without seeking any relief of declaring void the sale deed executed in favour of the defendant, the plaintiff's suit was liable to be dismissed. Learned Trial Court also framed issue as to whether a valid sale deed was executed in favour of the defendants by Late Jhadu Ram and whether the sale deed was got executed by playing fraud with Jhadu Ram that he is surrendering only 50 decimal of land. In addition, some other issues were also framed.

Learned trial Court recorded a finding that the plaintiff has failed to prove that the sale deed was an outcome of fraud played by the defendants or that Jhadu Ram was made to execute the sale deed by falsely stating that he is only surrendering 50 decimal of land for the deity. The learned trial Court held that from the oral and documentary evidence on record, it is proved that Jhadu Ram sold his land and house in favour of the defendants for a consideration of Rs.15,000/-. Though, the learned trial Court held that the valuation of the disputed property was much more than Rs.15,000/-, yet the suit was dismissed by recording a finding that in the absence of any relief of cancellation or appropriate declaration sought against the sale deed, suit was not maintainable for mere relief of declaration of title and was liable to be dismissed.

5. Learned counsel for the appellant argued that the learned trial Court fell in error of law in holding that the suit was not maintainable on account of no relief sought against the sale deed. According to him, once the plaintiffs claim to continue in possession of the property in dispute and as they were not party to the sale deed executed by Jhadu Ram in favour of the defendants, it was not necessary for them to seek relief that the sale deed be declared null, void and inoperative and/or seek cancellation of the same. Next submission is that the plaintiffs have not only pleaded but also proved by clinching evidence that Jhadu Ram was not keeping well. He was under no compelling circumstances to sell his property, comprising of land and house when he was keeping unwell and his property was being looked after by the daughters and son-in-laws. There is no evidence to prove that he had any debt on him. Further submission is that the plaintiff has proved that Jhadu Ram at the fag end of his life, when he was not keeping well, intended to surrender a part of his land to the deity and he had no intention of sale and purchase of property at that stage. A letter sent to the defendants, proved by the plaintiffs, also states that Jhadu Ram was only

willing to surrender his 50 decimal of land to the deity and he had no intention to sell his entire property. Further submission is that soon after Jhadu Ram and plaintiffs came to know that the defendants had played fraud, Jhadu Ram made complaints not only to the Revenue Authorities, but also to the police authorities by stating that he was taken to the Registrar's Office by the defendants and signatures/thumb impressions were obtained by stating that Jhadu Ram is executing a document of surrender of 50 decimal of land. Overwhelming oral evidence has also been led by the plaintiffs. The plaintiffs further proved that the sale consideration was nominal one and clearly supports the plea that the Jhadu Ram was subjected to fraud by the defendants. Various sale deeds, which have been filed and proved by the plaintiffs, would show that at the relevant time, valuation of the property was much more than the consideration, for which, it is claimed to have been sold by Jhadu Ram in favour of the defendants. Even the letters written by Jhadu Ram also proved that Jhadu Ram was only willing to surrender his land for the services of deity and not for sale. In support of his submission, learned counsel for the appellant placed reliance upon decisions in the cases of ***Ramesh Chand Ardawatiya vs. Anil Panjwani***, AIR 2003 SC 2508, ***Mehar Chand Das v. Lal Babu Siddique & Ors.***, AIR 2007 SC 1499 and ***Darbari vs. Sunwa and another***, 2004(2) MPHT 111.

6. On the other hand, learned counsel for the respondents-defendants argued that the plaintiffs, who are widow and daughters of Late Jhadu Ram filed suit only with a dishonest intention to take back the property in dispute, which was sold to the defendants by Late Jhadu Ram for adequate consideration of Rs.15,000/-, to which, he had agreed. It is submitted that the plea of fraud is an afterthought. After execution of sale deed, Jhadu Ram did not take any objection. Jhadu Ram was a Patel of the Village and a literate person. It is improbable that he would execute the sale deed without reading the same. It is

next contended that even when Jhadu Ram received notice of mutation, he did not raise any objection, but his wife and daughters started nurturing dishonest intention to take back his property after its sale by Jhadu Ram. Further submission is that the plea of fraud taken by the plaintiffs is improbable. The plaintiffs have been taking contradictory stand in different proceedings. Further argument is that the plaintiffs having admitted that for the purpose of execution of sale deed, Jhadu Ram had gone along with his wife Indira Bai, two daughters and son-in-laws to the Office of Registrar and the sale deed was executed in presence of witnesses, who have supported the case of the defendants and plaintiffs witnesses including his daughters have also admitted regarding execution of consent letter in favour of the defendants expressing their no objection, therefore, the suit is liable to be dismissed. Last but not the least, it is submitted that the plaintiff's suit for mere declaration was not maintainable without seeking any declaration of sale deed being void, not binding on the plaintiffs. Learned counsel for the respondents placed reliance on the decisions in the case of ***Sukh Lal and others vs. Devi Lal and others*, AIR 1954 Rajasthan 170 & *Sannidhi Ratnavathi vs. Arava Narasimha Murthy*, AIR 2004 Andhra Pradesh 29.**

7. Having considered the submission of learned counsel for the parties, I have perused the records.

8. Following issues arise for consideration in this appeal :-

(A) Whether a suit for mere declaration of title without seeking cancellation or declaration that the sale deed is null and void and not binding on the plaintiffs, was maintainable in law?

(B) Whether the sale deed Ex.D/2 dated 24-08-1974 was prepared and executed by obtaining the signature of Jhadu Ram by playing fraud upon him?

9. The relief sought by the plaintiff in the plaint, are as below:-

1 “यह कि सलंगन फेहरिस्त में बतलाई हुई जायदाद के मालिक वादीगण हैं तथा प्रतिवादी नहीं हैं घोषणा दी जावे ।

2 अदालत खर्च व अन्य दादरसी न्यायालय उचित समझे दिलाई जावे ।“

10. The third relief sought by the plaintiff was for grant of decree of permanent injunction to restrain the plaintiffs from interfering with the possession over the property in dispute, which was, later on, omitted by an amendment. In para 18 of the plaint, it was averred that as the document of so-called sale was prepared by wrongly stating that it is a document of sale of 50 decimal of land, whereas it was intended to be a *Bakhshishnama* in respect of the land ad measuring 50 decimal, the document is void and inoperative and there is no need to get that document declared illegal. It would thus be clear that the plaintiffs consciously did not seek any relief against the sale deed Ex.D-2, though it was a registered document in respect of the property in dispute, execution of which, by Jhadu Ram in favour of the defendants was not denied nor the registration thereof in presence of witnesses except that he did not intend to execute the sale deed in respect of the entire property, but only to execute *Bakhshishnama* in respect of 50 decimal of land. Learned trial Court on issue No.11 also held that the suit was liable to be dismissed as it is only for mere declaration without seeking relief that the sale deed was void or liable to be cancelled and not binding on the plaintiff being inoperative in law. No declaration of title in favour of the plaintiff could be granted unless the sale deed, Ex.D-2 is declared not binding and inoperative against the plaintiffs. It was a registered document, execution of which, was not disputed by the

plaintiffs. If that be so, the plaintiffs could not be granted relief of declaration unless the obstruction to their claim of title, the sale deed, Ex.D-2 is not cancelled or declared void, inoperative and not binding on the plaintiffs. As long as the sale deed remains in force and existence, no declaration of title in respect of the plaintiffs could be granted ignoring the registered sale deed, by which, title was transferred in favour of the defendants.

11. Legal position in this regard has been clearly propounded in the case of ***Sukh Lal*** (supra), as below :-

6. "There is a difference between a suit for the cancellation of an instrument and one for a declaration that the instrument is not binding on the plaintiff, when the plaintiff seeks to establish, a title in himself and cannot establish that title without removing an insuperable obstacle such as a decree or a deed to which he has been a party or by which he is otherwise bound then quite clearly he must get that decree or deed cancelled or declared void in toto and his suit is in substance a suit for the cancellation of the decree or deed notwithstanding the fact that the suit may have been framed as a suit for a declaration. On the other hand, when the plaintiff is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or deed cancelled in toto. The proper remedy in such a case is to get a declaration that the decree or deed is invalid so far as he himself is concerned, and, therefore, he may sue for a declaration to that effect and not for the cancellation of the decree or the deed. [See -- 'Vellayya Konar v. Ramaswami Konar'](#), AIR 1939 Mad 894 (C)."

12. Similarly, in another judgment relied on by learned counsel for the defendants in the case of ***Sannidhi Ratnavathi*** (supra), it is held that when relief of setting aside alienation covered by sale deed was not asked for, the suit for declaration of title was not maintainable, as under:-

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"In the present suit though the plaintiff is aware of the sale transaction covered by the Ex.B 1 sale deed as clear from the averments in the plaint, he did not ask for the necessary relief namely relief to set aside the sale transaction under Ex.B 1. The learned counsel for the respondent contended that the plaintiff asked for the relief of declaration of the title, it is a wider relief and so he need not ask for the relief of setting aside the transaction covered by Ex.B1

sale deed. I find no force in the said contention. By the date of the suit under Ex. B1 suit property was already sold by his de jure guardian namely his father. Therefore, plaintiff lost his title and interest in the suit property. Through his guardian, he conveyed his title to 1st defendant. If he desires his title to Ex.B 1 property restored to him he had to avoid necessarily the said transaction. Till he avoids the said transaction in a manner known to law, he cannot become the owner of the said property. He has necessarily to ask for specific relief of setting aside the alienation covered by the sale deed Ex.B 1. The wider relief to be asked for is setting aside the alienation covered by Ex.B 1. Then only he can get the other relief of declaration of his title to the suit property. I am, therefore, satisfied that the suit as framed by the plaintiff is not maintainable and it is liable to be dismissed.”

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The legal position in this regard is thus clearly well settled.

13. Submission of learned counsel for the appellant that the appellant came in possession of the property in dispute and as the document was void, being outcome of fraud, no relief was required to be asked against the document, is liable to be rejected. Reliance placed by learned counsel for the appellant in the case of **Ramesh Chand Ardawatiya** (supra) is misconceived because in the aforesaid case, in a suit by holder under agreement of against trespasser, claim of relief of declaration of title, restoration of possession and injunction was found to be good enough and the argument that further relief of specific performance was required to be prayed as consequential relief under mandate of Section 34 of Specific Relief Act was repelled, holding that such relief could not be claimed against the defendants-trespasser.

14. In the case of **Mehar Chand Das** (supra), the question arising for consideration was whether the suit for setting aside an order in the absence of any consequential relief of possession was barred under Section 34 of the Specific Relief Act. It was found that as the defendant was in possession of the property, consequential relief could be asked and for want of such relief, suit was not maintainable. It was held that the decision in the case of **Vinay Krishna vs. Keshav Chandra and another, AIR 1993 SC 957**, was not

applicable, because that was a case, in which, suit for mere declaration of title was upheld as the plaintiff claimed to be in possession. It would thus be seen that the facts of the aforesaid case were entirely different and the issue whether the sale deed in respect of the property in dispute, in absence of challenge would render the suit liable to be dismissed, was neither raised nor decided. Learned counsel for the appellant, in fact, places reliance upon the decision in the case of **Vinay Krishna** (supra), reference of which, has been made in the case of **Mehar Chand Das** (supra). Neither the aforesaid decision nor the decision of **Vinay Krishna** (supra) is an authority for the proposition that where the plaintiffs are in possession, sale deed executed in favour of the defendants need not be challenged and mere declaratory relief would be sufficient.

15. Therefore, the findings recorded by the learned trial Court on Issue No.11 was liable to be dismissed as no relief against the registered sale deed, Ex.D-2 was sought and suit being only for declaration of title, was liable to be dismissed, is affirmed and it is held that for that reason alone, the suit of the plaintiff was liable to be dismissed.

16. The entire case of plaintiffs, as far as merits is concerned, is based on fraud alleged to have been practiced by the defendants. According to the plaintiffs, Late Jhadu Ram only intended to execute the deed of *Bakhshishnama* of 50 decimal of land, but the defendants by playing fraud, prepared sale deed in respect of the property of Jhadu Ram in his own name and got it signed by Jhadu Ram and then registered before the Registrar. From the pleadings of the plaintiffs themselves, as stated in para 11 & 12, Jhadu Ram had gone along with his wife Indira Bai to Village Jawartala, where his daughters-Jot Kunwar, Damin Bai also reached and from there, they all went to Balod. It is further pleaded that the defendants also brought with him Charan Sahu and Ubar Panka at Balod. Thereafter, Jhadu Ram had gone along with his wife Indira Bai

went to the house of document writer Gopal Prasad and plaintiffs Jot Kunwar, Damin Bai and others went to the Court. According to this pleadings, all of them went along with Jhadu Ram and defendants. Sale deed was prepared and Jhadu Ram was asked to affix his thumb impression and then he was taken by Ubar Panka and Charan Sahu to the office of Registrar, where his thumb impressions were taken and the Registrar also asked regarding putting of thumb impression. Thus, from the plaintiff's own case, it is clear that Jhadu Ram had gone to Balod along with his wife, two daughters as also defendants went to Balod along with Charan and Ubar. Jhadu Ram went to the office of Document Writer where the document was prepared and he also affixed his thumb impression. He was taken to the office of Registrar and he was enquired by the Registrar and then deed was registered.

17. Shyam Lal Tiwari, PW-1 stated in his evidence that Jhadu Ram was a Patel of the village.

18. Indira Bai, PW-2, wife of Jhadu Ram, admits that she had gone to the Document Writer, but denies as to what document was prepared. She admits that she was also asked by the Registrar, where she affixed her thumb impression but says that she does not know as to what document was prepared.

19. Jot Kunwar, PW-3, one of the plaintiff and daughter of Jhadu Ram also admits that she had gone along with her sister and mother to Balod and Charan and Pardeshi had come to call them. They also went to the office of Document Writer. Damin Bai, PW-4 also makes similar statement. Thus, from the pleadings and evidence of the plaintiffs, it is clear that Jhadu Ram along with his wife Indira Bai, Plaintiff No.1, Damin Bai, Plaintiff No.2 and Jot Kunwar, Plaintiff No.3 and along with many other persons had gone to Balod along with the defendants and witnesses, where document was prepared in the office of the

Document Writer-Gopal Prasad, where Jhadu Ram signed the document. Thereafter, the parties were taken to the office of Registrar, where Jhadu Ram was enquired by the Registrar and then sale deed was registered. There is no clinching evidence led in the form of medical report or opinion produced during trial by the plaintiffs except oral evidence that at the time when the sale deed was got executed, Jhadu Ram was not in a fit physical and mental condition to understand the consequences. There was no allegation of any undue influence, coercion exerted on Jhadu Ram. Jhadu Ram was the Patel of the Village. Therefore, it is completely improbable that the Jhadu Ram would sign the document of sale without reading the same. In fact, the sale deed, Ex.D-2 shows that Jhadu Ram had put his signatures on the sale deed and not the thumb impression. This also proves falsity of the plea and evidence of the plaintiffs that Jhadu Ram affixed thumb impression.

20. The defendant has come out with a clear case that initially, wife and the daughters of Jhadu Ram had some reservations against wishes of Jhadu Ram to sell his property in favour of the defendants. Therefore, the defendants insisted all of them for giving no objection and document to that effect was also executed. It is the pleading and the evidence of the defendants that it was only when Jhadu Ram's wife and daughters had given no objection, document (sale deed) to that effect was executed. In this regard, the defendant has also proved a letter of consent given by the plaintiff Indira Bai, Jot Kunwar and Damin Bai, vide Ex.D-4 prepared on stamp paper and witnessed by Ubar Das and Pardeshi Ram and Charan. Indira Bai, Jot Kunwar and Damin Bai, who were examined as plaintiff witness, have been confronted with this document and they admitted that they had given consent letter by stating that they have no objection to the sale of land by Jhadu Ram in favour of the defendant-Vidya Saheb. Ubar Das, defendant's witness, is the witness of the sale deed as well as the consent

deed, Ex.D-4. The defendant has also proved that initially, when after execution of sale deed, notice was given to Jhadu Ram, Jhadu Ram did not raise any objection. To prove this fact, reply of Jhadu Ram, in response to notice given by Nayab Tahsildar, Balod, has been filed as Ex.D-15, in which, it has been recorded that there was no objection to the mutation proceedings initiated by the defendants after purchase of property in dispute from Jhadu Ram.

21. From the pleadings of the parties as also evidence oral as well as documentary on record, it appears that initially when Jhadu Ram intended to sell his property, his family members-the plaintiffs were not agreeable, but, later on, as Jhadu Ram was firm to sell the property, he being in need of money, the defendants agreed to purchase the property provided consent is given by the plaintiffs, which was finally given vide Ex.D/4, whereafter sale deed was executed. After the mutation proceedings were initiated, though Jhadu Ram did not raise any objection, again his wife and daughters started raising objection vide Ex.D-16 and submitted an application before the Revenue Authorities. But response in writing submitted by Jhadu Ram before Revenue Authorities clearly shows that Jhadu Ram had no objection to mutation and he expressed his inability to appear before the authority but consented that mutation be done in the name of purchaser. In the objection, which was filed by the plaintiffs before the Nayab Tahsildar in mutation proceedings, the only stand taken was that by giving some lure and without consideration, the sale deed was executed by Jhadu Ram. It was only after this objection, Jhadu Ram, later on, probably under the pressure of his wife and daughters, started making complaints by saying that his signatures were obtained on the sale deed by playing fraud.

However, once it is proved that the sale deed was executed by Jhadu Ram in favour of the defendants for a valid consideration of Rs.15,000/-, this Court having not found fraud proved, even on merits, the plaintiff is not entitled

to any relief.

22. In the result, the appeal is dismissed. Let appellate decree be drawn accordingly.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE