

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 220 of 2011**

Smt. Premin Bai, W/o Toran Satnami, Aged about 34 years,
Occupation Agriculturist, R/o Village Baijalpur, Patwari Halka No.
13, Tahsil And Thana Navagarh, Distt. Durg Chhattisgarh.

---- Appellant

Versus

1. Madho Prasad, S/o Janak Shande, Aged about 30 years, R/o Village Baijalpur, Patwari Halka No. 13 Tahsil And Thana Navagarh, Distt. Durg Chhattisgarh.
2. Shyam Bai, W/o Jaggo Shande, Aged about 24 years, R/o Village Baijalpur, Patwari Halka No. 13, Tahsil And Thana Navagarh, Distt. Durg Chhattisgarh.
3. State of Chhattisgarh, Through Collector Durg, Distt. Durg Chhattisgarh.

---- Respondents

For Appellant	: Shri Vivek Kumar Triapthi, Advocate.
For State/Respondent	: Shri V. B. Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****11.07.2018**

1. This is an appeal preferred by the plaintiff under Section 100 of the Code of Civil Procedure, 1908 (herein after referred to as 'the CPC') questioning the judgment and decree dated 29.03.2011 passed by the Additional District Judge (FTC) Bemetara, District Durg (C.G.) in Civil Appeal No.8-A/2011, by which the lower Appellate Court while affirming the judgment and decree dated 30.06.2009 passed by the Civil Judge Class-I, Bemetara, in Civil Suit No. 45-A/2008, has dismissed the appeal.

2. The facts leading to this appeal are that the plaintiff instituted a suit questioning the registered deed of sale executed by her father on 18.06.2007 in favour of Madhav Prasad and Shyam Bai the defendants 1 & 2, respectively. It is pleaded that the alleged sale deed has been

obtained by the defendants No.1 & 2 from her father without paying any sale consideration to him and, based upon it succeeded to obtained the revenue papers in their name. According to the plaintiff, though the registered deed of sale was executed, as such, but she was continuously in possession and cultivating the suit land and when her peaceful possession was disturbed by the defendants, she lodged the complaint on 22.06.2007 before the concerned Police Station at Navagarh, District Durg (C.G.). It is further pleaded that the defendants are also claiming their interest by virtue of the alleged forged document, therefore, the plaintiff has been constrained to file a suit in the instant nature.

3. The defendants No. 1 & 2 have contested the aforesaid claim. It is stated that the plaintiff is not the daughter of Nanku and, therefore, she has no right to question the registered deed of sale, as executed by Nanku in their favour. It is contested further on the ground that the alleged deed of sale was executed by Nanku only after obtaining the sale consideration from them and based upon the said sale deed, the revenue papers have accordingly mutated in their name. It is further stated that without impleading Nanku, the vendor of the property in question, the suit as framed is not maintainable.

4. After considering the evidence led by the parties, the trial Court by its judgment and decree dated 30.06.2009 has come to the conclusion while entertaining the issue No. 1 that the plaintiff is not the daughter of Nanku and further held that the alleged deed of sale executed on 18.06.2007 has rightly been executed in favour of defendants only after obtaining the entire sale consideration. As a consequence, the trial Court has dismissed the suit.

5. Being aggrieved, the plaintiff has preferred an appeal as per the provisions prescribed under Section 96 of CPC. The Appellate Court in turn has come to the conclusion that Premin Bai is the illegitimate child of the said Nanku and during his lifetime she was not competent to question the alleged sale as executed by him and, held further that suit as framed without impleading father Nanku is not maintainable. In consequences, the lower Appellate Court while affirming the judgment and decree of the trial Court has dismissed the appeal.

6. Being aggrieved, the plaintiff has preferred this appeal. Shri Vivek Kumar Tripathi, learned counsel for the appellant, submits that the judgment and decree, as passed by the Courts below holding that the alleged registered deed of sale was executed only after passing of entire sale consideration, is apparently contrary to law. He further submits that Premin Bai being a daughter has right to question the validity of alleged deed of sale executed by her father Nanku. He further submits that without appreciating the evidence in its proper manner, the Courts below have committed an illegality in arriving at a conclusion that the alleged deed of sale (Ex.D-1) was duly executed by said Nanku.

7. I have heard learned counsel for the appellant and perused the entire record carefully.

8. The plaintiff's suit is mainly on the ground that since the alleged registered deed of sale dated 18.06.2007 (Ex.D-1), was executed by Nanku in favour of defendants No.1 & 2 without passing of sale consideration and has been obtained by taking undue advantage of her father, an old man, is required to be established by the plaintiff. However, from perusal of the entire documentary evidence as well as the oral statement it is difficult to hold that it was got executed without

paying sale consideration to said Nanku, as claimed by the plaintiff. Besides, Nanku, the vendor was examined by defendants, who in turn has admitted this fact that alleged sale was executed by him only after obtaining the entire sale consideration from the purchasers i.e. the defendants No. 1 & 2. The Courts below after considering the evidence adduced by the parties have rightly come to the conclusion that the alleged deed of sale (Ex.D-1) was validly executed by Nanku. The findings so recorded in this regard by the Courts below are based upon due and proper appreciation of the evidence led by the parties and, therefore, I do not find any infirmity in arriving to such a conclusion of the Courts below.

9. In view of the forgoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this appeal. The appeal is accordingly dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge