

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 1022 of 1997**

1. Mahesh Kumar, S/o Pardesh Sahu, aged about 40 years, R/o Saklore, Tah. Suhela, Distt. Raipur.
2. Nand Kumar, S/o Pardeshi Sahu, aged about 38 years, R/o Saklore,
3. Ratan Kumar, S/o Pardeshi Sahu, aged about 36 years, R/o Saklore
4. Ratan Kumar, S/o Pardeshi Sahu, aged about 36 years, R/o Saklore.
5. Smt. Krishna Bai, W/o Heeradas, aged about 4 years, R/o Mowa, Tah. Suhela.
6. Swatantra Kumar, S/o Pardeshi Sahu, aged about 29 years, R/o Saklore
7. Smt. Geeta Bai, W/o Iswari Prasad Sahu, aged about 27 years, R/o Tah. Suhela, Distt. Raipur.

----Appellants/defendants**Versus**

1. Sadwa, aged about 50 years,
2. Bhodal, Aged about 35 years,

Both son of Kariya Satnami, R/o Village – Sahlore, P.S. Newra, Tahsil and District Raipur (M.P.) (Now C.G.)

---- Respondents/plaintiffs

For Appellants	: Shri Sanjay Patel, Advocate
For Respondents	: None present.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04/09/2018**

1. This is defendants' Second Appeal filed under Section 100 of CPC against the judgment and decree dated 8.10.1997, passed by the District Judge, Raipur, in Civil Appeal No.22-A/1997 reversing the judgment and decree dated 14.09.1987 passed by 2nd Civil Judge, Class-II, Raipur, in Civil Suit No. 102-A/86.

2. The civil suit filed by plaintiffs namely Kariya, Sadwas and Bhodal for declaration of title and recovery of possession was dismissed by the trial Court, which was decreed by the first appellate Court by reversing the findings recorded by the trial Court, against which instant second appeal under Section 100 of the Code of Civil Procedure has been filed.

3. Learned counsel appearing for the appellants/defendants would submit that the trial court has rightly passed the judgment & decree dismissing the plaintiffs' suit but the first appellate court has committed illegality in reversing the well reasoned findings recorded by the trial Court, as such, appeal involves substantial question of law for determination.

4. I have heard learned counsel appearing for the appellants/defendants and perused the records of both the courts below including judgment & decree impugned with utmost circumspection.

5. The suit property was originally belonged to Kariya and his two sons namely Sadwa & Modal as the suit property was the ancestral property in the hands of Kariya. It is the case of plaintiffs that the sale deed dated 17.03.1958 (Ex.D-5) executed by father of the plaintiffs- Sadwa & Bhodal namely Kariya in favour of original defendant Pardeshi was a nominal sale deed, which was executed for the purpose of security of loan and which was not accepted by the trial Court.

6. The first appellate Court has accepted the sale deed to be nominal sale deed on the ground that the suit property was originally held by plaintiff No. 1 Kariya (since deceased) and his two sons namely Sadwa and Bhodal, as such, plaintiff No. 1 had not executed the sale deed in favour of defendant - Pardeshi and it was only a nominal sale deed for the purpose of security of loan, it was also held by the first appellate court that the plaintiffs were never present when the sale deed was allegedly executed between plaintiffs' father

Kariya and original defendant Pardeshi, and thus the first appellate Court has accepted the plea of the plaintiffs that the sale deed was nominal sale deed and it was not the real sale deed and Ex.D-1 allegedly executed by Kariya and signed by Sadwa & Bhodal confers no title to defendants. The said finding recorded by the first appellate Court is finding of fact based on material available on record, in which I do not find any illegality or perversity warranting interference in the second appeal under Section 100 of the Code of Civil Procedure.

7. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

