

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 194 of 2018**

Fulan Bai W/o Banau Ram Rawat Aged About 45 Years R/o Village
Kodiyaghat, Tahsil And District Korba, Chhattisgarh. ---- **Appellant**

Versus

1. Ghasi Singh S/o Bali Singh Aged About 30 Years R/o Village
Kodiyaghat, Tahsil And District Korba, Chhattisgarh.
2. Takeshwar Singh S/o Bali Singh Aged About 26 Years R/o Village
Kodiyaghat, Tahsil And District Korba, Chhattisgarh.
3. Lakhan Singh S/o Bali Singh Aged About 22 Years R/o Village
Kodiyaghat, Tahsil And District Korba, Chhattisgarh.
4. Budheshwar Singh S/o Bali Singh Aged About 28 Years R/o Village
Kodiyaghat, Tahsil And District Korba, Chhattisgarh.
5. Non Baiya Wd/o Bali Singh Aged About 50 Years R/o Village
Kodiyaghat, Tahsil And District Korba, Chhattisgarh.
6. State Of Chhattisgarh Through The Collector Korba, District Korba,
Chhattisgarh. ---- **Respondents**

For Appellant:	Shri N. K. Chatterjee, Advocate.
For Respondents No 1 to 5:	Shri Ravish Verma, Advocate.
For State/Respondent No.6:	Shri V. B. Singh, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

09.08.2018

1. This is the defendant's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') against the judgment and decree dated 16.01.2018 passed by the First Additional District Judge, Korba in Civil Appeal No.19-A/2016, by which, the lower appellate Court, while reversing the judgment and decree of the trial Court dated 29.04.1999 passed in Civil Suit No.15-A/1997, has allowed the appeal while decreeing the plaintiffs' claim.

2. Briefly stated the facts of the case are that the plaintiffs' have instituted a suit claiming declaration of title and injunction submitting *inter-*

alia that by virtue of the registered deed of sale dated 01.05.1978 their predecessor-in-interest, namely, Bali Singh had purchased the suit property from defendant-Fulan Bai. It is pleaded in the plaint that after purchasing the property as such, the name of their predecessor-in-interest, namely, Bali Singh, was recorded in the “*Namantaran Punji*” and after the death of Bali Singh, defendant-Fulan Bai approached the revenue authority raising an objection therein for recording the name of plaintiffs' in place of said Bali Singh. The said proceeding was registered as Revenue Case No. 3-A-6/1995-96 by the Tehsildar, Korba and vide order dated 31.10.1996 (Ex.P.1) has set aside the said *Namantaran Punji* of year 1995-96 recorded in the name of said Bali Singh by disbelieving the registered deed of sale as executed on 01.05.1978. It is pleaded further that since the revenue authority has not accepted the alleged registered deed of sale while passing the said order, therefore, the plaintiffs have been constrained in filling the suit in the instant nature.

3. The defendant-Fulan Bai has contested the aforesaid claim and stated that she has never sold the property and stated further that neither Bali Singh nor his legal representatives are in possession over the property in question. It is contested further on the ground that the revenue authority has rightly passed the order on 31.10.1996 (Ex.P.1) while disbelieving the alleged registered deed of sale executed on 01.05.1978.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that since the validity of the alleged sale deed (Ex.P2) was not duly supported by its attesting witness Rajwa (PW-2), therefore, no right, title or interest would confer upon the plaintiffs' predecessor-in-interest, namely, Bali Singh and as such, the trial Court has

dismissed the suit.

5. Being aggrieved, the plaintiffs have preferred an appeal under Section 96 of CPC. The lower appellate Court, in turn, set aside the said finding by observing *inter-alia* that since the execution of the registered deed of sale was not specifically denied, therefore, even the attesting witness was not required to be examined under Section 68 of the Indian Evidence Act. It observed further that a document marked as Ex.D2 is attached with the copy of the order dated 31.10.1996 (Ex.P1) which shows very specifically that an application for mutation was made on the date when the alleged registered deed of sale was executed, i.e. on 01.05.1978 itself and accordingly observed further that since the execution of the same was not denied specifically by its vendor i.e. defendant-Fulan Bai, therefore, its due execution, attestation and validity cannot be held to be invalid. In consequence, the lower appellate court while reversing the finding of the trial Court has decreed the plaintiff's claim.

6. Being aggrieved, defendant has preferred this Appeal. Shri N. K. Chatterjee, learned Counsel for the Appellant submits that the judgment and decree as passed by the lower appellate court while reversing the finding of the trial Court even without meeting its reasons, is apparently contrary to law. He submits further that the trial Court has examined the statement of the attesting witness of the said registered deed of sale in detail and observed that the alleged registered deed of sale was neither read over to said defendant-Fulan Bai nor he has seen that vendor has put her thumb impression on the said document and without considering the same in its proper perspective the lower appellate Court has erred in reversing the findings of the trial Court.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. The Plaintiffs have instituted a suit claiming declaration of title and injunction on the basis of the registered deed of sale dated 01.05.1978 (Ex.P.2) purported to have been executed by defendant-Fulan Bai in favour of one Bali Singh, the predecessor-in-interest of the plaintiffs. The execution of the alleged registered deed of sale was not denied specifically by the defendant and, in order to establish its due execution and attestation, the plaintiffs have examined one of its attesting witnesses, namely, Rajwa (PW-2). Said Rajwa in his statement at para 25 has stated very specifically that the clerk of the Registrar has obtained the thumb impression of defendant-Fulan Bai on the said document. As a consequence of it, the due execution and attestation of the alleged registered deed of sale cannot be held to be invalid particularly, when its execution was not denied specifically by said Fulan Bai. The finding so recorded in this regard cannot be held to be perverse and the due execution of the registered deed of sale cannot be held to be invalid. The finding of the lower appellate Court is, therefore, liable to be and is hereby upheld.

9. In view of the foregoing 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. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE