

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 394 of 2018**

Bhanumati, D/o Shri Shivmangal, Aged About 50 Years, Caste Panika, Occupation House Wife, R/o Village Shivprasad Nagar, Tahsil Bhaiyathan, District Surajpur, Chhattisgarh.

---- Appellant**Versus**

1. Heeraman, S/o Shri Patthal, Aged About 50 Years, Caste Gond, Occupation Agriculturist, R/o Village Shiv Prasad Nagar, Tahsil Bhaiyathan, District Surajpur, Chhattisgarh.
2. The State of Chhattisgarh, Through the Collector, District Surajpur, Chhattisgarh.

---- Respondents

For Appellant	:	Shri A. N. Bhakta, Advocate.
For State/Respondent No. 2	:	Shri Satish Gupta, G. A.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****13.08.2018**

1. Heard on admission.
2. This is plaintiff's appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (herein after referred to as 'the CPC') questioning the judgment and decree dated 28.04.2018 passed by the 3rd Additional District Judge, Surajpur, District Surajpur (C.G.) in Civil Appeal No.1-A/2015, by which, the lower appellate Court, while affirming the judgment and decree dated 25.09.2014 passed by 2nd Civil Judge Class-I, Surajpur, in Civil Suit No.165-A/2013, has dismissed the plaintiff's claim.
3. Briefly stated the facts of the case are that the plaintiff, namely, Bhanumati instituted a suit claiming declaration of title, injunction and

praying further that the registered deed of sale dated 02.11.1998 executed by her father's elder brother Mohan in favour of defendant Heeraman, rectified subsequently on 18.11.1998, be declared as null and void. According to the plaint averments, the property in question bearing Khasra No. 246, admeasuring 0.14 hectare, Patwari Halka No. 13, situated at village Shiv Prasad Nagar, Tahsil & District Surajpur (C.G.) was owned by one Mohan, who expired issue-less and his wife has died during his lifetime, therefore, after the death of Mohan, she (plaintiff) acquired valid right, title and interest over the suit property by way of inheritance. It is pleaded further that said Mohan had executed a deed of Will also in her favour. It is pleaded further that defendant No. 1 Heeraman by playing fraud upon said Mohan has obtained his thumb impression on deed of sale dated 02.11.1998 and subsequently got it rectified on 18.11.1998 and based upon the alleged forged documents started interfering in her peaceful possession. The plaintiff has, therefore, constrained in filing the suit in the instant nature.

4. The aforesaid claim of the plaintiff has been contested by defendant Heeraman and pleaded therein that by virtue of the registered deed of sale, he acquired valid right, title and interest over the suit property and revenue papers have mutated accordingly in his name and since the date of its purchase, he is cultivating the suit land.

5. After considering the evidence led by the parties, the trial Court has dismissed the suit by holding *inter alia* that the plaintiff has failed to prove that the alleged registered deed of sale as executed by her father's elder brother, Mohan was obtained by defendant No. 1 Heeraman by playing fraud upon him. It held further that since Mohan has already sold the suit property as such, therefore, plaintiff would not be entitled to claim her ownership over the property in question.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in appeal preferred by the plaintiff.

7. Being aggrieved, the plaintiff has preferred this Appeal. Shri A. N. Bhakta counsel for the appellant, submits that the judgment and decree as passed by the Courts below holding that the registered deed of sale was not a forged document is apparently contrary to law. He submits further that without considering the oral and documentary evidence in its proper perspective, the Courts below have committed an illegality in dismissing the plaintiff's claim.

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

9. Undisputedly, the property in question bearing Khasra No. 246, admeasuring 0.14 hectare, Patwari Halka No. 13, situated at village Shiv Prasad Nagar, Tahsil & District Surajpur (C.G.) was held by one Mohan, the elder brother of plaintiff's father, Shiv Mangal. It is also not in dispute that said Mohan expired issue-less and his wife has died during his lifetime. The main contention of the plaintiff is that the alleged registered deed of sale dated 02.11.1998 (Ex.D-3) which was subsequently rectified on 18.11.1998 (Ex.D-4) was infact obtained by playing fraud upon said Mohan, and therefore, no right, title or interest whatsoever would confer upon the said defendant. The said fact as to whether the alleged registered deed of sale was obtained by playing fraud upon him or not has to be established by plaintiff by adducing cogent and reliable evidence and the burden to prove the same is heavily upon her to establish the alleged plea of fraud. However, the plaintiff has failed completely to prove the same. Pertinently, to be noted here that executor of alleged sale, namely, Mohan, has never questioned the validity of the same during his lifetime.

10. Besides, defendant No. 1 Heeraman, in order to establish its execution has examined both of its attesting witnesses namely, Rambaksha and Dashrath. Rambaksha (DW-2) has stated specifically in his evidence that in his presence, said Mohan has executed the alleged registered deed of sale and his evidence was duly supported by another attesting witness, namely, Dashrath (DW-3). The defendant Heeraman has, thus, proved its execution as required under Section 68 of the Indian Evidence Act, 1872. Consequently, due execution of alleged sale cannot be held to be obtained by fraud, as alleged by the plaintiff.

11. After considering all these material facts, the Courts below have, therefore, rightly come to the conclusion that defendant No. 1 Heeraman has acquired his valid right, title and interest over the suit property by virtue of the alleged registered deed of sale dated 02.11.1998 (ExD-3) which was duly rectified subsequently on 18.11.1998 (ExD-4) by correcting the Caste of said vendor Mohan.

12. 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 at the admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge