

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.539 of 2016**

1. Sushila Bai W/o Sevak Das, Aged About 48 Years D/o Itwri Das, R/o Village Ghuma, Tahsil Kota, Civil And Revenue District Bilaspur, Chhattisgarh, Chhattisgarh
2. Vipat Bai W/o Tilakdas, Aged About 39 Years D/o Itwari Das, R/o Village Nagoi, Tahsil Kota, Civil And Revenue District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Dhandas S/o Dukhidas, Aged About 48 Years R/o Village Butena, Tahsil Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
4. Pawan Das S/o Itwari Das, Aged About 35 Years R/o Village Pali, Tahsil Takhatpur, Civil And Revenue District Bilaspur, ChhattisgarhDefendants, District : Bilaspur, Chhattisgarh

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1. Kaushal Prasad S/o Thanuram, Aged About 35 Years Caste Kewat, R/o Nawagaon, Tahsil Takhatpur, Civil And Revenue District Bilaspur, Chhattisgarh, Chhattisgarh
2. The State Of Chhattisgarh, Through The Collector, Bilaspur, Civil And Revenue District Bilaspur, ChhattisgarhPlaintiffs, District : Bilaspur, Chhattisgarh

-----Respondents

For Appellants:	Shri Punit Ruparel, Advocate.
For Respondent No.2/State:	Shri Aditya Sharma, Panel Lawyer.

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

11.07.2018

1. This Appeal has been preferred by the legal representatives of deceased Defendant No.1-Heera Bai under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the judgment and decree dated 25.07.2016 passed by the 9th Additional District Judge, Bilaspur in Civil Appeal No.192-A/2014 by which, the lower appellate Court, while affirming the judgment and decree dated 28.06.2014 passed

by the Civil Judge, Class-2, Takhatpur, District Bilaspur in Civil Suit No.120-A/2009, has dismissed the Appeal.

2. Facts leading to this Appeal are that the Plaintiff Kaushal Prasad instituted a suit claiming permanent injunction in relation to the property in question bearing Khasra No.545/1 admeasuring 0.25 acres situated at Village Pali, Tahsil Takhatpur, District Bilaspur by submitting *inter alia* that the suit property was purchased by him from Defendant No.1-Heera Bai (since deceased now represented by her legal representatives) by virtue of registered deed of sale dated 09.03.2000. It is pleaded in the Plaint that after purchasing the property as such, the revenue papers were mutated in his name and he was cultivating the land in question peacefully. However, Defendant No.1 threatened to dispossess him, therefore, the Plaintiff has been constrained to file the suit in the instant nature.

3. While contesting the aforesaid claim as such, it is stated by the original Defendant No.1-Heera Bai that no registered deed of sale as such was executed by her in favour of the Plaintiff and in fact, it was executed for security of the loan amount of Rs.12,000/- While contesting the claim as such, a counter claim has been made by her praying for declaration of alleged registered deed of sale as a nominal sale and would not confer any right, title or interest upon the Plaintiff.

4. The trial Court, after considering the claim and counter claim as submitted by the parties, has arrived at a conclusion based upon the evidence adduced by the parties that the Plaintiff has purchased the suit property on the strength of the alleged registered deed of sale dated 09.03.2000 (Ex.P-1) and the same was not a nominal document as pleaded by Defendant No.1 and the trial Court has thus turned down the

defence taken by the said Defendant and held that it was duly executed conferring valid title upon the Plaintiff. As a consequence of it, the trial Court has decreed the Plaintiff's claim while dismissing the counter claim of Defendant No.1.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the legal representatives of said Defendant No.1-Heera Bai.

6. Being aggrieved, the instant Appeal has been preferred by her legal representatives. Shri Punit Ruparel, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below are apparently contrary to law and not sustainable in the eye of law. He submits further that the Courts below ought to have come to the conclusion that the alleged deed of sale (Ex.P-1) was a nominal sale and was executed for security of the loan amount of Rs.12,000/-. Without considering the evidence led in this regard in its proper perspective, the Courts below have committed an illegality in upholding its due execution and attestation. He therefore further submits that the judgment and decree as passed by the Courts below be set aside.

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

8. The Plaintiff has instituted a suit claiming injunction on the basis of the registered deed of sale (Ex.P-1) purported to have been executed in his favour by deceased Defendant No.1-Heera Bai. The said claim was contested by the said Defendant No.1-Heera Bai mainly on the ground that it was executed for security of the loan amount. It is thus clear that the execution of the alleged deed of sale was not in dispute. What is disputed

is as to whether it has been executed for security of the loan amount or not, as alleged by the said Defendant. The burden of proof is therefore upon the said Defendant to establish the said fact that the alleged deed of sale was executed for security of the loan amount and is a nominal one. However, from perusal of the evidence adduced in this regard, it is difficult to hold that the alleged registered deed of sale (Ex.P-1) was executed for security of the loan amount as alleged by the Defendants. The Courts below have therefore, rightly come to the conclusion that it was a genuine sale while dismissing the counter claim of the Defendant. The findings so recorded by the Court below are pure findings of fact based upon due and proper appreciation of the evidence adduced by the parties and therefore, the same deserve to be and are hereby affirmed.

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 at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE