

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.422 of 2002**

1. Keri Bai D/o Shri Kewal Ram Lodhi, aged about 52 years, R/o Village Katulbahi, Tahsil Khairagarh, District Rajnandgaon (CG)
2. Gendlal S/o Shri Tilak, aged about 15 years,
3. Pawan Kumar S/o Shri Tilak, aged about 9 years

The appellant No.2 and 3 are minor through : Next Friend and natural guardian mother Malti Bai, R/o Village Katulbahi, Tahsil Khairagarh, District Rajnandgaon (CG)

---- Appellants

Versus

1. State of Chhattisgarh through the Collector, Rajnandgaon, District Rajnandgaon (CG)

LRs of Respondent No.2 Horilal

- 2.a. Smt. Ganga Bai W/o Late Horilal, aged about 70 years,
- 2.b. Duleshwar S/o Late Horilal, aged about 45 years,
- 2.c. Karan S/o Late Horilal, aged about 40 years,
- 2.d. Bhuneshwar S/o Late Horilal, aged about 38 years,
- 2.e. Khimu S/o Late Horilal, aged about 32 years,
- 2.f. Aniruddh S/o Late Horilal, aged about 28 years,

The respondent No.2.a to 2.f are resident of village Katulbadi, Post Pipariya, Police Station Chhuikhadan, District Rajnandgaon (CG)

2.g Smt. Kanti Bai D/o Late Horilal, W/o Chhotelal, aged about 56 years, R/o Village Ghumka, Post Ghumka, Tahsil & District Rajnandgaon (CG)

2.h. Smt. Nand Kumari Verma D/o Late Horilal, W/o Halturam, aged about 54 years, R/o Village Iraikala, Post Patewa, Tahsil & District Rajnandgaon (CG)

2.i Smt. Bisaiya Bai D/o Late Horilal, W/o Bemlal, aged about 52 years, R/o Village Obetan, Post Bundeli, Tahsil Chhuikhadan, District Rajnandgaon (CG)

2.j Smt. Bhukhan Bai D/o Late Horilal, W/o Visesar Lodhi, aged about 41 years, Village Sandi, Post Bundeli, Tahsil Chhuikhadan, District Rajnandgaon (CG)

2.k Smt. Chaiti Bai D/o Late Horilal, W/o Jawahar erma, aged about 36 years, Village & Post Kuteli, Tahsil Chhuikhadan, District Rajnandgaon (CG)

2.I Smt. Sulochini Bai D/o Late Horilal, W/o Shankar Lodhi, aged about 36 years, Village Saliha, Post Devaribhath, Tahsil Khairagarh, District Rajnandgaon (CG)

LRs of respondent No.3 Balbhadra

3.a Smt. Dayamati widow of Late Balbhadra, aged about 70 years,

3.b Janaklal S/o Late Balbhadra, aged about 60 years

3.c Nar Singh Verma S/o Late Balbhadra, aged about 45 years

3.d Bhanupratap S/o Late Balbhadra, aged about 43 years

The respondent No.3.a to 3.d are resident of village Katalwahi Post Pipariya, Tahsil Khairagarh, District Rajnandgaon (CG)

3.e Smt. Kanchan D/o Late Balbhadra, W/o Madanlal Lodhi, aged about 56 years, R/o Village Baghmarra, Post Salauni, Tahsil Khairagarh, District Rajnandgaon (CG)

3.f Smt. Bindu Bai D/o Late Balbhadra, W/o Narayan Verma, aged about 53 years, R/o Village Chaknar, Police Station & Post Gandai, Tahsil Chhuikhadan, District Rajnandgaon (CG)

3.g Smt. Prem Bai D/o Late Balbhadra W/o Dilip Lodhi, aged about 48 years, R/o Village Kohlatola Police Station & Post Chhuikhadan, Tahsil Chhuikhadan, District Rajnandgaon (CG)

---- Respondents

For Appellants	:	Mr.Rakesh Pandey, Advocate
For Respondent No.1	:	Mr.A.N.Bhakta, Dy.A.G.
For LR's of respondent No.2	:	Mr.P.K.C.Tiwari, Senior Advocate with Mr.Ashutosh Trivedi, Advocate
For LR's of respondent No.3	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

03.01.2019

1. The substantial question of law involved, formulated and to be answered in the plaintiffs' second appeal is as under:-

“Whether the lower appellate Court was not justified in holding that the document (Ex.D-1) was an absolute sale

and reversing the finding of the trial Court that the said document was executed in lieu of the mortgage, but was fraudulently shaped as a sale deed ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. Four plaintiffs filed a civil suit for declaration of title and permanent injunction stating inter-alia that sale deed executed by Kewal Ram, father of plaintiffs No.2 and 3 and husband of plaintiff No.1 in favour of defended No.1-Horilal on 26.6.81 is only executed for security of loan amount, it is void & nominal and not binding on the plaintiffs.
3. Defendant No.1 filed written statement stating inter-alia that sale deed dated 26.6.81 (Ex.D/1) was out and out sale by the plaintiffs predecessor-in-title in favour of defendant No.1 and as such, title has been intended to and actually transferred in favour of defendant No.1 and the suit is liable to be dismissed.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 26.9.2000 came to the conclusion that sale deed (Ex.D/1) is not an outright sale and held that it is nominal deed as it was not intended to transfer the title and decreed the suit, which was reversed by the First Appellate Court after disagreeing with the finding recorded by the trial Court.
5. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100

of the CPC has been preferred by the appellants/plaintiffs, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

6. Mr.Rakesh Pandey, learned counsel for the appellants/plaintiffs, would submit that the First Appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court by recording the finding, which is perverse and contrary to record and as such, substantial question of law be answered in favour of the plaintiff.
7. Mr.P.K.C.Tiwari, learned Senior Counsel appearing for legal representatives of defendant No.1-Horilal, would support the impugned judgment and decree.
8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
9. The plaintiffs filed a suit for declaration of title and permanent injunction stating inter-alia that sale deed dated 26.6.81 executed by Kewal Ram (predecessor-in-title) in favour of defendant No.1-Horilal was not sale and it was only for security of loan and since loan was re-paid, defendants No.1 and 3 refused to return the sale deed on the ground that it is misplaced.
10. Despite bar of Section 92 of the Indian Evidence Act, 1872, it is well settled that oral evidence is admissible to prove that a document though executed was a nominal or sham document **Ishwar Dass Jain v. Sohanlal**¹, relying upon the decision in

¹ AIR 2000 SC 426

Gangabai v. Chhabubai² in which it has been held that it is permissible for a party to a deed to contend that deed was not intended to be acted upon but was only a sham document. It was held as under:-

“the bar imposed by section 92(1) applies only when a party seeks to rely upon the document embodying the terms of the transaction and not, when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties.”

11. The aforesaid proposition of law laid down by the Supreme Court has consistently followed in Lekhraj Diddi v. Sardar Sawan Singh³, Mandas v. Manbai⁴, Kodu Satnami v. Ramdayal⁵ and Babu Khan v. Mahila Narayan Devi⁶. However, certainly execution of a registered document is a solemn affair and the party who alleges that he did not do what otherwise appears to have been done by him has to prove such allegation. Necessarily burden to prove such an allegation lies on the plaintiff. (See Subhra Mukherjee v. Bharat Coking Coal Ltd.,⁷).

12. Before proceeding further, it would be appropriate to consider the nature of pleading to be raised by the plaintiffs in a suit claiming

2 AIR 1982 SC 20

3 1971 MPLJ 438

4 1972 MPLJ 852

5 1986 MPWN 114

6 1993 (1) Vidhi Bhaswar 93

7 AIR 2000 SC 1203

that sale deed is a nominal sale deed and it was not intended to transfer the title as in this case from the evidence available on record it is clear that Kewal Ram had executed sale deed (Ex.D/1) in favour of defendant No.1 on 26.6.81. The plaintiffs must plead that prior to executing the sale deed dated 26.6.81, there was oral agreement between the parties to show that sale transaction was sham and nominal and the suit property would be reconveyed on payment of loan amount. It must also specifically plead and prove that sale deed was executed as security to loan amount with rider of reconveyance and also plead and prove that loan amount was paid on particular date in presence of witnesses as highlighted by the Madhya Pradesh in Lekhraj Diddi (supra). It was observed in Lekhraj Diddi (supra) as under:-

“6. We find that there is, suits like those in this case, a wide-spread misunderstanding about pleading and proof of facts in derogation of the terms contained in registered documents. It is, therefore, necessary to indicate in a few words how these matters should be approached. Once it is admitted, or proved, that a party has executed a sale deed like the one dated December 3, 1963 in this case, then, between the parties to that deed or their representatives in interest, no oral evidence can be led for the purpose of contradicting, varying, adding to, or subtracting from, its terms unless a case falling under any proviso to Section 92 of the Evidence Act is specifically pleaded. In the absence of such a plea, there can be no question of lifting the veil and examining the nature of the transaction and effect must be given to the conclusiveness of the terms contained in the deed. So, Lekhraj Diddi has pleaded in the suit filed by him that, before executing the sale deed, it was clearly contracted that the sale deed would not be given any effect and that, after repayment of the loan, it would be returned with art endorsement that it was a nominal transaction or, if so desired, a deed of reconveyance

would be executed. The question, therefore, would be whether, upon approaching the case without any a priori notions about the nature of the transaction and without any pre-possession of judicial mind in favour of any of the rival versions and upon fairly considering the evidence as a whole, this contract set up in derogation of the sale deed has been clearly established. Speaking generally, this should be the approach to such questions raised in suits like the one filed by Lekhraj Diddi.”

- 13.** Reverting to the facts of the present case in the light of requirement of law for pleading and proving the sale deed to be nominal, it is evident from the plaint that the plaintiffs did not plead that prior to executing sale deed dated 26.6.81 (Ex.D/1) there was agreement to show that transaction was sham or nominal between Kewal Ram and defendant No.1/defendant No.3 and the suit property would be reconveyed on payment of loan amount to Mr.Kewal Ram. The plaintiffs have also not pleaded that loan amount was paid on particular date in presence of witnesses. Ex.D/1 is signed by two witnesses namely Balbhadra Prasad and Sunderlal. Sunderlal has been examined as DW-2. He has stated in his evidence before the court that Kewal Ram has executed sale deed dated 26.6.81 (Ex.D/1) in favour of defendant No.1-Horilal and ₹ 2000/- consideration amount was given by Horilal to Kewal Ram, plaintiffs' predecessor-in-title. Even no suggestion was put to him in his cross-examination that prior to execution of sale deed there was oral agreement between the parties to show that transaction was sham and nominal and the suit property would be reconveyed on payment of loan amount. The plaintiffs have failed to prove that loan amount was paid on particular date in presence of witnesses and

even no evidence has been adduced on behalf of the plaintiffs about the payment of loan by Kewal Ram to defendant No.1-Horilal. Even the evidence led is not sufficient to hold the sale deed to be nominal on account of requisite pleading and desired evidence. In view of that, the First Appellate Court is absolutely justified in reversing the judgment and decree passed by the trial Court, in which I do not find any illegality or perversity.

14. The second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

15. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-