

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 538 of 2003**

1. Firturam (Dead) Through Lrs
 1.1 - Janak Ram S/o Firtoo Ram Aged About 40 Years Caste Patel, R/o Village Nandeli, Post Office Sonthi, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
 1.2 - Chandrakumar S/o Firtoo Ram Aged About 32 Years Caste Patel, R/o Village Nandeli, Post Office Sonthi, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 1.3 - Tulsi S/o Firtoo Ram Aged About 29 Years Caste Patel, R/o Village Nandeli, Post Office Sonthi, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 1.4 - Smt. Putri Bai Wd/o Firtoo Ram Aged About 63 Years Caste Patel, R/o Village Nandeli, Post Office Sonthi, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 1.5 - Smt. Shyam Bai D/o Firtoo Ram Aged About 43 Years W/o Sheo Prasad, Caste Patel, R/o Village Sakrelikala, Post Office Jajang, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh
 1.6 - Smt. Kumari Bai D/o Firtoo Ram Aged About 28 Years W/o Ramnath, Caste Patel, R/o Village Sakrelikala, Post Office Jajang, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 1.7 - Smt. Gauri Bai D/o Firtoo Ram Aged About 35 Years W/o Ghsia Ram, Caste Patel, R/o Village And Post Temar, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 1.8 - Mahshkumari D/o Firtoo Ram Aged About 32 Years W/o Chunni Lal, Caste Patel, R/o Village And Post Temar, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh, **---- Appellants**

Versus

1. Lalit Kumar S/o Late Ramesh Kumar Aged About 18 Years R/o Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 2. Malti Bai D/o Late Ramesh Kumar Aged About 22 Years R/o Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 3. Sunita D/o Late Ramesh Kumar Aged About 20 Years R/o Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 4. Ku. Kusma D/o Late Ramesh Kumar Aged About 19 Years R/o Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 5. Jamuna Bai Wd/o Late Ramesh Kumar Aged About 42 Years R/o Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh,
 6. State Of Chhattisgarh Through The Collector, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh, **---- Respondents**

For Appellants:	Shri Awadh Tripathi, Advocate.
For Respondents No. 1 to 5:	Shri H. B. Agrawal, learned senior counsel along with Smt. Prabha Sharma, Advocate.
For State/Respondent No. 6:	Shri R. K. Jaiswal, Panel Lawyer.

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

04.04.2019

1. This appeal has been preferred by Defendant No. 1-Firturam (since deceased now represented by his legal representatives) questioning the propriety of the judgment and decree dated 28.07.2003 passed by the Additional District Judge, Sakti in Civil Appeal No.62A/2000, by which, the lower appellate Court, while affirming the judgment and decree dated 12.09.2000 passed by the Civil Judge, Class-II, Sakti in Civil Suit No.35A/89, has dismissed the Appeal.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming possession and *mesne* profits to the tune of Rs. 4,280/- (Rupees Four Thousand Two Hundred Eighty only) since 1983 by submitting *inter-alia* that their father-Ramesh Kumar, original Defendant No.2, sold the suit property described in plaint Schedule-A by executing two registered deeds of sale dated 11.12.1981 and 20.09.1983 without any authority. According to the plaintiffs, prior to alienation of the alleged sale deeds, a suit was instituted by them against their father-Ramesh Kumar for injunction restraining him from alienating the property in question. The said suit was registered as Civil Suit No.09A/80 and was decreed ex-parte on 14.04.1980 by restraining their father-Ramesh Kumar from alienating the property in question. It is pleaded further in the plaint that Plaintiff No. 1-Lalitkumar had also instituted a suit for partition against his father, mother and sisters, which was registered as Civil Suit No.69-A/81 claiming one-third share and the said suit was ultimately decreed by way of a compromise on 14.02.1983 where father-Ramesh Kumar has relinquished his right, title and interest in favour of his son and daughters in order to

perform their marriages as well as for educational purposes.

3. It is pleaded further by the plaintiffs that by virtue of the aforesaid decrees, father-Ramesh Kumar was not competent to alienate the property in question as such and since the plaintiffs have been dispossessed by Defendant No. 1-Firturam in the month of July, 1983, therefore, they have been constrained to file the suit.

4. The aforesaid suit was contested by Defendant No. 1-Firturam on the ground that he purchased the property in question from Ramesh Kumar by virtue of registered deeds of sale and is a *bona fide* purchaser and pleaded further that the alleged sale deeds were never questioned by said Ramesh Kumar, therefore, plaintiffs have not acquired any interest whatsoever after the alienation of the alleged sale deeds as made by their father.

5. After considering the evidence led by the parties, the trial Court by its judgment and decree dated 12.09.2000 has held that the plaintiff's father-Ramesh Kumar was not competent to sell the property as he was restrained by the judgment and decree dated 14.04.1980 from alienating the property in question and also by virtue of the said compromise decree passed on 14.02.1983, whereby said Ramesh Kumar has relinquished his right, title and interest in favour of his son and daughters. It held further that Defendant No. 1-Firturam is not a *bona fide* purchaser as contended by him. As a consequence, the trial Court has decreed the suit in part entitling them for the relief of possession, while declining the claim of *mesne* profits as claimed.

6. Being aggrieved by the aforesaid judgment and decree, Defendant No. 1-Firturam has preferred an appeal which is registered as Civil Appeal

No.62-A/2000 while the appeal preferred by the plaintiffs seeking mesne profits was registered as Civil Appeal No.59-A/2000. The appellate Court, in turn, has dismissed both the appeals while affirming the findings of the trial Court by its common judgment and decree dated 28.07.2003.

7. Being aggrieved, Defendant No.1-Firturam has preferred this appeal while the plaintiffs have raised their cross objection by moving an application under Order 41 Rule 22 of CPC claiming the relief of *mesne* profits which was, however, not pressed by the counsel for the Respondents during the course of hearing on admission. The said cross objection/appeal is, accordingly, rejected.

8. Shri Awadh Tripathi, learned counsel for the Appellants submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits further that by virtue of the registered deeds of sale dated 11.12.1981 and 20.09.1983, said Defendant No.1- Firturam has acquired his valid right, title and interest with regard to the property in question described in plaint Schedule-A. Therefore, the Courts below have committed an illegality in holding that Defendant No.1-Firturam has not acquired any interest over the suit property. He submits further that the alleged sale deeds were never questioned by said Ramesh Kumar, the vendor, therefore, the plaintiffs are not entitled for possession of the suit property.

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

10. A suit for possession as well as for *mesne* profits has been made by the plaintiffs on the ground that their father-Ramesh Kumar was not entitled to execute the registered deeds of sale as made by him in favour

of the original Defendant No.1, namely, Firturam as he was restrained from alienating the suit property by virtue of the judgment and decree dated 14.04.1980 (Ex.P.4) passed in Civil Suit No.9A/80 instituted by the plaintiffs against their father. According to the plaintiffs, their father-Ramesh Kumar has also relinquished his right, title and interest with regard to the property in question in a suit instituted by Plaintiff No. 1-Lalitkumar which was registered as Civil Suit No.69A/81, as the said suit was decreed on 14.02.1983 (Ex.P.12) by way of compromise, where father-Ramesh Kumar has relinquished his interest. Yet, he sold the property by executing the registered deeds of sale dated 11.12.1981 (Ex.D.1) and 20.09.1983 (Ex.D.3). Under such circumstances, it is difficult to hold that Ramesh Kumar was competent enough to execute the alleged registered deeds of sale either on 11.12.1981 or 20.09.1983. As such, Courts below have not committed any illegality in holding that Defendant No. 1-Firturam has not acquired any right, title and interest whatsoever with regard to the property in question based upon the alleged sales (Ex.D1 & Ex.D3).

11. In view of the forgoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE