

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-4-2019

Judgment delivered on 02-05-2019

FA No. 60 of 2007

- Sharad Joshi s/o. Lt. Madhaw Joshi, aged 36 years (at present 44 years), occupation Agriculture, Caste Brahmin, r/o. Village Khandsara, Tahsil Bemetara, Dist. Durg (CG).

---- Appellant/defendant No.1

Versus

1. Mrs. Padmawati D/o. Saheb Lal aged about 50 years (at present 56 years) occupation, Agriculture, Caste Brahmin r/o. Village Bhaisamunda, PS Nawagarh, Tahsil Nawagarh, Dist. Durg (CG).

– Respondent/plaintiff.

2. State of Chhattisgarh through Collector and Designated Secretary, Durg, Dist Office Durg (CG).

---- Respondent/defendant No.2

For appellant : Mr. Sudhir Verma, Advocate.

For respondent No.1 : Mr. Pramod Kumar Verma, Sr.
Advocate with Mr. Virendra Verma,
Advocates.

For respondent No.2/ : Mr. Afroz Khan, Panel Lawyer.
State.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 3-4-2007 passed by the Additional District Judge, Bemetara (CG) in Civil Suit No. 12-A/99 wherein the said court decreed the suit filed by the

respondent/plaintiff Padmawati for land bearing Survey No. 370 & 423/1 area 12.93 hectares situated at village Bhaisamuda and for getting amount of paddy auctioned of the said land in a proceeding under Section 146 of the Code of Criminal Procedure, 1973.

2) As per version of respondent/plaintiff Padmawati, Madhaw Joshi had agricultural land in village Khandsara and Bhaisamuda. Land measuring 52.51 acres situated at village Bhaisamuda was sold to Padmawati by said Madhaw Joshi vide sale deed dated 9-2-1972 for cash consideration of Rs.10,000/-. Some of land was re-sold by Padmawati to Madhaw Joshi and property in question was remained with Padmawati who is sole owner of the land having possession from the date of sale deed i.e., 9-2-1972. After hearing the parties, the trial court has decreed the suit as mentioned above.

3) Learned counsel for the appellant would submit as under:

- i) Smt. Padmawati had no capacity to purchase the land at once measuring about 52 acres.
- ii) Smt. Padmawati failed to establish the source of earning of her own with her husband and as per her version her father was Priest (statement of Padmawati (PW/1 at para 23), therefore, sale deed is void.
- iii) Sale deed was without consideration, therefore, the appellant who is natural legal

heir of Madhaw Joshi was owner of the property in question.

4) On the other hand, learned counsel for the respondent No.1 would submit that the Madhaw Joshi did not challenge the execution of the sale deed in his life time, therefore, it shall be presumed that sale deed was executed after obtaining full consideration and same was executed in full consciousness. There is nothing to say that Smt. Padmawati had no capacity to pay the consideration amount. Possession of Smt. Padmawati in land in question is admitted which supports the execution of sale deed and passing of title to Padmawati. He would further submit that finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) Both parties adduced oral and documentary evidence. Smt. S. Bhattacharya (PW/1) who is record keeper in the office of Sub Registrar of Durg, proved execution of sale deed dated 9-2-1972 in favour of Padmawati by Madhaw Joshi which is again supported by version of Smt Rama Ghatge, Incharge, Sub Registrar. Padmawati (PW/3) also proved the factum of execution of sale deed which is supported by version of Bhagwat (PW/4). Though Sharad Joshi

(DW/1),Dukalu (DW/2) and Ankhla (DW/3) deposed that Padmawati had no capacity to purchase land, but oral evidence of these witnesses is not sufficient to rebut execution of sale deed. Sale deed is executed on in the year 1972 and seller namely Madhaw Joshi survived upto 30-5-1998 i.e., after 26 years after execution of sale deed but he did not challenge the sale deed executed by him during his life time, therefore, it cannot be said that Madhaw Joshi did not execute the sale deed. While mentioning in the registered sale deed that consideration of Rs.10000/- was paid by Padmawati, it means Padmawati had capacity to pay consideration amount. The sale deed is not cancelled during life time of Madhaw Joshi and unless sale deed is cancelled, the same is in existence which proves the title of Padmawati in land in question. Again it is admitted that Padmawati is in possession of the land in question which further strengthen the claim over the property. Finding arrived at by the trial court is not liable to be interfered with while invoking jurisdiction of this appeal. The appeal is liable to be dismissed as argument advanced on behalf of the appellant is sustainable.

7) Accordingly, decree is passed in favour of respondent No.1 Padmawati and against the appellant as under:

- (i) The appeal is dismissed with cost.

- (ii) Appellant to bear the cost of respondent No.1 Padmawati through out.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd-

(Ram Prasanna Sharma)
JUDGE

Raju