

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.180 of 2002**

1. Shri Kumar Dwivedi (dead)

1-A. Ankur Dwivedi, Son of Shri Prakash Narayan Dwivedi, Aged about 14 years, Minor Through his natural guardian father namely Prakash Narayan Dwivedi, S/o Ramanugrah Dwivedi, Present Resident at Bouripara, Ambikapur, Post Office and Police Station Ambikapur, District Surguja (CG)

1-B. Rishiv Dev Dwivedi, Son of Shri Rajnarayan Dwivedi, Aged about 13 years, Minor Through his natural Guardian Father Namely Rajnarayan Dwivedi, Son of Ramanugrah Dwivedi, Present Resident at Bouripara, Ambikapur, Post Office and Police Station Ambikapur, District Surguja (CG)

1-C. Manua Devi, Widow of late Shrikumar Dwivedi, Aged about 65 years, Present Resident at Bouripara, Ambikapur, Post Office and Police Station Ambikapur, District Surguja (CG) **---- Appellants/Defendants**

Versus

Anil Kumari, S/o late Ramautar Sao, Aged about 21 years, Resident of Bauripara, Thana & Tahsil Ambikapur District Sarguja (CG)

--- Respondent

For Appellants/Defendants	:	Mr. T.R. Chandrakar, Advocate
For Respondent	:	Mr. Neeraj Pradhan, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order on Board****06/11/2019**

Heard.

1. This second appeal is directed against impugned judgment and decree dated 30.04.2002 passed by the Second Additional District Judge, Ambikapur, District Sarguja in Civil Appeal No.6-A/2002 arising out of judgment and decree dated 29.11.1990 passed by the Civil Judge Class-II Ambikapur in Civil Suit No.233-A/90, whereby, learned Lower Appellate Court, reversing the judgment and decree of the trial Court, has decreed the suit of the plaintiff.

2. The respondent/plaintiff filed a suit seeking declaration of title and injunction on the pleadings, inter alia, that the property in dispute consisting of land and house was purchased from the fund provided by the plaintiff. However, at the time of execution of sale deed, defendant fraudulently got his name entered in the sale deed which fact came to the notice and knowledge of the plaintiff Anil Kumari, who is the daughter of late Ramautar Sao. After death of Ramautar Sao, the plaintiff and his two mothers were being looked after by the defendant Shri Kumar Dwivedi as their guardian. According to the plaintiff, defendant taking undue advantage of his position played fraud upon the plaintiff. Learned trial Court dismissed the suit holding that the seller, who executed sale deed in favour of defendant Shri Kumar Dwivedi was necessary party and further, plaintiff's suit for specific performance was not maintainable. Aggrieved by the said judgment and decree, plaintiff preferred an appeal. Though the trial Court had recorded a finding that the house on the disputed land was constructed from the fund provided by the plaintiff, the defendant did not file any cross appeal assailing those findings. Learned Lower Appellate Court proceeded on the premise that the finding that the house on the land was constructed from the fund provided by the plaintiff, has attained finality for want of challenge by the defendant by way of cross appeal, proceeded to hold that from the evidence on record, it is proved that the sale consideration was actually paid by the plaintiff, as deposed by the seller and the witnesses of the sale deed. On this finding, learned Lower Appellate Court came to the conclusion that the property was purchased by the defendant for and on behalf of the plaintiff and thus, declared plaintiff's title.

3. This appeal was admitted on following two substantial question of law :

- “1. Whether the lower appellate Court erred in law in recording a finding that the suit property was purchased by the plaintiff, particularly when the sale -deed in question (Ex.D/1) was on the name of the defendant ?
2. Whether the above finding is perverse and is based on no positive evidence on record ?”

4. Learned counsel for the appellant would argue that the learned Lower Appellate Court committed gross perversity in recording a finding that the property was purchased by the defendant for and on behalf of plaintiff as the sale deed is in the name of the defendant and not in the name of the plaintiff. He would argue that the land was purchased by the defendant for and on

behalf of plaintiff from the fund provided by the plaintiff is liable to be disbelieved as it is contrary to the recital of the sale deed, in which, the purchaser of the property has been described as Shri Kumar Dwivedi the defendant and not the plaintiff. He would further argue that the plaintiff's suit was rightly held to be not maintainable by the trial Court because the plaintiff did not implead the seller as one of the defendant and the plaintiff's suit for specific performance. Relying upon the judgment of the Supreme Court in the case of **Murugan & Others Vs. Kesava Gounder (dead) and ors. decided on 25.02.2019 in Civil Appeal No.1782 of 2019**, it has been argued that unless the plaintiff sought appropriate relief avoiding sale deed, no relief could be granted in favour of the plaintiff. Relying upon another judgment of this Court in the case of **Sushila Devi Vs. Chamru Ram and others in S.A. No.484 of 2003 decided on 31.07.2019**, it has been argued that unless the plaintiff seeks appropriate declaration against the sale deed, the suit, itself, is liable to be dismissed.

5. On the other hand, learned counsel for the respondent would argue that this appeal has been admitted only on two substantial question of law to the effect as to whether the finding that the property was purchased by the plaintiff is perverse. He would argue that the learned Lower Appellate Court in order to come to the conclusion that the suit property was purchased for and on behalf of the plaintiff by defendant is based on clinching and oral evidence not only of the seller but also of the witness. In addition to, what has been stated by the plaintiff herself.

6. I have heard learned counsel for the parties and perused the records.

7. The only substantial question of law which is required to be answered in this appeal is that as to whether the finding of the learned lower Appellate Court that the suit property was purchased for and on behalf of plaintiff is perverse. True, it is that the sale deed contains the name of the defendant as one of the purchaser. However, learned Lower Appellate Court has elaborately considered the evidence led before the Court below. In para 8 to 12, learned Lower Appellate Court has recorded that the property was purchased by the defendant, who was their guardian, is proved from the evidence of Surendra Mohan (PW-5), who is none other than the seller of the land. Further, learned Lower Appellate Court has also taken into consideration the evidence of Dilip Ram (PW-3), who is the witness of the sale deed. In addition, learned Lower

Appellate Court has also taken into consideration the evidence of the plaintiff Anil Kumari (PW1) and her mother, Sudesari (PW4). All these witnesses have clearly stated that the fund for the purpose of purchase were provided by the plaintiff and from this fund only, the sale consideration was paid to the seller and thereafter, sale deed was executed. Therefore, finding of the learned Lower Appellate Court does not appear to be perverse but based on evidence on record.

8. No other substantial question of law has been framed by this Court. Therefore, it is not necessary for this Court to examine other contentions and for that reason, reliance placed on various decision is misplaced for want of any substantial question of law in that regard. Question of law is accordingly answered in the manner that the learned Lower Appellate Court did not commit any perversity or patent illegality in recording finding that the suit property was purchased for the plaintiff. The finding cannot be said to be perverse.

9. In the result, the appeal fails and is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge