

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.522 of 2003****Judgment reserved on :15.02.2019****Judgment delivered on: 20.02.2019**

Kheluram son of Bisahuram Chandrakar aged about 50 years r/o. Khamtarai Naka, Near Brahmdeo Mandir, Sharma Engineering Works, Tehsil and District Raipur (CG)

---- Appellant**Versus**

1. Smt. Heera Bai (deleted)
2. Marayangir Goswami Aged 51 years
3. Mohangir Goswami Aged 44 years
4. Vijaygir Goswami Aged 39 years
5. Mangalgir Goswami Aged 34 years

Respondent No.2 to 5 son of Bharatgir Goswami

6. Smt. Shail Goswami Aged 56 years Daughter of Bharatgir Goswami
7. Smt Tukeshwari Goswami Aged 54 years Daughter of Bharatgir Goswami
8. Smt. Purnima Goswami Aged 37 years Daughter of Bharatgir Goswami

All residents of village Madeli, Tehsil Kurud, District Dhamtari (CG)

9. Ramnarayan alias Ballu
10. Tejendra Kumar
11. Mahendra Kumar alias Balla

All sons of Bisahuram Chandrakar r/o. Near Khamtarai Naka, Sharma Engineering Works, Brahmdeo Mandir, Tehsil and District Raipur (CG)

---- Respondents

For Appellants/Defendant No.2:	Mr.Kishore Bhaduri, Advocate
For Respondents No.2 to 8 :	Mr.R.S.Patel, Advocate
For Respondents No.9 to 11 :	None present

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by defendant No.2 is as under:-

“Whether the lower appellate Court was not justified in reversing the judgment and decree passed by the trial Court since the judgment of the lower appellate Court does not reflect conscious application of mind to all the grounds on which the lower appellate Court had declined to grant relief to the respondents/plaintiffs No.1 to 8 ?”

[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. The plaintiff filed a suit for possession stating inter-alia that he has constructed the house on *abadi land* owned by him and known as *Udiya Prasara* attached with the plaint, which was given on license to father of defendants No.1 to 4 to stay therein, but on being demanded, it was not vacated leading to filing of the suit for possession.
3. The defendants by filing written statement set-up a plea that their father purchased the suit house from Duryodhan Gir by un-registered sale deed dated 26.7.55 and became title-holders of the suit house and prayed for dismissal of suit. The trial Court dismissed the suit. On appeal being preferred by legal representatives of the plaintiff, the First Appellate Court allowed the

appeal and decreed the suit, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant No.2, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

4. Mr.Kishore Bhaduri, learned counsel for the appellant/defendant No.2, would submit that the First Appellate Court is absolutely unjustified in reversing the well merited finding of the trial Court as the plaintiff has failed to establish his title over the suit house, which is abadi land as it has been purchased by father of defendants No.1 to 4 by un-registered sale deed 26.7.55. Therefore, the judgment and decree of the First Appellate Court be set aside and that of the trial Court be restored.
5. Mr.R.S.Patel, learned counsel for respondents No.2 to 8/plaintiff, would support the impugned judgment and decree and submit that the defendants having been set up a plea that the suit house has been purchased by un-registered sale deed dated 26.7.55 have failed to establish the fact as sale deed has neither been produced nor it has been marked or exhibited during trial, therefore, the First Appellate Court is absolutely justified in reversing the judgment and decree of the trial Court and decreeing the suit in favour of the plaintiffs.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

7. The suit was brought by original plaintiff-Bharat Gir, who died during pendency of the suit stating inter-alia that the suit house constructed on abadi land is owned by him and known as *Udiya Prasar*, which he had given on licence to father of defendants No.1 to 4 for residential purpose on his demand, but he did not vacate on being asked and thereafter, registered notice was served to him and the suit was filed for possession. The defendants took up a plea that their father purchased the suit house from Duryodhan Gir i.e. plaintiff's father by registered sale deed dated 26.7.55 for consideration of ₹ 95/-.
8. The suit house admittedly belonged to Duryodhan Gir and his title over the suit house is not in dispute, which the defendants have claimed by un-registered sale deed dated 26.7.55, but the defendants have failed to prove the said un-registered sale deed though un-registered sale deed was brought on record, but it was neither marked as exhibit nor it was proved by examining the witnesses of the said sale deed, as such, the defendants have failed to establish the purchase of suit house by un-registered sale deed dated 26.7.55 from the plaintiff's father and the plaintiff being title-holder of the suit house being son of Duryodhan Gir was entitled for decree, which the trial Court did not grant and dismissed the suit, but the First Appellate Court granted the decree holding that the plaintiff has proved his title over the suit house.
9. In view of above-stated legal analysis, finding of fact recorded by the First Appellate Court that the plaintiff/his legal representatives

are title-holders of the suit house is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding. The substantial question of law is answered in favour of the plaintiff and against the defendants.

10. Accordingly, the second appeal being is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

11. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-