

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 64 of 2005**

1. Sundersai, S/o Shri Budu Singh Gond, Aged about 47 years,
2. Amarsai, S/o Shri Budu Singh, Aged about 44 years,
3. Kattar Singh, S/o Budu Singh, Aged about 41 years,
4. Budu Singh, S/o. Ram Singh, Aged about 70 years,
5. Jagsai, S/o Jirjodhan Gond, Aged about 55 years.

---- Appellants/Defendants**Versus**

1. Dev Kumar, S/o Late Heera Singh, Aged about 55 years, R/o Village Dhawalpur, P.S. & Tahsil Manendragarh, Dist : Korea (C.G.)
2. State of Chhattisgarh, Through Collector, Baikunthpur, Distt : Korea (C.G.)

---- Respondents/Plaintiffs.

For Appellant /Defendants	: Mr. A.S. Rajput, Advocate.
For Respondent No. 1	: Mr. Ravi Mahobia, Advocate.
For Respondent No. 2	: Ms. Anjali Singh Chauhan, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment On Board****13/08/2019**

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by the defendants states as under:

“As to whether execution of sale deed dated 23-2-1988 by Gorelal, D.W. No. 3 was proved in accordance with law when Gorelal DW-3 himself has stated before the Court that he has never sold the land under the alleged sale deed dated 23-2-1988 ?

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

(2) Plaintiff - Dev Kumar filed a suit for declaration of title, recovery of possession and permanent injunction stating *inter alia* that he has purchased the suit land bearing Khasra No. 291/1, area 3.395 hectare from Gorelal and Karan Sai by registered sale deed dated 23.02.1988 (Ex.P-5) and came in possession thereof, and Assistant Bandobast Adhikari mutated his name in the revenue records on 17.05.1990 vide Ex. P-4, as such, he was in possession of the suit land but on 27.06.1992 defendants dispossessed him from the suit premises leading to filing of the civil suit for the afore-said reliefs. Though, the plaintiff had filed an application under Section 250 of the Land Revenue Code for delivery of possession but was rejected by the revenue officer and affirmed in appeal and revision also.

(3) The defendants filed their written statement stating *inter alia* that they are successor-in-interest of Gorelal and Karan Sai and they have never sold the suit property in favour of plaintiff and, as such, the suit deserves to be dismissed and even otherwise, Gorelal was not impleaded as a party defendant in the suit.

(4) The trial Court, after appreciating the oral and documentary evidence available on record, decreed the suit holding that plaintiff has purchased the suit land by registered sale deed dated 23.02.1988 (Ex.P-5) and became owner of the suit land and he has been dispossessed forcefully by the defendants. The defendant preferred first appeal there-against. The First appellate Court after re-appreciating the oral and documentary evidence available on record, dismissed the appeal and affirmed the finding so recorded by the trial Court, against which this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants, in which, substantial

question of law has been formulated and set out in the opening paragraph of this judgment.

(5) Learned counsel appearing for the appellants/defendants would submit that Gorelal was examined as DW-3, who has categorically denied the fact of alienation of suit property in favour of plaintiff, as such, no title has been transferred in favour of the plaintiff and both the courts below have erred in granting decree in favour of the plaintiff, which is perverse and deserves to be set aside.

(6) On the other hand, Shri Ravi Mahobia, counsel for respondent No. 1 would support the judgment and decree impugned.

(7) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

(8) The plaintiff set up his title over the suit land on the basis of registered sale deed executed by Gorelal and Karan Sai in his favour on 23.02.1988 (Ex.P-5) and, thereafter, his name came to be recorded on 17.05.1990 vide Ex.P-4 by Assistant Bandobast Adhikari and he came in possession of the suit land and, thereafter, on 27.06.1992, he has been dispossessed by the defendants. It is not in dispute that Gorelal and Karan Sai had right to sell the suit property, but it is the case of the defendants that Gorelal and Karan Sai had never sold the suit property to the plaintiff.

(9) Both the courts below have relied upon the document (Ex.P-4) i.e. the order of mutation passed by the Assistant Bandobast Adhikari on 17.05.1990, in which paragraph No. 3, it has clearly been recorded that Gorelal and Karan Sai both have submitted their affidavit and even the statement of Karan Sai has been recorded, in

which he has stated that they have sold the suit land in favour of the plaintiff and they have no objection in recording the name of plaintiff in the revenue records.

(10) Gulab Singh (PW-3), one of the witness to the sale deed, has already been examined before the trial Court and also supported the fact of alienation made by Gorelal and Karan Sai in favour of the plaintiff but has held that now the plaintiff has been dispossessed from the suit land and the defendants are in possession of the same. He has been cross-examined in detail, but nothing has been brought on record to hold that Gorelal and Karan Sai had not alienated the suit property in favour of the plaintiff. Both the courts below have concurrently recorded a finding that Gorelal and Karan Sai had sold the suit property in favour of the plaintiff vide Ex.P-5, which was duly recorded in the revenue records vide Ex.P-4 by the order of Assistant Bandobast Adhikari directing mutation in favour of the plaintiff relying upon affidavit filed by the sellors and they have made no objection if the name of the plaintiff is recorded in the revenue record, as such, the concurrent finding recorded by both the courts below that Gorelal and Karan Sai has sold the suit property in favour of the plaintiff vide Ex.P-5 is a finding of fact based on material available on record in view of statement made by Gorelal (DW-3) before the Assistant Bandobast Adhikari way back on 17.05.1990 admitting the sale in favour of plaintiff, his subsequent statement in this suit cannot be relied upon to non suit the plaintiff and, as such, I do not find it either perverse or contrary to the record. Thus, the substantial question of law framed is answered in favour of the plaintiff and against the defendants.

(11) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No cost(s).

(12) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

