

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.335 of 2007**

1. Santosh Singh, S/oBhagwan Singh Chouhan, aged about 76 years, Cultivator, R/o Village Jamdih, Tehsil-Balloa Bazar, Distt. Raipur
2. Itwari, S/o Darshan Satnami, aged about 45 years, R/o Village Jamdih, Tehsil-Baloda Bazar, District Raipur (CG)

---- Appellants**Versus**

1. Devchand, S/o Mehattar Satnami, aged about 50 years,
 2. Bhagchand, S/o Mehattar Satnami, aged about 47 years
- Both R/o Village Jamdih, Tehsil-Baloda Bazar, Distt. Raipur (CG)

-----Respondents

For Appellants:	Shri Anil Singh Rajput, Advocate.
For Respondents:	None.

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

11.04.2019

1. This Appeal has been preferred by the Defendants under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the propriety of the judgment and decree dated 28.03.2007 passed by the Second Additional District Judge, Baloda Bazar, in Civil Appeal No.25-A/2006 by which, the lower appellate Court, while reversing the judgment and decree dated 12.01.2005 passed by the Additional Civil Judge, Class-II, Baloda Bazar in Civil Suit No.3-A/2003, has decreed the Plaintiffs' claim.
2. Briefly stated, facts of the case are that the Plaintiffs instituted a suit claiming declaration of title, injunction and also for possession by submitting *inter alia* that the suit property bearing Khasra No.727/1 admeasuring 0.178 hectares situated at Jamdih, Tehsil Baloda Bazar has been purchased by them under the registered deed of sale dated

18.03.1970 from one Darshan, S/o Paklu. According to the Plaint averments, the said Darshan, after alienating the suit land as such, has again sold the same to his son namely Itwari (Defendant No.2) by executing the registered deed of sale dated 31.12.1973 and who, in turn, has sold the same to Defendant No.1-Santosh Singh by executing a registered deed of sale dated 10.03.1975. It is pleaded further that the Defendants have obtained the revenue papers in their name based upon alleged sales in the year 1982 and started threatening the Plaintiffs from cultivating the land in question. The Plaintiffs have, therefore, been constrained to file the suit in the instant nature.

3. The aforesaid claim has been contested by the Defendants by stating that the suit property was purchased by Defendant No.2 - Itwari in the year 1973 from his father Darshan and has sold the same to Defendant No.1-Santosh Singh in the year 1975 and he has thus derived his title. It is contested further on the ground that after purchasing the property as such, they have obtained the revenue papers mutated in their names and the mutation order as passed was never questioned by the Plaintiffs and therefore, the suit as framed is not maintainable and barred by time.

4. After considering the evidence led by the parties, the trial Court has come to the conclusion that by virtue of registered deed of sale dated 18.03.1970 (Ex.P-6), the Plaintiffs have purchased the suit property bearing Khasra No.727/1 admeasuring 0.178 hectares from one Darshan, S/o Paklu and held further that the subsequent registered deeds of sale as executed on 31.12.1973 (Ex.D-17) and 10.03.1975 (Ex.D-18) respectively by Darshan and his son Itwari are not genuine and would not confer any

right, title or interest upon them by virtue of those sales (Ex.D-17 and Ex.D-18). It held further that the suit as framed is within time. It, however, found that the Plaintiffs are not in possession. As a consequence, the trial Court has non-suited the Plaintiffs as they failed to seek the further relief of possession.

5. Being aggrieved, the Defendants have preferred this Appeal. The lower appellate Court, in turn, has arrived at a conclusion that the Plaintiffs have acquired their valid right, title and interest by virtue of registered deed of sale dated 18.03.1970 (Ex.P-6) and observed further by relying upon *kishtbandi khatouni* B-1 (Ex.P-4) that Plaintiffs are in possession over the property in question upto 1981-82 and thereafter they were not found in possession. It held further that since the suit was filed within the period of 12 years, therefore, it is within time. In consequence, decreed the Plaintiffs' claim entitling them to obtain the possession of the suit land from the Defendants.

6. Being aggrieved, the Defendants have preferred this Appeal. Shri Anil Singh Rajput, learned Counsel for the Appellants submits that the judgment and decree as passed by the lower appellate Court reversing the finding of the trial Court by granting the decree of possession, even in absence of seeking the relief of possession, is apparently contrary to law.

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

8. The Plaintiffs have instituted the suit on the strength of the registered deed of sale executed by one Darshan, S/o Paklu in their favour on 18.03.1970 (Ex.P-6). In order to establish the said fact, the Plaintiffs have produced not only the said registered deed of sale but also the

relevant revenue papers and a bare perusal of it would show that the property in question bearing Khasra No.727/1 admeasuring 0.178 hectares was purchased by them from said Darshan on 18.03.1970. Since the property was already purchased by the Plaintiffs as such, therefore, the further alienation of the suit land as reflected from the registered deeds of sale dated 31.12.1973 (Ex.D-17) and 10.03.1975 (Ex.D-18) would, therefore, not confer any right, title or interest upon the Defendants. In view of the said fact, the Courts below have not committed any illegality in holding that the Plaintiffs have acquired their valid interest upon the suit land much prior to those sales (Ex.D-17 & Ex.D-18). As regards the contention of Shri Rajput, learned Counsel for the Appellants that since the Plaintiffs have not claimed the relief of possession, the claim is liable to be rejected as held by the trial Court, the same is however noted to be rejected as it appears from the Plaint averments, particularly paragraphs-11 and 13(c) that the Plaintiffs have not only claimed the relief of possession but has paid the requisite Court fee also. The lower appellate Court has, therefore, not committed any illegality in reversing the findings of the trial Court while granting the decree of possession to the Plaintiffs.

9. In view of the foregoing 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