

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 4-2-2019

Judgment delivered on 28-02-2019

FA No. 19 of 2003

- Daneshwar Chandrakar, son of Shri Fekeerchand Chandrakar, resident of village Santara, Tahsil Patan, District Durg (died through following LRs).

1(a) Smt. Manvi Chandrakar w/o. Late Shri Daneshwar Chandrakar, abged about 50 years.

1(b) Smt. Kalpana Chandrakar w/o. Shri Rajesh Chandrakar, aged about 29 years, r/o. Ward No.18, Naharpar, Mahasamund, Dist. Mahasamund (CG).

1(c) Tikendra Chandrakar s/o. Late Shri Daneshwar Chandrakar, aged about 27 years.

Appellants (a) to (c) are residents of village Santara, Tahsil Patan, District Durg (CG).

---- Appellants

Versus

1. Smt. Vedbati Chandrakar, wife of Shri Ramkrishna Chandrakar.
2. Kumari Bhichha Chandrakar, d/o. Shri Ramkrishna Chandrakar.
3. Ramkrishna Chandrakar, s/o. Shri Fekeerchand Chandrakar
All residents of village Santara, Tahsil Patan, Dist. Durg (CG).
4. State of Chhattisgarh through Collectr, Durg (CG).

---- Respondents

For appellants : Mr. R.K. Pali, Advocate.

For respondents : None
No.1 to 3

For State : Mr. Afroz Khan, Panel Lawyer

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 2-9-2003 passed by the First Additional District Judge, Durg (CG) in Civil Suit No. 7A/2002 wherein the said court dismissed the suit filed by the original appellant/plaintiff - Daneshwar Chandrakar for declaring that the sale deed executed on 25-3-1996 in favour of respondent No.2/defendant is not binding on him/permanent injunction is dismissed which is related to land Survey No. 1315 measuring about 0.83 hectare situated at village Santara Tahsil Patan, District Durg, MP now CG.

2) As per version of appellants/plaintiffs side, late Dhaneshwar Chandrakar appointed respondent No.1 Smt. Vedbati Chandrakar as his Attorney for care of the land in dispute. On 24-3-1996 he got knowledge by one Patwari that respondent No.1 has taken copy of record of right for the purpose of execution of sale deed. As the original plaintiff had not given any right or permission for execution of sale deed, he filed objection before the Deputy Registrar, Patan, Dist. Durg on 25-3-1996, but respondent No.1 executed sale deed in favour of respondent No.2 for the land in question.

3. As per version of the respondents, the said plaintiff had taken loan of Rs.63,000/- @ 2% interest per annum on 2-10-1995 and for return of the loan amount, the original plaintiff permitted respondent No.1 for sale of the land that is why sale deed was executed for which consideration was already received, therefore, sale deed is binding on the appellants.

4) Learned counsel for the appellants would submit as under:

- i) Appellant borrowed a sum of Rs.63,000/- on 20-10-1995 from respondent No.3 namely Ramkrishna Chandrakar @2% interest per month. The amount was returned, therefore, sale deed for the said amount in favour of respondent No.2 is without consideration and it is not binding on the appellant.
- ii) Appellant gave Power of Attorney to respondent No.1 for taking care of land belonging to the appellant and was not authorised to execute the sale deed in favour of respondent No.2.
- iii) No Special Power of Attorney is granted to respondent No.1 by the appellant, therefore, recital in the sale deed of the same and sale deed is executed on the basis of special Power

of Attorney, is without substance.

- iv) It is mentioned in the sale deed and it is executed for meeting the expenses of house hold while the appellant had no occasion to take money for household purpose.
- v) After executing the sale deed and after having knowledge about the said sale deed, Power of Attorney granted to respondent No.1 is cancelled as per Ex.P/1.
- vi) The appellant did not permit respondent No.1 to execute the sale deed of his land, therefore, same is not binding on the appellants.

5) On the other hand, learned counsel for the respondents would submit that the said appellant has permitted respondent No.1 to execute the sale deed and on the basis of Power of Attorney given by original appellant the sale deed was executed for which consideration was already received by the said appellant, therefore, finding of the trial court is not liable to be interfered with.

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

7) PW/1 Dhaneshwar Chandrakar deposed before the trial court that he borrowed a sum of Rs.63,000/- from respondent No.3. Though he deposed that he returned the amount but he admitted that he is not having any receipt of return of the amount to respondent No.3. From the evidence, it is clear that original appellant/ PW/1 is a graduate therefore, his version was not accepted by the trial Court that he did not execute the Power of Attorney in favour of respondent No.1 for execution of sale deed. Once it is proved that original appellant was debtor of respondent No.3 and he permitted respondent No.1 to execute the sale deed, the act done by respondent No.1 will be said to be act of the original appellant and therefore, the trial Court opined that it is the original appellant who executed the sale deed through his Attorney and sale deed is binding on him. The finding of the trial court is based on proper marshaling of oral and documentary evidence.

8) After re-assessing the entire evidence, this court has no reason to substitute contrary finding, therefore, the appeal is liable to be dismissed.

9) Accordingly decree is passed in favour of the respondents and against the appellants as under:

- (i) The appeal is dismissed.
- (ii) Parties to bear their own cost.

- (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