

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.716 of 1997

Thetha Ram since dead, through L.Rs.

1(a) Mst. Jalkunwar alias Purenhin, widow of Thetha Ram, Mowar, aged 70 years

1(b) Ghasia alias Ghasi Ram (Died) Through Legal Heirs

1. Bhuri Bai, wd/o Ghasi Ram, aged 55 years.

2. Sudarshan, S/o Ghansi Ram, aged 32 years.

3. Gavendra (Died) Through Legal Heirs

3 (1) Smt. Suvanti, Wd/o Late Shri Gavendra, aged 35 years,

3 (2) Sagar, S/o late Shri Gavendra, aged about 15 years, Minor through natural guardian: Smt. Suvanti, Wd/o Late Shri Gavendra, aged about 35 years.

Both above R/o Village Bhedikona, Tahsil Dhabra, District Janjgir-Champa (C.G.)

4. Onkar Singh, S/o Ghasi Ram, aged 28 years.

5. Dev Singh, S/o Ghasi Ram, aged 26 years.

6. Shailendrai Bai, D/o Ghasi Ram, aged 15 years, minor through guardian mother Bhuri Bai.

All R/o Village Bhedikona, Tah. Dabhara, District Bilaspur (C.G.)

(Defendants)

---- Appellants

Versus

Amrit Lal, since dead, through L.Rs.

1. Mst. Ram Kumari (Died and deleted)

2. Suresh Kumar, S/o Amrit Lal, aged 30 years.

3. Poonam Chand alias Pooram Chand, aged 20 years.

All R/o Village Bhedikona, Tah. Dabhara, District Bilaspur, M.P.
(now C.G.)

(Plaintiffs)

4. Ghasneen (Died and deleted)

(Defendant 1(c))
---- Respondents

For Appellants: Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.
For Respondents No.1 to 3: -
Mr. Malay Shrivastava and Mr. Prateek Kumar Singh,
Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

07/01/2019

1. The substantial questions of law involved, formulated and to be answered in the defendant's second appeal are as under: -

“1. Whether the appeal Court acted in excess of jurisdiction in upholding sales Ex.P-1 and Ex.P-2 and the rent note Ex.P-5 without meeting the reasonings of the trial Court?

2. Whether the sale Ex.P-1 and Ex.P-2 are void as hit by section 165(6) of the MPLR Code 1959 without prior permission from the Collector?”

2. In a claim for eviction from a house at mouza Bhedikona, Tahsil Dabhara, District Bilaspur and for arrears of rent of ₹ 2,700/- at ₹ 75/- per month, the trial Court dismissed the suit finding inter alia that it has not been proved that the defendant sold the suit house in favour of the plaintiffs under two registered sale deeds, both dated 23-6-1976 (Exs.P-1 & P-2) for ₹ 9,000/- and ₹ 6,000/-, respectively nor the plaintiffs were put in possession thereof, as no consideration has been paid to the defendant and there is great variance as to when and if at all the plaintiffs were put in possession as deposed by Amritlal (PW-1), Kashi Prasad (PW-5) & Lokeshwar (PW-6) and the sale was incomplete for essentials under Section 54

of the Transfer of Property Act were not adhered to. It was further held that it is not proved that Ex.P-5 is a rent-note or lease and the defendant had ever paid rent thereunder. Therefore, the plaintiffs are not entitled for eviction and arrears of rent. The trial Court further recorded a finding that Exs.P-1 & P-2 are not hit by Section 165(6) of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') for there is no material that the defendant, Mowar by caste, is aboriginal tribe notified under Section 165(6) of the Code. In appeal preferred by the plaintiffs, the first appellate Court did not agree with the findings of the trial Court and upheld the sale Ex.P-1 & P-2 and further upholding the rent-note Ex.P-5 claim for eviction and arrears of rent has been decreed against which this appeal under Section 100 of the CPC has been preferred and substantial questions of law have been framed which have been set-out in the opening paragraph of this judgment.

3. Mr. Manoj Paranjpe, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in setting aside the well reasoned finding of the trial Court. The sale if hit by Section 165(6) of the Code has been left undetermined. As such, Mowar is notified aboriginal tribe under Section 165(6) of the Code by prohibiting sale without permission of the Collector. He would further submit that the first appellate Court is absolutely unjustified in upholding sale Exs.P-1 & P-2 and rent-note Ex.P-5 as such, the judgment & decree of the first appellate Court are liable to be set aside.

4. Mr. Malay Shrivastava, learned counsel appearing for the plaintiffs /

respondents No.1 to 3, would support the impugned judgment & decree.

5. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.

Answer to substantial question of law No.2: -

6. On the pleadings of the parties, the trial Court has clearly held that Exs.P-1 & P-2 are not hit by Section 165(6) of the Code, as there is no material that the defendant is Mowar by caste which is an aboriginal tribe notified under Section 165(6) of the Code. The said finding has attained finality as it was not challenged by the defendant by either filing appeal or cross-appeal before the first appellate Court and that finding of the trial Court on such issue has become final and the defendant now cannot be permitted to raise an issue which has become final and, therefore, in this second appeal, no such question arises for determination as such, it is answered accordingly, as the finding has attained finality. Even otherwise, the said finding is a finding of fact based on the material available on record having no perversity.

Answer to substantial question of law No.1: -

7. It is the case of the plaintiffs that they have purchased the suit house by two sale deeds Exs.P-1 & P-2 both dated 23-6-1976 for ₹ 9,000/- and ₹ 6,000/-, respectively and they were put in possession of the suit land which the defendant denied. The trial Court held that no consideration has been paid to the defendant and there is great variance as to when and if at all the plaintiffs were put in possession relying upon the deposition of Amritlal (PW-1), Kashi

Prasad (PW-5) & Lokeshwar (PW-6) and dismissed the suit which has not been found favour with by the first appellate Court and the first appellate Court held that sale has been made vide Exs.P-1 & P-2 by the defendant in favour of the plaintiffs. Plaintiffs No.1 & 2 purchased the suit land by sale deed Ex.P-2 and plaintiff No.3 purchased by sale deed Ex.P-1.

8. In order to decide the said question, it would be appropriate to notice the written statement filed by the defendant in which in paragraph 3, the defendant has only stated that the market value of the suit house is only ₹ 50,000/- and for which one Khemlal was ready and willing to purchase though the registered sale deed has been executed by the defendant in favour of the plaintiffs, but that has been obtained deceitfully / fraudulently. Thereafter, nothing has been stated about the particulars of fraud, even it has not been alleged in the written statement that no consideration has been paid to the defendant or there is dispute as to the date of handing-over of possession of the property to the plaintiffs. The written statement is blissfully silent except make self-serving statement that the sale deed was executed by playing fraud. The defendant claiming that sale deed has been obtained by fraud was required to make specific pleading that defendant never intended to transfer the suit land in favour of the plaintiffs and no consideration was paid and possession was never handed-over to the plaintiffs in pursuance of the said sale deed and contrary to the recitals made in the sale deed. This pleading is absolutely lacking in the written statement filed by the defendant before the trial Court.

9. Sale deed was executed in presence of Dorilal and Lakhanlal. Dorilal has been examined as PW-2. He has clearly stated that he was called as witness to the sale deed and he has signed Exs.P-1 & P-2 as a witness. During the cross-examination nothing has been elicited from the said witness to the sale deed about the fraud allegedly played by the plaintiffs with the defendant.
10. Lakhanlal (PW-4) has also been examined who has also supported the execution of sale deed in favour of the plaintiffs by the defendant and nothing has been put to him to say that the sale deed was ever obtained by playing fraud.
11. The Supreme Court in the matter of Vidhyadhar v. Manikrao and another¹ while considering Section 54 of the Transfer of Property Act held that even if the whole of the price is not paid, but sale deed is executed and thereafter registered, if the property is of value of more than ₹ 100, the sale would be complete. It was held as under:-

“36. The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of whole of the price at the time of the execution of sale deed is not sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100/-, the sale would be complete.

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37. There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect and the title would pass under that transaction. To cite only a few, in *Gyatri Prasad v. Board of Revenue*², it was held that non-payment of a portion of the sale price would not effect validity of sale. It was observed that part payment of consideration by vendee itself proved the intention to pay the remaining amount of sale price. To the same effect is the decision of the Madhya Pradesh High Court in *Sukaloo and Anr. v. Punau*.

38. The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in presenti or in future. The intention is to be gathered from the recital in the sale deed, conduct of the parties and the evidence on record."

12. In view of the above-stated legal position and the finding recorded by the first appellate Court, I am of the considered opinion that the said Court is absolutely justified in holding that by virtue of sale Exs.P-1 & P-2 made by the defendant in favour of the plaintiffs, title has been passed in favour of the plaintiffs and I do not find any perversity or illegality in the said finding.
13. Now coming to Ex.P-5, the rent-note which has been upheld by the first appellate Court, Ex.P-5 is the rent note executed by the defendant in favour of the plaintiffs on monthly rent of ₹ 75/- and which has been proved by Amritlal (PW-1) & Kashi Prasad (PW-5). The first appellate Court has rightly held that the rent-note has been proved that the defendant is the tenant and possession was handed-over by the defendant to the plaintiffs and as such, the defendant is said to be in the suit accommodation as a tenant. The said finding is also based on the evidence available on record and I do not find any illegality or perversity in the said finding.

14. Both the substantial questions of law are answered against the defendant and in favour of the plaintiffs. Thus, as a result of the aforesaid discussion, the second appeal as framed and filed is dismissed. No order as to cost(s).

15. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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