

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 714 of 2003

Gaind Ram Sen S/o Siyaram Sen Aged About 52 Years Cultivator And Resident Of Village - Mudpar, Tahsil Baloda Bazar (Now Palari), In The District Raipur Chhattisgarh. (Plaintiff), District : Raipur, Chhattisgarh

---- Appellant

Versus

1. Jhadu Ram (Died) Through LRs:

1(A). Tirith Ram S/o Late Jhadu Ram Sen Aged About 69 Years R/o Kotara Talab, Raipur Chhattisgarh., District : Raipur, Chhattisgarh

1(B). Ramkhilawan S/o Late Jhadu Ram Sen Aged About 62 Years R/o Village - Sangi - Mudpara, Post - Mudpara, P.S. Pallari, District Baloda Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

1(C). Kumbhakaran Sen S/o Late Jhadu Ram Sen Aged About 46 Years R/o Village - Sangi - Mudpara, Post - Mudpara, P.S. Pallari, District Baloda Bazar Bhatapara Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

2. State Of Chhattisgarh Through The Collector, Raipur, District Raipur. (Defendants), District : Raipur, Chhattisgarh

---- Respondents

For Appellant/Plaintiff : Shri Hemant Gupta, Advocate

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Judgment On Board

27/11/2019

1. This second appeal was filed in the year 2003. It was dismissed for want of prosecution on almost four occasions and finally restored.
2. As no question of law has been framed, this appeal is heard on admission.
3. Learned counsel for the appellant argues that the Courts below committed gross and patent illegality and perversity in recording a finding against the appellant-plaintiff and in favour of respondent-defendant that the plaintiff failed to prove valid acquisition of title in his favour in respect of the land in dispute. Learned counsel for the appellant argues that the plaintiff's case that he had purchased the disputed property in the year 1960-65 from Udal has been disbelieved by completely ignoring clinching

and reliable evidence not only of the plaintiff GainDRAM (PW1) but also of the vendor Udal (PW2) who has clearly deposed in his evidence that he sold the disputed property in favour of plaintiff- GainDRAM for a sale consideration of Rs.90/-. The learned Courts below also completely misdirected in relying upon the evidence of defendant's witnesses and receipt of Rs.240/- (Ex.D-3) and in relying upon defendant's version that defendant had purchased the property in dispute for consideration of Rs.240/- from his brother Udal because the sale consideration being more than Rs.240/-, defendant could not have acquired title in respect of the property in dispute in absence of there being a registered sale deed. Learned counsel for the appellant also argues that the Courts below wrongly decided the issue of possession also. According to him, the evidence of Udal ought to be given precedence over the evidence of defendant because, admittedly, the property originally belonged to Udal and the question which fell for determination of the Courts below was whether property was validly sold to the plaintiff in 1960-65 or to the defendant in the year 1956. As the sale consideration in case of plaintiff was less than Rs.100/-, he did not require any registration whereas in case of defendant, no title would pass in favour defendant unless sale is effected by a registered sale deed.

4. Both the Courts below have recorded concurrent finding of fact against the plaintiff and in favour of defendant. The plaintiff's case of he having purchased the land in dispute from Udal has been disbelieved after close scrutiny of evidence of GainDRAM (PW1) as well as Udal (PW2). Learned lower appellate Court has scrutinized evidence of these witnesses in para 10-18 of its judgment. In order to disbelieve the evidence of GainDRAM (PW1), learned Court below has taken into consideration the admission of GainDRAM that he has not given any description of the land which was purchased by him from Udal. Learned lower appellate Court also disbelieved his evidence upon consideration that the evidence is at variance with the pleading with regard to sale and purchase. Even though registered sale deed was not a requirement of law, the Court below, while assessing the evidence, has also taken into consideration that plaintiff's case of he having acquired valid acquisition of title is not based on any document.

5. The Court below has also taken into consideration a receipt (Ex.D-3) which admitted to have been signed by Udal (PW2) in his evidence. According to defendant, it was the receipt towards sale of property in his favour whereas according to Udal (PW2), it was only a loan transaction which was, later on, repaid. Learned lower appellate Court has also taken into consideration that the plaintiff and Udal has failed to produce any document of acknowledgment of re-payment of the money.

Learned Courts below have recorded concurrent finding with regard to possession of the property also. According to Court below, it is the defendant who is in possession of the property since long and not the plaintiff. The evidence in this regard has been analyzed and taking into consideration that the plea of plaintiff having constructed house is not reliable and that the defendant had led reliable evidence regarding construction of house, Courts below have preferred to rely upon evidence of defendant with regard to construction of house. Plaintiff's case that he is in possession has been found to be not supported from any material evidence and the learned lower appellate Court has considered that plaintiff has failed to prove any reliable document also from 1965 till 1979 and the revenue documents are relating to period after 1979 and not before that.

6. In the considered opinion of this Court, the finding recorded by the Courts below that the plaintiff failed to prove the title in respect of property in dispute and that property since long has remained in possession of the defendant does not suffer from any patent illegality or perversity and, therefore, no substantial question of law arises for consideration in the case.
7. The appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge