

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 02.05.2019****Judgment delivered on 21.6.2019****First Appeal No.142 of 2015**

- Premlal Halwai S/o Late Yashwant Lal Halwani Aged About 75 Years R/o Frezerpur, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh

---- Appellant**Versus**

1. Smt. Lilawati Dandwani W/o Meghraj Dandwani Sindhi Aged About 73 Years R/o Kewramunda Ward, Jagdalpur, P.S. Jagdalpur Distt. Bastar Chhattisgarh
2. Risabh Jain S/o Late Khubchand Jain Aged About 56 Years R/o Sadar Ward, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh
- 3a. Sushila Devi W/o Late Gendlal Aged About 69 Years R/o Sh. Laldhar Gupta Sweets Of Station Road, Chhindwada, P.S. Chhindwada, Distt. Chhindwada, M.P.
- 3b. Amit Kumar S/o Late Gendlal Aged About 45 Years R/o Sh. Laldhar Gupta Sweets Of Station Road, Chhindwada, P.S. Chhindwada, Distt. Chhindwada, M.P.
- 3c. Ashish Kumar S/o Late Gendlal Aged About 43 Years R/o Sh. Laldhar Gupta Sweets Of Station Road, Chhindwada, P.S. Chhindwada, Distt. Chhindwada, M.P.
4. Ruplal S/o Late Yashwant Lal Halwani Aged About 85 Years R/o Mahadev Ghat Para, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh
5. Gopal S/o Late Yashwant Lal Halwai Aged About 65 Years R/o Mahadev Ghat Para, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh
6. Smt. Asha Gupta W/o Late Mohan Lal Gupta Aged About 45 Years R/o Mahadev Ghat Para, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh
7. Manish Kumar Gupta S/o Late Mohan Lal Gupta Aged About 30 Years R/o Mahadev Ghat Para, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh
8. Rohit Gupta S/o Late Mohan Lal Gupta Aged About 28 Years R/o Mahadev Ghat Para, Jagdalpur, P.S. Jagdalpur, Distt. Bastar Chhattisgarh

---Respondents

For the appellants : Shri BP Gupta, Advocate
For respondent No.2 : Shri Goutam Khetrapal, Advocate
For respondents 3(a) to 3(c) : Shri Ravish Verma and Shri
Tarun Dansena, Advocates.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against judgment and decree dated 21.01.2015 passed by Second Additional District Judge, Jagdalpur (CG) in a Civil Suit No.4A/2014 wherein the said Court declared the sale deeds dated 18.01.2001 and 25.01.2001 respectively as null and void in respect of suit property bearing Sheet No.77 plot No.106/1 total area 1903 sq.ft. executed by respondent No.1/defendant No.1 Leelawati in favour of respondent No.2/defendant No.2 Rishabh Jain and ordered to deliver possession of the property to heirs of Gendlal who are respondents 3a to 3c namely Smt. Sushila Devi, Amit Kumar and Ashish Kumar within two months. The trial Court further decreed that the appellant/plaintiff has no locus standi over the suit property therefore, he is not entitled for vacant possession of the property in question, or any kind of injunction or interim compensation.

2. The appellant/plaintiff filed suit for declaration/injunction/possession and interim compensation against respondents 1 & 2. Later on other respondents were also added in the said suit. It is submitted on behalf of the appellant

that the suit land is the ancestral and undivided joint family property of the appellant along with respondents 3 to 8. Previously the suit land was sold to respondent No.1 and sale deed made in favour of respondent No.1 was challenged by one of the brothers namely Gendlal and his sister Uma Bai submitting that the suit property is undivided joint property which cannot be sold unilaterally. The suit filed by Gendlal was decreed and sale deed was declared null and void by the Court of District Judge, Jagdalpur in Civil Suit No.11A.1982 vide judgment/decreed dated 31.01.1986. An appeal was preferred against the judgment/decreed of the Court of District Judge before the High Court of Madhya Pradesh at Jabalpur which was registered as FA No.42/1986 and the same was dismissed vide judgment dated 19.02.1999.

3. It is pleaded on behalf of the appellant that decree nullifying the sale deed was passed against respondent No.1, but respondent No.1 sold said property to respondent No.2 which is null and void. Therefore, respondent No.2 has no right or authority over the suit property. The trial Court dismissed the suit of the appellant holding that he has no locus standi to file suit which is under challenge.

4. Learned counsel for the appellant submits as under:

(i) As the sale deed executed in favour of Leelawati was declared null and void in previous suit by the Court of District Judge, and appeal against which dismissed by the Hon'ble the

High Court of Madhya Pradesh, Leelawati had no right to alienate the property in favour of respondent No.2. The total area of the property is 1903 sq.ft. and area 903 sq.ft. was sold to respondent No.2 for consideration of 45,000/- and remaining 1000 sq.ft was again sold to respondent No.2 by Leelawati for consideration of Rs.30,000/-.

(ii) The property is joint property in which appellant Premlal is one of the brother of Gendlal having share therefore, Gendlal is not the sole owner of the property and Premlal has all the right to challenge the said transaction of property sold by Lilawati.

(iii) Once the sale deed is declared null and void, the suit filed by the appellant is maintainable, therefore, finding of the trial Court that the appellant has no locus standi is not proper.

5. Learned counsel for respondents 3a to 3c submits as under:

(i) The right of appellant Premlal is already decided in previous Suit No.11A/1982 vide judgment dated 31.01.1986 and appeal against the decree is also dismissed therefore, Premlal is having no right over the property in question and the trial Court is right in holding that the appellant has no locus standi to file suit.

6. Learned counsel for respondent No.2 submits as under:

(1) Respondents 3a to 3c did not file any written statement as well as cross suit which is provided under Order 8 Rule 6A of the CPC. The trial Court passed decree in favour of respondents 3a to 3c without there being any plea or any relief

sought by them. None of the issue is related to respondents 3a to 3c, therefore, the trial Court exceeded its jurisdiction in passing the decree in favour of respondents 3a to 3c regarding the delivery of possession to said respondent by respondent No.2 which is not sustainable.

7. The first question for consideration before this Court is whether respondent No.1 Lilawati had any right to alienate the property in question in favour of respondent No.2 Rishabh Jain. Lilawati was party in Civil Suit No.11A/1982 decided by the District Judge, Jagdalpur on 31.01.1986. In that suit it is decreed that sale deed executed in favour of Leelawati is null and void and it is further decreed that the property in question belongs to Gendlal whose successors are respondents 3a to 3c in the present case. Appeal was preferred against said decree which was also dismissed. Once the issue is settled, respondent No.1 Lilawati had no right to alienate the property because she was not the owner of the property and when she had no right over the property the purchaser cannot get any right over the property. The trial Court has elaborately discussed the entire evidence and recorded finding that the sale deed executed by respondent No.1 Lilawati in favour of respondent No.2 Rishabh Jain is null and void. After reassessing the entire evidence, this Court has no reason to record a contrary finding. Therefore, respondent No.2 got nothing from the sale deed executed by Lilawati.

8. The second question for consideration before this Court is whether the appellant had any locus standi to file the suit for

declaring right over the property. It appears from the judgment that on 31.01.1986 the appellant was the party in that suit. In the said suit it is decided that only Gendlal had right over the property and the appellant Premalal had no right over the property. The finding was confirmed by the High Court of Madhya Pradesh which attains finality. Therefore, Premlal had no right over the property. The trial Court has discussed the entire evidence and recorded finding that the appellant having no right had no locus standi to file the suit. After reassessing the entire evidence, this Court has no reason to record a contrary finding because issue of title is already decided in previous suit which is final and binding on him.

9. Learned counsel for respondent No.2 submits that no cross suit was filed by respondents 3a to 3c and they sought no relief before the trial Court, therefore, order directing delivery of the possession to them by respondent No.2 is without jurisdiction. In view of this Court, the trial Court has not decided the issue of title of respondents 3a to 3c. The issue was already decided in previous suit. These respondents are the successors of Gendlal in whose favour the decree was passed and the same attains finality because the same was confirmed in the appeal. Therefore, respondents 3a to 3c were not required to plead any relief or to file any cross suit before the trial Court. They being the legal representatives of Gendlal are title holders of the property in question and respondent No.2 had no right over the property who is in possession of the property, therefore, the trial Court is right

in directing respondent No.2 to deliver the possession of suit property to respondents 3a to 3c to do complete justice in the case. Arguments advanced on behalf of respondent No.2 as well as the appellant are not sustainable in the facts and circumstances of the case and the appeal filed by the appellant is liable to be dismissed.

10. Accordingly, decree is passed against the appellant and respondents 1 & 2 and in favour of respondent 3a to 3c as under:

- (i) The appeal is dismissed with cost.
- (ii) The parties to bear their own cost.
- (iii) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-
(Ram Prasanna Sharma)
JUDGE