

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.246 of 2002**

1. Paluram S/o Rameshwar, Aged About 38 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, Chhattisgarh
2. Shyam Prasad S/o Rameshwar, Aged About 27 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
3. Shashi Kumar S/o Rameshwar, Aged About 24 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
4. Sambhu S/o Rameshwar, Aged About 21 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
5. Rukmani W/o Rameshwar, Aged About 50 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
6. Bhuneshwar S/o Jagmohan, Aged About 35 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
7. Bhuwan S/o Jagmohan, Aged About 32 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
8. Sarweshwar S/o Jagmohan, Aged About 30 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
9. Subhash S/o Jagmohan, Aged About 25 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh
10. Chandra Deo S/o Jagmohan, Aged About 25 Years Caste Roniyar Vaisya, R/o Village Belgaon, Police Station- Sitapur, Tahsil- Sitapur, District- Surguja, ChhattisgarhPlaintiffs, District : Surguja (Ambikapur), Chhattisgarh

---- Appellants/Plaintiffs**Versus**

1. Bhukha Dead Through Lrs Through Collector, District- Sarguja, ChhattisgarhDefendants
 - 1.1 - Dubraj S/o Late Bhukha Ram, Aged About 25 Years R/o Village Hardisand, Police Station And Post Seetapur, Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh
 - 1.2 - Dhuran Ram S/o Late Bhukha Ram, Aged About 35 Years R/o Village

Hardisand, Police Station And Post Seetapur, Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

- 1.3 - Naihar Ram S/o Late Bhukha Ram, Aged About 32 Years R/o Village Hardisand, Police Station And Post Seetapur, Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh
- 1.4 Gajraj S/o Late Bhukha Ram, Aged About 30 Years R/o Village Hardisand, Police Station And Post Seetapur, Tahsil Seetapur, Civil And Revenue District Surguja, Chhattisgarh

1.5 - Soharai Ram Dead Through Lrs

- 1.6 - Lagin Bai Wd/o Late Soharai Ram Aged About 45 Years R/o House No. 157, Village And Post Pidiya, Tahsil Kartala, District- Korba, Chhattisgarh
2. State Of Chhattisgarh, Through Collector, District- Surguja, ChhattisgarhDefendants, District : Surguja (Ambikapur), Chhattisgarh

---- **Respondents/Defendants**

Present:-

Shri Prasoon Agrawal, Advocate for appellants.

Smt. Fouzia Mirza, Additional Advocate General for respondent No.2-State.

None appears for other respondents, despite service of notice.

Single Bench : Hon'ble Shri Justice Manindra Mohan Shrivastava

JUDGMENT

04/09/2019

Heard.

1. This second appeal arises out of the impugned judgment and decree dated 24-04-2002 passed by the Second Additional District Judge, Ambikapur, Surguja in Civil Appeal No.7-A/2002, by which, the learned lower appellate Court has reversed the judgment and decree dated 12-08-1991 passed by the learned Trial Court in Civil Suit No.25-A/1991.

2. This appeal was admitted for hearing on 17-08-2016 on the following substantial question of law:-

“Whether the first appellate Court is justified in reversing the well reasoned finding of the trial Court regarding recording a perverse

finding particularly with regard to purchase of suit land by plaintiffs?”

3. The appellants-plaintiffs filed a suit seeking declaration, possession and permanent injunction in respect of the property in dispute on the pleadings, inter alia, that the properties in dispute were purchased by him by three registered sale deeds dated 15-03-1954, EX.P-1, 15-03-1954, Ex.P-2 and 29-03-1962, Ex.P-3 from Bhukha, Hari Sai and Bhukha respectively and on the basis of those sale deeds, the plaintiffs acquired title over the disputed lands. Further case of the plaintiffs was that later on, the defendant-Bhukha started interfering with their possession not only in respect of those properties, which were sold by Bhukha under two registered sale deeds, Ex.P-1 & Ex.P-3, but also in respect of those properties, which were sold to the plaintiffs by Hari Sai vide Ex.P-2. According to the plaintiffs, one of the seller Hari Sai, brother of Bhukha never disputed it. It is only Bhukha, the defendant, who was not only denying title of the plaintiffs, but also disturbing their possession, which led to initiation of proceedings under Section 145 of Cr.P.C. and various orders passed, giving rise to cause of action for the plaintiffs to file a suit seeking reliefs prayed therein.

4. The case of the defendant-Bhukha, as stated in the written statement, is that he neither sold his property to the plaintiffs, nor his brother-Hari Sai had sold his property. In the written statement, it was stated by defendant-Bhukha that he had taken loan from Jagmohan Sao and Jagmohan Sao, acting fraudulently, taking undue advantage of defendant being illiterate and villager, attempted to grab his property. According to the defendant, he had mortgaged his property with Jagmohan Sao.

5. On the basis of the pleadings of the parties, learned trial Court framed as many as 12 issues including additional issues from time to time. The first and

fourth issue was whether the plaintiffs acquired title by virtue of sale deed or whether it was a case of transaction of mortgage.

6. The learned trial Court recorded finding that the plaintiffs had acquired valid title in respect of the property in dispute by virtue of three registered sale deeds. That properties were mortgaged and the transaction was essentially that of mortgage, could not be proved by the defendant. The learned trial Court also recorded a finding that the plaintiffs did not seek any relief against Hari Sai and his sons. From plaint allegations, the plaintiffs had no cause of action against Hari Sai or his sons, in so far as the land, which is subject matter of sale deed, Ex.P-2 is concerned and the defendant witnesses have clearly stated that as far as Hari Sai and his sons are concerned, they are not raising any dispute and that the plaintiffs cause of action is only against the defendant-Bhukha, brother of Hari Sai. On the issue whether Hari Sai was also a necessary party in the suit, learned trial Court recorded a finding that the plaintiffs have neither sought any relief against Hari Sai nor have stated in the plaint that Hari Sai has disputed the plaintiffs title over the land, which is subject matter of sale by Hari Sai to the plaintiff vide Ex.P-2.

7. Aggrieved by the judgment and decree passed by the learned trial Court, the defendant filed an appeal before the learned lower appellate Court. The learned lower appellate Court, while reversing the judgment and decree passed by the learned trial Court, held that the registered sale deeds could not be duly proved by the plaintiffs and they are suspicious documents. On the basis of such finding, the learned lower appellate Court dismissed the suit of the plaintiffs.

8. On the substantial question of law, learned counsel appearing for the appellants would argue that the plaintiffs case is based on three registered sale

deeds. The defendant-Bhukha did not come out with any specific case of transaction essentially being that of mortgage or outright sale. The defendant-Bhukha has not given any specific details in the written statement regarding date, time and the amount of so-called loan or against repayment of loan, the property was allegedly mortgaged by the defendant. He would argue that once there is registered sale deed, which has not been challenged by the defendant, but it has only challenged as a sham transaction as being transaction of mortgage and not of outright sale, burden was on the defendant to prove that it was essentially a transaction of mortgage and that the sale itself were sham transactions. It is next submitted by learned counsel for the appellants that the learned lower appellate Court perversely acted in recording a finding that the sale deeds were suspicious and that the defendant did not dispute execution of three registered sale deeds, but has stated that these deeds were not transaction of outright sale, but only intended as security towards repayment of loan. The defendant having failed to raise any specific pleading much less specific evidence doubting execution of sale deed, which is not in dispute, the learned lower appellate Court committed patent illegality in reversing the judgment and decree passed by the learned trial Court. It is also argued that lower appellate Court committed patent illegality that without impleading Hari Sai as a party, no relief could be sought in respect of the property purchased by the plaintiffs from Hari Sai vide Ex.P-2, in as much as the plaintiff did not seek any relief against Hari Sai, because according to the plaintiff, in so far as property being subject matter of the sale deed Ex.P-2 is concerned, Hari Sai or his sons never raised any dispute, but cause of action to seek declaration arose, as the defendant Bhukha was not only interfering with the plaintiffs possession over the lands, which are subject matter of sale by Bhukha in favour of the plaintiffs vide sale deeds Ex.P-1 & P-3, but also interfering plaintiffs

possession in respect of the land comprised and subject matter of sale vide Ex.P-2, purchased by the plaintiffs from Hari Sai. Therefore, at the most, it could be held that Hari Sai could at the most be a proper party, but was not a necessary party.

9. On the other hand, learned counsel for the respondent No.2-State would submit that as this was a dispute between the private respondents, the State would not take any specific stand in this appeal.

10. Other respondents have not appeared before this Court, despite service of notice including publication of notice in the newspapers.

11. The pleadings of the plaintiff, as contained in the plaint, are that the plaintiffs had purchased three sets of properties. The details of sale are that vide sale deed dated 15-03-1954, Ex.P-1, the plaintiffs purchased the land from the defendant-Bhukha for a consideration of Rs.380/-. Another piece of land was purchased on 15-03-1954 vide Ex.P-2 from Hari Sai for a consideration of Rs.300/-. Vide Ex.P-3, registered sale deed dated 29-03-1962, lands were purchased from Bhukha for a total consideration of Rs.1400/- by Jagmohan Sao and after his death, the plaintiff succeeded to the property. According to the plaintiffs, the plaintiffs, after purchasing the aforesaid three sets of land from Bhukha and Hari Sai, came into possession and started cultivating, but later on, Bhukha started disputing the plaintiff's title and also started interfering with their possession, which resulted in initiation of proceedings under Section 145 of Cr.P.C. and finally, after various orders passed by the appellate and revisional authorities, the plaintiff had to file a suit seeking declaration of his title by virtue of those sale deeds.

12. As against this, the defendant-Bhukha denied having sold his property to the plaintiff. In para 6 of his written statement and para 4 of his additional written

statement, the defendant pleaded as below:-

6. यह कि वाद पत्र की कंडिका क्रमांक 6 अमान्य है प्रतिवादी ने जमीन नहीं बेचा है और जमीन का कब्जा भी नहीं दिया है । यह कथन सत्य है कि जगमोहन साव से प्रतिवादी ने ऋण लिया था जिसके बदले में अपनी चालाकी से एवं धूर्तता से जगमोहन साव प्रतिवादी को एक अपढ गंवार समझकर उसकी संपूर्ण भूमि ऋण में हडपने का प्रयास किया था ।

4. यह कि स्व. जगमोहन साव आदिवासी गरीब किसानों को ऋण देने का धन्धा करता था तथा प्रतिवादी ने विवादित भूमि जगमोहन साव के पास रेहन रखकर कर्जा लिया था और रेहन के आड में चालबाजी से उक्त भूमि को बगैर प्रतिवादी को किसी प्रकार की जानकारी दिये अपने नाम पर राजस्व अभिलेखों में हल्का पटवारी को मिला कर अंकित कराया गया है जो विधान विरुद्ध है।

The aforesaid pleadings of the defendant-Bhukha are that the property was mortgaged by him and his brother-Hari Sai against the loan taken by him from Jagmohan Sao. However, in these pleadings, no dates, time and place of loan, much less the amount of loan was disclosed. In the entire written statement, there is no specific denial of execution of three sale deeds. It is pertinent to mention here that as far as sale deeds, Ex.P-1 & P-3 are concerned, these are sale deeds said to be executed by the defendant-Bhukha in favour of the plaintiff which were duly registered. As far as Ex.P-2 is concerned, the same was executed by Hari Sai in favour of the plaintiff, even though, the defendant-Bhukha in his written statement, stated that the property was never sold by Hari Sai in favour of the plaintiff.

13. There being three registered sale deeds and certified copy of the same were placed before the Court below, which were led in evidence by the plaintiff and the original records summoned from the office of the Registrar were proved by N. P. Dewangan, PW-1, Registration Moharir in the office of the Registrar,

regarding entries made in respect of the property in dispute. Though these properties were sold in favour of the plaintiff by Bhukha and Hari Sai, particularly when the defendant did not specifically denied execution of the sale deeds, burden was heavy on the defendant to prove that these transactions which were shown as transaction of sale by registered sale deeds were in fact, mortgage transactions and not outright sale.

14. It is well settled legal position that if execution of document of sale itself is not disputed and the other party sets claim that it was sham transaction and the nature of transaction was other than that of outright sale, burden would entirely lay on the other party to plead and prove that the transaction was other than what is evident from the contents of the registered document of sale deed.

15. The only evidence of Bhukha is that he did not sell the property to the plaintiff. In his evidence, he has come out with the pleading that he mortgaged 12 acres of land in favour of Jagmohan Sao, because he borrowed Rs.500/- from Jagmohan, which he could not repay to Jagmohan. Bhukha mortgaged his property against Rs.500/- and his evidence is that he came back from Korba after 9 years and asked Jagmohan for return of land on the ground of completion of mortgage transaction, to which, Jagmohan refused and thereafter, Bhukha paid Rs.200/- out of Rs.500/-, which was taken by him by way of loan from Jagmohan. According to the defendant-Bhukha, DW-1, even after return of Rs.200/- out of Rs.500/-, Jagmohan did not return his land. This evidence of defendant is not supported from specific pleadings and also contrary to the documentary evidence. In the written statement, there is no whisper of the amount, which is said to have been taken by the defendant Bhukha from Jagmohan. In the written statement, not even dates were mentioned. His evidence is that he had mortgaged 12 acres of land, which Jagmohan was not

returning, is contrary to the contents of two sale deeds, Ex.P-1 & P-3. Total extent of land in these two sale deeds is 7.42 acres. Thus, it is clear that the plaintiff's claim is only in respect of lands said to be purchased from the defendant-Bhukha by registered sale deeds. There is no material to show that total extent of 12 acres of land were mortgaged by the defendant-Bhukha with Jagmohan. It would thus be seen that as against the registered sale deeds, the defendant came out with a very shaky and contradictory plea and evidence of mortgage transaction. The learned lower appellate Court raised doubt over three registered sale deeds on considerations that the plaintiff could not prove that the amount of consideration was paid to Bhukha and it was only certified copy of the registered sale deeds and in fact, there is disputed aspect of possession over the property.

16. In the considered opinion of this Court, once the plaintiff rested his claim on the basis of three registered sale deeds, execution of which were not specifically denied by the defendant, but the defendant sought to set up a case that the transaction was, in fact, a transaction of mortgage, the learned lower appellate Court adopted completely illegal approach in recording a finding that the execution of sale deed was in dispute, therefore, burden was entirely on the plaintiff to prove that the transactions were that of sale as contained in three sale deeds. Finally, the learned lower appellate Court held that Hari Sai was a necessary party, is also patently illegal. It is also not a case where the plaintiff came out with the pleading that Hari Sai or his sons started disputing or denying plaintiffs title over the land, which is subject matter of sale deed Ex.P-2 or interfered with the peaceful possession of the plaintiff over the land in dispute. According to the plaint allegations, the plaintiffs cause of action was that Bhukha alone was denying plaintiffs title over the land comprised in three sale deeds and was also interfering with his possession. The plaintiff did not have

any cause of action against Hari Sai and his sons nor was any relief sought by the plaintiff against Hari Sai. The plaintiff seeking declaration of title and other reliefs on the basis of three registered sale deeds including one executed in his favour by Hari Sai. The plaintiffs cause of action was that in respect of those land also, Bhukha was interfered with his possession. Therefore, on such pleadings and reliefs, it cannot be said that Hari Sai was a necessary party. May be that Hari Sai was a proper party in the case, but it cannot be said that in the absence of Hari Sai being made a party, no effective decree could be passed in favour of the plaintiff. Merely because, Hari Sai was the seller of the property, being subject matter of the sale deed, Ex.P-2, in respect of which, plaintiffs possession was being interfered with by the defendant-Bhukha, it is not correct to hold that Hari Sai was a necessary party. In this regard, this Court deems it appropriate to state the legal position as settled in the decision of the Supreme Court in the case of ***Kasturi vs. Iyyamperumal and others***¹, as under:-

13. "From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person."

17. In a later decision of the Supreme Court in the case of ***Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others***², it was held as under:-

13. "The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is

1 (2005) 6 SCC 733

2 (2010) 7 SCC 417

not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

"10.(2) Court may strike out or add parties. --The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

18. In Kasturi, this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.”

18. Substantial question of law framed by this Court is accordingly answered in favour of the plaintiff and against the defendant that the learned lower appellate Court was not justified in reversing well reasoned judgment and decree passed by the learned trial Court.

19. In the result, this appeal is allowed and the impugned judgment and decree passed by the learned lower appellate Court on 24-04-2002 in Civil Appeal No.7-A/2002 is accordingly set aside and that of learned trial Court is restored. Let appellate decree be drawn accordingly. The parties to bear their respective costs.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE