

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 287 of 2008**

1. Smt. Pramila Gedam, Widow of Nand Kumar Gedam, Aged about 40 years.
 2. Nimesh Kumar, S/o Nand Kumar Gedam, Aged about 16 years, Minor through his mother Smt. Pramila Gedam.
- Both are residents of Magarpara, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.

---Appellants/Defendants**Versus**

1. Manmohan Homne, S/o Saiman Homne, Aged about 48 years, R/o Magarpara, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.
 2. Shiv Shankar Homne, S/o Manmohan Homne, Aged about 34 years.
 3. Kumari Prabha, D/o Ajay Kumar, Aged about 20 years.
- Respondents No. 2 and 3 above are residents of Village Chhari, Tahsil Katghora, District Korba, Chhattisgarh. (Legal heirs of Devki Bai)

---- Respondents/Plaintiffs

For Appellants : Mr. Rajeev Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****14/11/2019**

1. Office objection is over-ruled. Heard on admission and formulation of substantial question of law involved in this second appeal preferred by the defendants under Section 100 of the CPC.

2. Mr. Rajeev Shrivastava, learned counsel for the appellants/defendants would submit the trial Court has erred in not holding that sale deed dated 04/04/1966 (Ex. P/1) executed by Vithal Rao in favour of Devaki Bai was not a real sale deed, but was a nominal one intended only for security of loan and therefore, there was no title conferred upon the plaintiff/purchaser i.e. Devaki Bai and there was no landlord-tenant relationship between the parties i.e. Devaki Bai and Nand Kumar Gedam, as such, the first appellate Court is absolutely unjustified in decreeing the suit of the plaintiffs by reversing the well-reasoned judgment and decree passed by the trial Court, therefore, this second appeal deserves to be admitted by formulating substantial question of law.

3. The suit property was originally held by Vithal Rao. He executed a sale deed dated 04/04/1966 (Ex. P/1) in favour of Devaki Bai alienating the suit property in her favour. It is the case of the plaintiffs that immediately after purchase of the suit property, it was let out to Vithal Rao on tenancy of ₹ 25/- per month and then since, Devaki Bai needed the suit property for renovation, legal notice was served upon the defendants for eviction and payment of arrears of rent, but the suit

property was not vacated and the defendants claimed title over it.

4. Defendants denied the plaint allegations by way of filing their written statement stating that along with Nand Kumar (son of Vithal Rao) his three sisters namely Rajeshwari Bai, Seema Bai and Manju Bai also resided with him in the suit property, as such, they too are necessary parties in the suit and ought to have been impleaded as defendants in the suit which has not been done by the plaintiffs therefore, the suit deserves to be dismissed.

5. Learned trial Court, upon appreciating the oral and documentary evidence available on record, dismissed the suit of the plaintiffs by holding that Devaki Bai has failed to prove that sale deed dated 04/04/1966 (Ex. P/1) executed by Vithal Rao in her favour is a real and outright sale deed and not a nominal sale deed intended only for security of loan and the landlord-tenant relationship has also not been proved between the parties and sisters of Nand Kumar, being necessary parties to the suit, have also not been impleaded in the suit. The trial Court further held that Vithal Rao sold the suit property but never handed over the possession to Devaki Bai.

6. On appeal being preferred by the plaintiff, learned first appellate Court held that the sale deed in question was a real sale deed through which Vithal Rao sold the suit property to Devaki Bai and plaintiffs are entitled for decree of eviction against which this second appeal has been preferred by the defendants.

7. The submission of Mr. Shrivastava, learned counsel for the appellants/defendants that the sale deed dated 04/04/1966 (Ex. P/1) was only intended for security of loan and it was a nominal sale deed and not a real sale deed is *sans* merit in two ways; firstly, that the trial Court found the sale deed to be a real and outright sale deed and not executed for security of loan. The said finding of the trial Court that the sale deed was a real sale deed was not challenged by the defendants by filing counter-claim, as such, that finding has become final. Even otherwise, the first appellate Court has also deliberated on the said issue and held that the sale deed dated 04/04/1966 (Ex. P/1) is a real and outright sale deed. Secondly, in the said sale deed, there is no compliance of proviso to Section 58 (c) of the Transfer of Property Act, 1882 as no such condition is embodied in the document (Ex. P/1) showing the sale transaction to be mortgage, as such, the concurrent finding

recorded by both the Courts below that the said sale deed dated 04/04/1966 (Ex. P/1) is a real and outright sale deed which has become final during the pendency of the first appeal and the same is not open to be questioned by the defendants and the first appellate Court has rightly held that relationship of landlord-tenant existed between the plaintiff and the defendants therefore, plaintiffs are entitled for decree of eviction. The above-stated finding recorded by the first appellate Court is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and does not give rise to any substantial question of law for determination.

8. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet