

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 92 of 2007**

Radheyshyam, S/o Gopal, aged about 49 years, occupation agriculturist, resident of Village Pondi, Thana Ramanuj Nagar, Tahsil Surajpur, District Surguja (C.G.)

----Appellant/Plaintiff

Versus

1. Savitri, D/o Sukhraj, aged 60 years,
2. Ghanshyam, S/o Gopal, aged 47 years,
3. Dhanukdhari, S/o Richau, aged 80 years,
4. Manikchand, S/o Richau, aged 75 years.
5. Balwant, S/o Richau, (Dead).
6. State of Chhattisgarh, through the Collector Surguja, at Ambikapur (C.G.)

---- Respondent/Plaintiff.

For Appellant	: Shri Sunil Tripathi, Advocate.
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/03/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court and on appeal being preferred, it was affirmed by the first appellate Court, against which instant second appeal has been preferred.
3. Learned counsel appearing for the appellant/plaintiff vehemently submits that both

the courts below have wrongly shifted the burden of proof upon the plaintiff that the sale deed dated 5.5.1972 (Ex.P-1) was never executed by him & his brother -Ghanshyam and defendants No. 3 & 5 in favour of one Sukhraj and thereby dismissed the suit and affirmed in appeal and that give rise to substantial question of law for determination.

4. The plaintiff brought a suit that by sale deed executed by him and his brother - Ghanshyam and defendants No. 3 to 5 in favour of one Sukhraj, no title has been transferred in favour of Sukhraj, therefore, plaintiff is entitled for decree declaration of title in his favour, which the trial Court dismissed holding that document Ex.P-1 has not been proved to be void by plaintiff and which has been upheld by the first appellate Court. In the considered opinion of this Court, the plaintiff was required to examine atleast witnesses of sale deed namely Sukhai and Aditi Ram to prove the contents of the sale deed and even plaintiff's brother Ghanshyam & defendants No. 3 to 5 have not questioned the sale deed and they were not examined to prove that no sale was made in favour of Sukhraj, as such, both the courts below have concurrently recorded a finding that plaintiff has failed to prove the execution of sale deed (Ex.P-1) to be void document, which is a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

5. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse and contrary to law. {See : **Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul Datta and others¹** & **Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others²** }

¹ (2018) 11 SCC 77

² (2018) 12 SCC 681

6. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed *in limine* without noticing to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

