

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.298 of 2003

Agarsay, S/o Roopsay, Caste Gaderi, aged about 36 years, R/o Village Kusmusi, Chowki Basdei, P.S. & Tehsil Surajpur, Distt. Surguja, C.G.

(Plaintiff)
---- Appellant

Versus

1. Shankhlal, S/o Mehilal, Caste Gaderi, age 35 years, R/o Village Kusmusi, Police Chowki Basdei, P.S. & Tehsil Surajpur, Distt. Surguja, C.G.
2. Jira Bai, W/o Agarsay, D/o Bullu, age 35 years, Caste Gaderi, R/o Village Kusmusi, Chowki Basdei, P.S. & Tehsil Surajpur, Distt. Surguja, C.G.

(Defendants)

3. The State of Chhattisgarh, through Collector, Surguja, C.G.
(Proforma Defendant)
---- Respondents

For Appellant:	Mr. A.K. Prasad, Advocate.
For Respondent No.1:	Mr. Pallav Mishra, Advocate.
For Respondent No.3 / State:-	Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

21/01/2019

1. The second appeal was admitted for final hearing on the following substantial question of law: -

“Whether the lower appellate Court while reversing the finding of the trial Court has committed an illegality in holding that the registered deed of sale dated 14/02/1979 (Ex.P-2) does not confer any right, title or interest upon the plaintiff?”

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court.)

2. The plaintiff/appellant herein filed a suit for declaration of title and

permanent injunction that he has purchased the suit land from Bundo Bai, erstwhile owner, by registered sale deed dated 14-2-1979 (Ex.P-2) and came into possession thereafter and is continuing in peaceful possession, but thereafter, defendant No.1 got the sale deed executed on 21-4-1998 from Bundo Bai and started interfering with leading to filing of suit for declaration of sale deed dated 21-4-1998 void and for restraining the defendants from interfering with the peaceful possession which the trial Court granted holding that Bundo Bai had already sold the suit land in favour of the plaintiff on 14-2-1979 and thereafter, she has no right and title to execute the sale deed vide Ex.D-1 on 21-4-1998. The said finding was reversed by the first appellate Court holding that Ex.P-2 has not created right, title and interest in favour of the plaintiff against which this second appeal has been preferred in which the substantial question of law has been framed and which has been set-out in the opening paragraph of the judgment.

3. Mr. A.K. Prasad, learned counsel appearing for the appellant/ plaintiff, would submit that the first appellate Court is absolutely unjustified in reversing the well reasoned and well-merited finding of the trial Court granting decree in favour of the plaintiff by recording a finding which is not only perverse, but contrary to record.
4. Mr. Pallav Mishra, learned counsel appearing for respondent No.1/ defendant No.1, would support the impugned judgment.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
6. It is evident on record that Bundo Bai, erstwhile owner, executed

sale deed with respect to the suit land on 14-2-1979 (Ex.P-2) in favour of the plaintiff which has also been proved by examining one of the witnesses Sukhram (PW-2) who has clearly stated that the suit land was sold by Bundo Bai in favour of the plaintiff on payment of consideration amount and he is in possession. Defendant No.1 only setup a plea that he has purchased the suit land from Bundo Bai on 21-4-1998. Once it has been established that the erstwhile owner had already sold the suit land in favour of the plaintiff vide Ex.P-2, Bundo Bai was not competent to re-alienate the suit property in favour of defendant No.1 by sale deed Ex.D-1 dated 21-4-1998, as she had no right and title with her so as to re-alienate the suit land after having sold the suit land in favour of the plaintiff. Therefore, the first appellate Court was not right in disturbing the finding of the trial Court with regard to sale of suit land by Bundo Bai in favour of the plaintiff. It is not the case of the defendant that Bundo Bai never intended to sell the suit land in favour of the plaintiff or the consideration amount was not paid by the plaintiff to Bundo Bai for purchase of suit land. Merely because the earlier suit filed by the plaintiff came to be dismissed in default or mutation application was rejected, that would not furnish a ground to non-suit the plaintiff who is otherwise owner of the suit land by registered sale deed dated 14-2-1979 (Ex.P-2) and it has been proved by examining the witnesses to the sale deed, as such, the first appellate Court is absolutely unjustified in disturbing the well reasoned and well-merited judgment & decree of the trial Court.

7. As a fallout and consequence of the above-stated discussion, the substantial question of law framed is answered against the

defendants and in favour of the plaintiff. The judgment & decree passed by the first appellate Court is set aside and that of the trial Court is restored. The second appeal is allowed leaving the parties to bear their own cost(s).

8. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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