

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.311 of 2007

1. Raghvendra S/o Umakant @ Bodhan Shastri, aged about 23 years,
 2. Raman Prasad S/o. Umakant @ Bodhan Shastri, aged about 21 years,
 3. Ravindra S/o. Umakant @ Bodhan Prasad (Shastri), aged about 19 years,
 4. Smt.Madhu Devi W/o. Umakant @ Bodhan Prasad Shastri, aged about 42 years,
- All are agriculturists & R/o village Ruha, Tah. Dhamdha, District Durg (CG)

(Plaintiffs)

---- Appellants

Versus

1. Manharan S/o Chain Singh Patel, aged about 50 years,
 2. Umakant @ Bodhan Prasad Shastri, S/o Shri Khemlal, aged about 46 years,
- Both Respondents 1 & 2 are agriculturists and R/o. Village Ruha, Tahsil Dhamdha, District Durg (CG)

(Defendants)

3. State of Chhattisgarh, through Collector, District Durg (CG)

---- Respondents

For Appellants/Plaintiffs: Mr.Jitendra Gupta, Advocate
 For Respondent No.3 : Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. AgrawalJudgment On Board27/11/2019

1. Heard this second appeal on the question of admission and for formulation of substantial question of law preferred by the appellants/plaintiffs against the judgment and decree of the first appellate Court dated 21.3.2007 passed in Civil Appeal NO.22A/06, whereby the first appellate Court has partly allowed the appeal and

modified the decree of the trial Court and ultimately the suit of the plaintiffs has been dismissed and counter-claim to the extent of damages has been reduced from ₹5000 to ₹1000/-.

2. The suit property was held by defendant No.2- Umakant. He sold the suit land by registered sale deed dated 17.6.1981 in favour of defendant No.1. The plaintiffs, who are sons and wife of defendant No.2, filed a suit on 4.2.2000 stating inter-alia that sale deed is only nominal sale executed for security of loan and compromise decree dated 24.11.97 entered into between defendant No.1 and defendant No.2 is not binding on them, as such, decree be set aside.
3. Defendant No.1 filed his written statement and set-up a plea that on the basis of compromise decree dated 24.11.97 his title has been re-affirmed and sale is outright sale and it is not nominal sale.
4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 16.7.2001 dismissed the suit holding that compromise decree dated 24.11.97 entered into between defendant No.1 and defendant No.2 being Civil Suit 109A/92 dated 24.11.97 is not null & void and sale deed dated 17.6.1981 is real sale, which has been affirmed by

the first appellate Court. However, the trial Court has granted damages to the extent of ₹5000/-, which has been reduced by the first appellate Court up to ₹1000/-.

5. Mr. Jitendra Gupta, learned counsel for the appellants/plaintiffs, would submit that both the Courts below were absolutely unjustified in holding that compromise decree entered into between defendant No.1 and defendant No.2 is binding on the plaintiffs and sale deed is not null and void by recording a finding which is perverse and contrary to record, as such, the appeal deserves to be admitted for hearing by formulating the substantial question of law.

6. I have heard learned counsel for the appellants/plaintiffs and perused the records with utmost circumspection.

7. Compromise decree dated 4.11.97 has been filed as Ex.P-6 in which suit was filed by defendant No.1 and purchaser from defendant No.2, wherein it has been decreed that defendant No.2 will not interfere with possession of defendant No.1 in the suit land bearing Khasra No.267/2 area 0.56 hectare and that judgment & decree has become final. The trial Court and the first appellate Court both have clearly held that said decree is binding on the plaintiffs

being sons and wife of defendant No.2. Finding recorded by two Courts below that compromise decree dated 24.11.97 is binding on the plaintiffs is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. Likewise, both the Courts below have held that sale deed executed by defendant No.2 in favour of defendant NO.1 dated 17.6.81 is not null and void, it is outright sale and not nominal sale. Even otherwise, there is no compliance of proviso to Section 58 of the Transfer of Property Act, 1882, as such, I do not find any illegality or perversity in the finding recorded by two Courts below and even I do not find any substantial question of law for determination of this second appeal.

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

Sd/-

(Sanjay K. Agrawal)
Judge

B/-