

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 204 of 2004**

1. Ramawtar S/o Gourishanker, Aged 50 years, R/o Village Ghutku, Tahsil and Distt. Bilaspur, Chhattisgarh.
2. Rajkumar S/o Kanaiyalal Kurmi, Aged 48 years, R/o Village Konar, Tahsil Pamgarh, Distt. Janjgir-Champa Chhattisgarh.

---- Appellants/Defendants**Versus**

1. Motilal, Aged 68 years S/o Ballu Prasad.
 - A. Smt. Sahodara Bai Wd/o Motilal (deleted).
 - B. Smt. Shail Bai, Wd/o Ramnath, Aged 40 years.
 - C. Rajesh Kumar S/o Ramnath, Aged 21 years.
 - D. Sushil S/o Motilal, Aged 37 years.
 - E. Krishna Lal S/o Motilal, Aged 33 years.

Both R/o Konargarh, Post Office – Konargarh, Tahsil Pamgarh, Distt. Janjgir-Champa.

 - F. Rambhau Pandey, S/o Motilal, Aged 50 years, R/o Pakariya (Jhulan), Tahsil Pamgarh, Distt. Janjgir-Champa.
2. Laxmi Prasad, Aged 52 years, S/o Amritlal (deleted).
3. Birendra Kumar, Aged 50 years, S/o Amritlal.
4. Rampalan, Aged 38 years, S/o Amritlal.
5. Karuna Bai, Aged 55 years, W/o Kamal Prasad.

All R/o Village Konar, Tahsil Pamgarh, Distt. Janjgir-Champa.
6. State of Chhattisgarh, Through Collector Janjgir-Champa, Chhattisgarh.

----Respondents/Plaintiffs

For Appellants	:	Mr. Anand Ku. Gupta, Advocate
For Respondents	:	Mr. Y.C. Sharma, Advocate
For State	:	Mr. Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

05.08.2019

1. The substantial questions of law involved, formulated and to be answered in this defendants' second appeal state as under:

“1. Whether the appellant No. 1 in whose favour the sale deed Ex. D/1 & D/2 along with appellant No. 2 alleged to be executed by deceased Ram Dulari on 18/04/1983 can be said to be 'assign' within the meaning of Section 35 (1) (c) of the Registration Act, 1908, so as to enable him to admit the execution of document (Ex. D/1 & D/2) said to be executed by deceased Ramdulari before the registering authority?

2. Whether the Court below has legally erred in holding document Ex. D/1 & D/2 as forged and fabricated document ?”

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

3. Admittedly, the suit property originally belonged to Ramdulari. She is said to have executed two sale deeds (Exhibits D/1 and D/2) on 18/04/1983 in favour of Rajkumar and Ramawtar respectively. On that day, the sale deeds could not be registered and thereafter, she died on 02/05/1983. Subsequently, at the instance of defendants No. 1 and 2, both the sale deeds were registered in the Office of Sub-Registrar, Janjgir-Champa on 18/07/1983.
4. The plaintiffs herein, being the successors in the interest of Ramdulari, filed a civil suit on 18/03/1985 stating *inter alia* that no

sale deed was ever executed by Ramdulari in favour of defendants No. 1 and 2 as she died prior to the registration of the sale deeds, which makes the documents forged and fabricated and therefore, the sale deeds (Exhibits D/1 and D/2) be declared as void and inoperative and decree for declaration of title and possession be granted in their favour.

5. The defendants filed written statement and denied the plaint averments holding that the sale deeds were executed by payment of sale consideration, but before Ramdulari could register those sale deeds, she died. Thereafter, the sale deeds were presented by them before the Sub-Registrar, Janjgir-Champa for registration under Section 35 (1) (c) of the Registration Act, 1908 (hereinafter referred to as "the Act of 1908") and the Sub-Registrar, after having been satisfied with the due execution of the sale deeds, registered them in accordance with the provisions contained in the Act of 1908. As such, they are the title-holders of the suit land as they have also claimed that Ramdulari was the sister of defendant No. 1's father.
6. Learned trial Court accepted the case of the plaintiff and by judgment and decree dated 30/09/1998 held that the plaintiffs are successors in interest of Ramdulari and after her death, they entered into possession of the suit land thereby, declared the sale deeds (Exhibits D/1 and D/2) to be void and inoperative as the defendants are not 'assign' within the meaning of Section 35 (1) (c) of the Act of 1908.
7. Questioning the judgment and decree passed by the trial Court, civil appeal was preferred by the defendants before the first appellate Court, but there too, the defendants remained unsuccessful. Learned first appellate Court, vide judgment and

decree dated 16/12/2003 dismissed the appeal of the defendants.

8. Challenging the judgment and decree of the first appellate Court, now the defendants have preferred this second appeal in which substantial questions of law have been formulated and incorporated in the opening paragraph of the judgment.
9. Mr. Anand Ku. Gupta, learned counsel for the defendants would submit that both the Courts below are absolutely unjustified in holding that defendants are not 'assign' of deceased Ramdulari within the meaning of Section 35 (1) (c) of the Act of 1908 and learned first appellate Court committed error in holding that the sale deeds (Exhibits D/1 and D/2) are forged and fabricated documents, and as such, the judgment and decree passed by the first appellate Court deserves to be set aside.
10. Mr. Y.C. Sharma, learned counsel for the plaintiffs would support the impugned judgment and decree passed by learned first appellate Court.
11. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
12. It is a case of the defendants that Ramdulari executed two sale deeds (Exhibits D/1 and D/2) dated 18/04/1983 in favour of defendants No. 2 and 1 respectively, but it could not be registered and in the meanwhile, she died on 02/05/1983. Thereafter, at the instance of defendants No. 1 and 2, the sale deeds got registered by the Sub-registrar, Janjgir-Champa on 18/07/1983.
13. The question is whether defendants No. 1 and 2 could be said to be 'assign' within the meaning of Section 35 (1) (c) of the Act of

1908. At this stage, it would be appropriate to notice Section 35 (1) (c) of the Act of 1908, which is quoted below :-

“35. Procedure on admission and denial of execution respectively –

(1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the person they represent themselves to be, and if they all admit the execution of the document, or

(b) xxx xxx xxx

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in Sections 58 to 61 inclusive.”

14. The question that arises now is whether the defendants who are the proposed purchasers in the sale deeds (Exhibits D/1 and D/2), as at their instance, the sale deeds got registered by the registering officer could be said to be 'assign' within the meaning of Section 35 (1) (c) of the Act of 1908. The word 'assign' has not been defined in the Act of 1908. The Black's Law Dictionary (8th Edition) defines the word 'assign' as under :-

“assign, vb. 1. To convey; to transfer rights or property <the bank assigned the note to a thrift institution>.”

15. In the instant case, the defendants presented both the sale deeds for registration before the registering officer on 18/07/1983 and on that day, they got registered. By virtue of the provisions contained in Section 35 (1) (c) of the Act of 1908, if the person executing the document is dead, then his representative or his 'assign' must

appear before the registering officer and must admit the execution, then only the registering officer is obliged to register the document as directed in Sections 58 to 61 of the Act.

16. The Supreme Court, in the matter of ***Sri Sri Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and others***¹, has clearly held that where, a document is presented for registration by a person other than a party to it or his legal representative or assign or by a person who is not an agent authorized in the manner prescribed in Section 33 of the Act of 1908, such presentation is wholly inoperative, and the registration of such a document is void. Paragraph 13 of the judgment would be relevant to notice at this stage, which states as under :-

“(13) In 'Jambu Prasad v. Muhammad Aftab Ali Khan', AIR 1914 PC 16 (B), it was observed by the Judicial Committee approving of the decision in - 'Ishri Prasad v. Baijnath', 28 All 707 (C) that,

" ...the terms of sections 32 and 33 of Act III of 1877 are imperative, and that a presentation of a document for registration by an agent....., who has not been duly authorized in accordance with those sections, does not give to the Registering Officer the indispensable foundation of his authority to register the document."

Where, therefore, a document is presented for registration by a person other than a party to it or his legal representative or assign or by a person who is not an agent authorized in the manner prescribed in section 33, such presentation is wholly inoperative, and the registration of such a document is void. ”

17. Reverting to the facts of the present case, admittedly, defendants No. 1 and 2, in whose favour the sale deeds were allegedly

¹ AIR 1954 SC 316

executed by Ramdulari, were neither representatives nor assign, and no one having the capacity of being her representative or assign had admitted the execution of the sale deeds (Exhibits D/1 and D/2) in favour of defendants before the Sub-Registrar except defendants No. 1 and 2 themselves, therefore, such presentation on the part of the defendants was wholly inoperative and thus, both the registered sale deeds (Exhibits D/1 and D/2) are wholly void and inoperative documents.

18. Accordingly, both the Courts below are absolutely justified in holding that the sale deeds (Exhibits D/1 and D/2) which were allegedly executed by Ramdulari and registered in favour of defendants No. 1 and 2 after her death are void documents and it has not conferred any title in favour of defendants No. 1 and 2. In view of that, both the substantial questions of law have been answered against the defendants and in favour of the plaintiffs.

19. The second appeal, deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

20. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)

Judge