

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 519 of 2004**

1. Ramshankar S/o Sundarlal, Aged about 32 years.
2. Ramkumar S/o Sundarlal, Aged about 30 years.
3. Vijay S/o Sundarlal, Aged about 25 years.
4. Sunil S/o Sundarlal, Aged about 42 years.
5. Sunita D/o Sundarlal, Aged about 21 years.
6. Kalabai Wd/o Sundarlal, Aged about 62 years.

All above R/o Village Latuva (Nayaktad) Tahsil Baloda Bazar, Distt. Raipur, Chhattisgarh.

**--- Appellants/Defendants**

**Versus**

1. Tirithram S/o Dukharam Sahu, Aged about 40 years.
2. Sarhu S/o Dukhram Sahu, Aged about 35 years.
3. Murit S/o Dukhram Sahu, Aged about 32 years.
4. Ramjeevan @ Surit Sahu, Aged about 27 years. S/o Dukhram Sahu.

All Above R/o Village Latuva, Tahsil Baloda Bazar, Distt. Raipur, Chhattisgarh.

5. State of Chhattisgarh, through Collector, Raipur, Distt. Raipur, Chhattisgarh.

**---- Respondents/Plaintiffs**

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|-----------------|---|----------------------------------------------------|
| For Appellants  | : | Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates |
| For Respondents | : | None                                               |
| For State       | : | Mr. Sanjeev Agrawal, Panel Lawyer                  |

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**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Judgment on Board**

**30/09/2019**

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the defendants states as under:

“Whether the learned Lower Appellate Court, which is final Court of facts, was justified in reversing the findings of the trial Court without even meeting the reasonings on which the judgment of the trial Court was based ?”

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

2. The suit land bearing khasra No. 397 admeasuring 0.15 decimal situated at village Lutwa, Tahsil and District Baloda Bazar was purchased by plaintiffs' father namely Dukhram Sahu from one Mahngu by registered sale deed dated 01/07/1955 (Exhibit P/1) after which he came into possession of the suit land and after his death, plaintiffs came into possession of the said suit land.
3. It is the case of the plaintiffs that on the basis of subsequent sale deed dated 01/04/1978 (Exhibit D/1) allegedly executed by Mahngu in favour of defendants' father namely Sundarlal, defendants got their name mutated in the revenue records and started interfering with possession of the plaintiffs which led to the institution of the civil suit by the plaintiffs claiming decree for declaration of title, possession and permanent injunction.

4. In the said civil suit filed by the plaintiffs, defendants filed their written statement and set up a plea that their father i.e. Sundarlal purchased the suit land from Mahngu by registered sale deed dated 01/04/1978 (Exhibit D/1) and came in possession of the suit land.
5. Learned trial Court, upon appreciating the oral and documentary on record, recorded a finding that plaintiffs have failed to prove their title over the suit land as such, they are not entitled for decree as claimed by them and thereby, dismissed the suit by its judgment and decree dated 30/11/2002.
6. Against the judgment and decree of the trial Court, plaintiffs preferred an appeal under Section 96 of the CPC wherein learned first appellate Court, vide its judgment and decree dated 24/07/2004, reversed the judgment and decree passed by the trial Court and allowed the appeal of the plaintiffs after holding that plaintiffs are the owners of the suit land by virtue of sale deed dated 01/07/1955 (Exhibit P/1) after which they came into possession and the seller of the suit land i.e. Mahngu could not have alienated the suit land subsequently to defendants' father i.e. Sundarlal by sale deed dated 01/04/1978 (Exhibit D/1) after having been sold the suit land to plaintiffs' father previously.
7. Being aggrieved by the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the defendants in which substantial question of law has been framed on 28/03/2005 and has been set out in the opening paragraph of this judgment.

8. Mr. Manoj Paranjpe and Mr. Anurag Singh, learned counsel appearing for the appellants/defendants would submit that the first appellate Court is absolutely unjustified in dismissing the appeal of the defendants by holding that the sale deed dated 01/04/1978 (Exhibit D/1) executed by Mahngu in favour of defendants' father is void as the plaintiffs did not ask for cancellation / declaration of the said sale deed (Exhibit D/1) therefore, the judgment and decree passed by the first appellate Court is liable to be set aside and the second appeal deserves to be allowed.
9. None appears for respondents/plaintiffs though served.
10. It is admitted position on record that suit land was owned by one Mahngu. He firstly sold the suit land to plaintiffs' father namely Dukhram Sahu by registered sale deed dated 01/07/1955 (Exhibit P/1) and placed him in possession of the suit land and thereafter, he executed another sale deed dated 01/04/1978 (Exhibit D/1) and sold the suit land to defendants' father namely Sundarlal.
11. It is the case of the plaintiffs that they were initially in possession of the suit land but by subsequent sale deed dated 01/04/1978 (Exhibit D/1) executed by Mahngu in favour of defendants, they have been dispossessed.
12. Mahngu, admittedly, is the erstwhile owner of the suit land who sold the suit land to father of the plaintiffs namely Dukhram Sahu by registered sale deed dated 01/07/1955 (Exhibit P/1) after which he ceased to be the title-holder of the suit land therefore, he could not have subsequently alienated the suit land in favour of

defendants' father namely Sundarlal by sale deed dated 01/04/1978 (Exhibit D/1), as such, the said subsequent sale deed (Exhibit D/1) is absolutely void and illegal and by that defendants have not acquired any title over the suit land.

13. The Supreme Court, in the matter of ***Mahadeo Prasad Singh and another Vs. Ram Lochan and others***<sup>1</sup>, has clearly held that the sale which was entirely without jurisdiction was non est in the eye of law and such a nullity does not, from its very nature, need setting aside. It was observed as under :-

“This is not a case of an irregular or voidable sale which continues to subsist so long as it is not set aside, but of a sale which was entirely without jurisdiction. It was non est in the eye of law. Such a nullity does not from its very nature, need setting aside. ”

14. Similarly, in the matter of ***Prem Singh and others Vs. Birbal and others***<sup>2</sup>, the Supreme Court has held that when a document is valid, no question arises of its cancellation and when a document is *void ab initio*, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.

15. Reverting to the facts of the present case in light of the aforesaid decisions rendered by the Supreme Court, defendants have not acquired any title over the suit land by virtue of sale deed dated 01/04/1978 (Exhibit D/1) executed by Mahngu in favour of defendants' father namely Sundarlal as Mahngu had already sold

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1 (1980) 4 SCC 354

2 (2006) 5 SCC 353

the suit land previously to plaintiffs' father – Dukhram Sahu by registered sale deed dated 01/07/1955 (Exhibit P/1) after which title over the suit land transferred to the plaintiffs and they came to be in possession of the suit land moreover, they were not required to seek cancellation/declaration of subsequent sale deed dated 01/04/1978 (Exhibit D/1) executed by Mahngu in favour of defendants' father i.e. Sundarlal as it was *void ab initio* under Section 31 of the Specific Relief Act, 1963. Thus, learned first appellate Court is absolutely justified in holding that Dukhram Sahu, plaintiffs' predecessor in title, had acquired title over the suit land after purchasing it from Mahngu by sale deed dated 01/07/1955 (Exhibit P/1), from which the present plaintiffs have been dispossessed and therefore, they are entitled for decree for declaration of title, possession and permanent injunction in which I do not find any perversity or illegality. Consequently, the substantial question of law is answered in favour of plaintiffs and against the defendants.

16. The second appeal, deserves to be and is accordingly dismissed.

No order as to cost(s).

17. Decree be drawn up accordingly.

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**