

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 518 of 2017****Judgment Reserved on 19.11.2019****Judgment delivered on 26.11.2019**

1. Joidha, aged about 67 years, son of Visheshar Sahu,
 2. Jagdish, aged about 46 years, son of Joidha Sahu,
 3. Rajkumar, aged about 44 years, son of Joidha Sahu,
 4. Santosh, aged about 42 years, son of Joidha Sahu,
 5. Ganesh, aged about 40 years, son of Joidha Sahu,
- All are resident of Village – Barra, Tahsil – Nawagarh, District Janjgir-Champa (C.G.)

----Appellants/Defendants.

Versus

1. Badrivishal, aged about 47 years, son of Ramprasad Sahu,
 2. Chandrika, aged about 42 years, son of Ramprasad Sahu,
 3. Amrika Bai, aged about 40 years, daughter of Ramprasad Sahu,
 4. Purnima, aged about 37 years, son of Ramprasad Sahu,
 5. Hara Bai, daughter of Ramprasad Sahu (dead), through LRs.
- a. Suman, aged about 17 years, son of Gendram Sahu,
 - b. Chhoti, aged about 14 years, daughter of Gendram Sahu,

c. Lala, aged about 12 years, son of Gendram Sahu,
No. a, b, & c are minor represented through father
Gendram Sahu,

d. Gendram Sahu, aged about 50 years, son of
Dhaniya Sahu,

All are resident of Village – Turri, Tahsil –
Nawagarh, District – Janjgir- Champa (C.G.)

6. Guruwari Bai, aged about 72 years, widow of
Ramprasad Sahu, resident of Village- Barra,
Tahsil – Nawagarh, District Janjgir-Champa (C.G.)

Plaintiffs

7. Shyamlal, aged about 57 years,

8. Laxmin, aged about 22 years, daughter of
Shyamlal Sahu,

9. Ravikumar, aged about 17 years, son of Shjyamlal
Sahu,

10. Suman, aged about 14 years, daughter of Shyamlal
Sahu,

11. Harish, aged about 7 years, son of Shyamlal
Sahu,

No. 9 to 11 are minor, represented through father
Shyamlal Sahu,

No. 7 to 11 are resident of Village – Tusar ,
Tahsil – Hassaud, District Janjgir-Champa (C.G.)

12. State of Chhattisgarh, through the Collector,
Janjgir, District Janjgir- Champa **...Defendants**

----Respondents

For Appellants : Mr. Malay Kumar Bhaduri, Adv.
For Respondent No. 12 : Mr. Sanjeev Kumar Agrawal, PL

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by defendants under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 22nd July, 2017 passed in Civil Appeal No. 10-A/2016 by the District Judge, Janjgir Champa affirming the judgment & decree of Civil Judge, Class-I, Janjgir dated 31.03.2016 passed in Civil Suit No. 2-A/2012, decreeing the suit.

(2) Learned counsel appearing for the appellants/defendants would submit that both the courts below have concurrently erred in holding that defendants have failed to prove sale deed (Ex.D-1) in accordance with law as by the said document, defendants have purchased the suit land by un-registered sale deed on payment of consideration of Rs.90/- by recording a finding, which is perverse and contrary to the record, as such, second appeal deserves to be admitted by formulating substantial question of law for determination. He placed reliance upon the judgment of the High Court of Madhya Pradesh in the matters of ***Annilal v. Laxmi Prasad***¹, ***Smt. Kadam Kunwar v. Hari Singh***²

1 1997 (II) MPJR SN 26

2 1993 MPJR SN 8

and **Janki & others v. Hari Prasad & others**³ in support of his submissions.

(3) The plaintiffs filed a suit for declaration of title and for recovery of possession of land bearing Khasra No. 656/3, area 0.70 acres stating *inter alia* that they are title holder and possession holder of the suit land and, as such, defendants are interfering with the possession of their suit land and, therefore, decree of declaration of title be granted and permanent injunction be issued in their favour restraining the defendants from interfering with the suit land, in which, the defendants No. 1 to 5 set up their defence, by filing written statement, stating *inter alia* that on 10.06.1976, father of defendant No. 1 namely Vishambhar Sao had purchased the suit land from father of plaintiff No. 1 namely Ramprasad Sahu by unregistered sale deed on payment of consideration of Rs.90/- and obtained possession thereof, as such, the plaintiffs are not entitled for the decree as claimed.

(4) The trial Court, upon appreciation of oral & documentary evidence available on record, decreed the suit negating the title of the defendants and holding the title of the plaintiffs over the suit land.

3 2000 (II) MPJR SN 1

(5) The plaintiffs preferred first appeal there-against. The first appellate Court, after re-appreciation of oral and documentary evidence available on record, affirmed the judgment and decree of the trial Court by dismissing the appeal, against which, instant second appeal has been preferred.

(6) The trial Court, after appreciation of oral and documentary evidence available on record, has come to the conclusion that document (Ex.D-1), by which defendants claimed the suit land to be purchased by father of defendant No.1 namely Vishambhar Sao from father of plaintiff No.1 namely Ramprasad is not proved as the witnesses of the said document (Ex.D-1) namely Jayanta and Kheeru have not been examined to prove the same; and by virtue of Section 54 of the Transfer of Property Act, 1954, sale of less than Rs.100/- has to be followed by delivery of possession but the defendants are not in possession of suit land and, therefore, document (Ex.D-1) has not been proved in accordance with law. Thus, defendants have failed to establish that they have purchased the suit land by unregistered sale deed (Ex.D-1) for a cash consideration of Rs.90/- and the suit land, being the agricultural land, held by plaintiffs and they are in possession of the suit land and entitled for decree of the declaration of title and possession. The

first appellate Court has also affirmed the finding recorded by the trial Court by holding that document (Ex.D-1) has not been proved by defendant No.1. Thus, concurrent finding recorded by two courts below that the defendants have failed to establish that they have purchased the suit land by un-registered sale deed (Ex.D-1) for a cash consideration of Rs. 90/-, is a finding of fact based on material available on record. 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. In view of above, the aforesaid judgments cited by the learned counsel appearing for the appellants/defendants are clearly distinguishable to the facts of the present case.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs

Sd/-

(Sanjay K. Agrawal)
Judge

D/-