

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 308 of 2008**

1. Smt. Pramila Gadam, Aged about 40 years, Widow of Nand Kumar Gadam.
2. Nimesh Kumar S/o Nand Kumar Gadam, Aged about 16 years, Minor through his mother Smt. Pramila Gadam
Both appellant No. 1 and 2 are R/o Magarpara, Tahsil and District Bilaspur, Chhattisgarh.
3. Smt. Rajeshwari, Aged about 40 years.
4. Sema Bai, Aged about 38 years.
5. Manju Bai, Aged about 43 years.

Appellants No. 3 and 5 both were daughters of Withal Rao, R/o Magarpara, Tahsil and District Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Manmohan Homne, S/o Saiman Homne, Aged about 48 years, R/o Magarpara, Bilaspur, Tahsil and Distt. Bilaspur, Chhattisgarh.
2. Shiv Shankar Huamne, S/o Manmohan Huamne, Aged about 34 years, R/o Magarpara, Bilaspur, Chhattisgarh.
3. Manmohan Muhune, S/o Saiman Muhune, Aged about 42 years, R/o Magarpara, Bilaspur, Chhattisgarh.

---- Respondents/Defendants

For Appellants : Mr. Rajeev Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

14/11/2019

1. Office objection is over-ruled. Heard on admission and formulation of substantial question of law involved in this second appeal preferred by the plaintiffs under Section 100 of the CPC.
2. Mr. Rajeev Shrivastava, learned counsel for the appellants/plaintiffs would submit that both the Courts below have concurrently erred in not declaring the title of the plaintiffs over the suit property and have committed legal error in dismissing their suit.
3. Nandkumar Gedam, Rajeshwari Bai, Seema Bai and Manju Bai, being the legal heirs of Vithal Rao, filed a suit for declaration of title stating that the suit property was held by their father Vithal Rao which he purchased vide registered sale deed dated 31/12/1958 and the sale deed dated 04/04/1966 executed by Vithal Rao in favour of Devaki Bai was just a nominal sale deed intended for security of loan and not a real sale deed, therefore, they are entitled for declaration of title.
4. Defendants set up a plea that they purchased the suit property by registered sale deed dated 04/04/1966 and let out the same to the plaintiffs,

as such, plaintiffs are not entitled for decree of declaration of title.

5. Learned trial Court, upon appreciating the oral and documentary evidence on record, returned a finding that plaintiffs failed to prove that the sale deed dated 04/04/1966 was executed only for security of loan and it was a real and outright sale deed and thereby, dismissed the suit which was upheld by the first appellate Court against which this second appeal has been preferred by the plaintiffs.

6. The only question that has been raised is whether the sale deed dated 04/04/1966 was a real and outright sale deed or a nominal one.

7. Both the Courts below have concurrently held the sale deed to be real sale deed and not a nominal sale deed. The above-stated concurrent finding recorded by both the Courts below is a finding of fact based on evidence available on record which is neither perverse nor contrary to record and even otherwise, in the said sale deed, proviso to Section 58 (c) of the Transfer of Property Act, 1882 has not been complied with as no such condition is embodied in the sale deed to demonstrate the transaction as mortgage. Moreover, the defendants in this suit filed a substantive

civil suit No. 51A/2006 which was also the subject matter of Second Appeal No. 287 of 2008 which was heard along with this appeal and by a separate order, that second appeal preferred by the plaintiffs herein (defendants in that second appeal) has also been dismissed on merits in which the finding has been recorded that the sale deed dated 04/04/1966 is a real and outright sale deed and not a nominal sale deed, as such, I do not find any substantial question of law in this appeal.

8. The second appeal being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet