

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 450 of 2006**

1. Ram Swaroop Dead Through Lrs R/o Village Bundeli, Tahsil And District Mungeli, ChhattisgarhLrs. Of Def. No.1
 - (a) - Smt. Matibai, Wd/o Late Ram Swaroop, Aged About 65 Years, R/o Village Bundeli, Tahsil & District Mungeli, Chhattisgarh.
 - (b) - Bhupendra Nath, S/o Late Ram Swaroop, Aged About 45 Years, R/o Village Bundeli, Tahsil & District Mungeli, Chhattisgarh.
 - (c) – Chandranath, S/o Late Ram Swaroop, Aged About 42 Years, R/o Village Bundeli, Tahsil & District Mungeli, Chhattisgarh.
 - (d) – Surendranath, S/o Late Ram Swaroop, Aged About 40 Years, R/o Village Bundeli, Tahsil & District Mungeli, Chhattisgarh.
 - (e) – Raghvendra Nath, S/o Late Ram Swaroop, Aged About 38 Years, R/o Village Bundeli, Tahsil & District Mungeli, Chhattisgarh.

---- Appellants**Versus**

1. Vishwanath, S/o Uderam, Aged About 56 Years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.
2. (a) Purshottam, S/o Heeru, Aged About 36 Years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.
- (b) Sanat Kumar S/o Heeru, Aged About 29 Years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.
- (c) Panchobai Wd/o Goverdhan, Aged About 32 Years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.
- (d) Amerika Bai D/o Goverdhan, Aged about 15 years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.
- (e) Ramsnehi D/o Goverdhan, Aged About 13 years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.
- (f) Dulesh S/o Goverdhan, Aged About 10 years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.

(g) Durgesh S/o Goverdhan, Aged about 6 years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.

No.(d) to (g) are minors through their Natural guardian Mother Panchobai Wd/o Goverdhan.

3. Kheman Das, S/o Heeralal, Aged About 37 Years, R/o Village Bundeli, Tahsil Mungeli, District Bilaspur, Chhattisgarh.

4. State of Chhattisgarh, Through Collector Bilaspur, Chhattisgarh.

---- Respondents

For Appellants : Shri B. L. Dembra, Advocate.

For Respondent No.1, 2(a) to 2(g) : Shri Devesh G. Kela, Advocate.

For State/Respondent No.4 : Ms. Neha Shukla, P. L.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

02.04.2019

1. This appeal has been preferred by Defendant No.1, Ram Swaroop (since deceased now represented by his legal representatives) under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC') questioning the propriety of the judgment and decree dated 01.07.2006 passed by Additional District Judge, Mungeli, District Bilaspur in Civil Appeal No.26-A/2006, by which the lower Appellate Court, while reversing the finding of the trial Court dated 04.03.2006 passed in Civil Suit No.40-A/1996 has decreed the plaintiff's claim.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming declaration of title and praying further that the compromising decree dated 15.05.1996, drawn on 17.05.1996 passed in Civil Appeal No.2-A/1995 by the Fourth Additional District Judge, Bilaspur (C.G.) be declared as null and void, as the same has been

obtained by playing fraud with the Court. It is pleaded in the plaint that by virtue of the two registered deed of sales both dated 24.10.1994, the suit property bearing Khasra No.379 admeasuring 0.64 acres along with the property bearing Khasra No.181 admeasuring 1.11 acres (not the suit land) situated at village Bundeli, Tehsil Mungeli, District Bilaspur has been purchased by the plaintiffs. It is pleaded further in the plaint that after purchasing the property as such, they applied for mutation before the concerned Revenue Authorities, where an objection was raised by Defendant No.1 by saying that a suit has been filed by him against the father of Defendant No.2, namely, Heeralal for declaration of title with regard to the property in question. The said suit was registered as Civil Suit No.17-A/1990 and after considering the evidence led by the parties, the said suit was dismissed by the trial Court by its judgment and decree dated 03.04.1995. It is pleaded further that prior to the delivery of the said judgment and decree, the plaintiffs have purchased the property in question by virtue of alleged deed of sale dated 24.10.1994. It is pleaded further that the judgment and decree as passed by the trial Court in the said suit was questioned by Defendant No.1 before the appellate Court and during the pendency of the said appeal, an application was made on 15.05.1996 for compromise and based on the said application, the compromise decree has been drawn as such by holding that Defendant No.1 Ram Swaroop is the owner of the property in question bearing Khasra No.379 admeasuring 0.64 acres. It is pleaded further that based upon the said fraudulent decree, the Defendant No.1 is trying to dispossess the plaintiffs, therefore, they have been constrained to file the suit in the instant nature, instituted on 02.07.1996.

3. The aforesaid claim has been contested by the Defendants in which it has been stated that the alleged compromise decree has not been obtained by playing fraud, as contended by the plaintiffs. It is contested further on the ground that the deed of sale was infact a nominal one, which does not confer any right, title or interest upon them.

4. After considering the evidence led by the parties, the trial Court by its judgment and decree dated 04.03.2006 has dismissed the suit by holding *inter alia* while entertaining the Issue No.3 that the alleged compromise decree has not been obtained by playing fraud and held further that since the alleged sale was executed during the pendency of the earlier suit instituted by Defendant No.1 Ram Swaroop against the father of the Defendant No.2, namely, Heeralal, therefore, it is not a genuine one. As a consequence, the trial Court has dismissed the suit.

5. Being aggrieved, the plaintiffs have preferred an appeal, the appellate Court, in turn, while examining the documentary evidence as well as oral statements as adduced by the parites arrived to a conclusion that the alleged compromise decree has been obtained by playing fraud, as the material facts regarding the alienation of the property in question made in the year 1994 has not been disclosed to the concerned appellate Court. In consequence, the lower appellate Court while reversing the finding of the trial Court has decreed the plaintiffs' claim.

6. Being aggrieved, the Defendant No.1 has preferred this appeal. Shri B. L. Dembra learned counsel for the appellants submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court is apparently contrary to law. He submits further that the finding of the trial Court holding that the alleged

compromise decree has not been obtained by playing fraud ought not to have been reversed by the lower appellate Court without meeting its reasoning in its proper manner.

7. I have heard learned counsel for the appellants and perused the entire record carefully.

8. A suit was instituted by the plaintiffs on the basis of the registered deed of sale dated 24.10.1994, purported to have been executed by Defendant No.2 Kheman Das in their favour. Perusal of the record would show that a suit, bearing Civil Suit No.17-A/1990, was instituted by the Appellant/Defendant No.1 Ram Swaroop against the father of the Defendant No.2, namely, Heeralal for declaration of title in relation to the property in question bearing Khasra No. 379 admeasuring 0.64 acres. The said suit was ultimately dismissed by the trial Court by its judgment and decree dated 03.04.1995 (ExP-9). It reveals further from perusal of the record that the alleged judgment and decree (ExP-9) was questioned by Defendant No.1 Ram Swaroop before the appellate Court, where it was registered as Civil Appeal No.2-A/1995. It appears further that during the pendency of that appeal, an application for compromise was made by the parties on 15.05.1996 (ExP-13) and after recording the statement of Fagni Bai and her son, Kheman Das (Defendant No.2), the alleged compromise decree (ExP-14) was drawn. It is, true that the alleged compromise decree was drawn as such, however, from bare examination of the said compromise application (ExP-13), it is evident that while moving this application, it has not been stated anywhere that by virtue of the registered deed of sale dated 24.10.1994, the property in question had been sold by Defendant No.2 Kheman Das to plaintiffs. Even in the statement of Fagni Bai and Kheman Das, it has not been stated

anywhere by them that Kheman Das has sold the property in question to plaintiffs in the year 1994. It, therefore, appears apparently that the alleged compromise decree (ExP-14) was obtained by Defendant No.1 Ram Swaroop and his cousin Kheman Das without disclosing this material facts.

9. In view of the said fact, the lower appellate Court has not committed any illegality in reversing the finding of the trial Court by holding that the alleged compromise decree is a fraudulent one and as such, it cannot be held that plaintiffs have not acquired any interest with regard to the property in question on the strength of the registered deed of sale dated 24.10.1994 (ExP-1). The findings of the lower appellate Court reversing the finding of the trial Court, thus, deserves to be and is hereby affirmed.

10. In view of the forgoing discussions, I do not find any question of law, much less the substantial question of law, which arise for determination in this appeal. The appeal is, accordingly, dismissed at admission stage itself. No order as to costs.

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