

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.150 of 2006

Gyanbati, D/o Latel Sahu, 55 years, R/o Village Murmunda, Tehsil Dongargarh, Distt. Rajnandgaon (C.G.) Through Jumuk Lal Sahu, S/o Heeralal Sahu, 46 years, R/o Village Murmunda, Tehsil Dongargarh, Distt. Rajnandgaon (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Banshilal, S/o Mehttar Sahu, 45 years,
2. Bahur Singh, S/o Mehttar Sahu, 40 years,

Respondent No.1 & 2 R/o Village Murmunda, Tehsil Dongargarh, Distt. Rajnandgaon (C.G.)

3. State of Chhattisgarh, Through the District Magistrate, Rajnandgaon (C.G.)

(Defendants)
---- Respondents

For Appellant: Mr. Harshal Chouhan, Advocate.

For Respondent No.3 / State: -

Mr. Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

11/11/2019

1. This appeal filed by the plaintiff / appellant was admitted by formulating the following substantial question of law: -

“Whether the finding of the Lower Appellate Court that the suit land was the land of ownership and possession of all 3 purchasers is perverse?”

(Parties hereinafter will be referred as per their status shown and ranking given in the suit before the trial Court.)

2. The plaintiff filed a suit for declaration of title and permanent injunction that though by sale deed dated 29-1-1993 she purchased

the piece of land bearing Khasra No.416, area 2 acres, from Smt. Jani Begam, widow of Mir Munivar Musalman by registered sale deed, but the sale deed also mentions the names of defendants No.1 & 2 as purchasers, whereas the entire sale consideration was paid by her exclusively, therefore, no title has been acquired by defendants No.1 & 2, as such, she is the exclusive owner of the suit land. The defendants set up the plea that they are also owners of the suit land as they have also purchased the same.

3. The trial Court accepted the case of the plaintiff and declared her to be the exclusive owner of the suit land. On appeal preferred by defendant No.1, the first appellate Court set-aside the decree of the trial Court and dismissed the suit resulting into filing of this second appeal by the plaintiff in which substantial question of law has been framed which has been set out in the opening paragraph of this judgment.
4. Mr. Harshal Chouhan, learned counsel appearing for the appellant / plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiff is not the exclusive title holder of the suit land as such, the impugned judgment & decree deserve to be dismissed.
5. I have heard learned counsel for the appellant / plaintiff and considered his submissions and went through the record with utmost circumspection.
6. The plaintiff said to have purchased the suit property by paying entire sale consideration of ₹ 35,000/- to the seller namely Smt. Jani Begam, widow of Mir Munivar Musalman, but as it has been

held by the first appellate Court, the said sale deed was never produced before either of the Courts by which it can be ascertained as to who paid the consideration amount to seller Jani Begam, widow of Mir Munivar Musalman, as such, it could not be ascertained from the record as to whether the plaintiff is exclusive owner of the suit land or not. There is nothing on record to hold that the entire sale consideration has been paid by the plaintiff to the seller. Counsel for the appellant could not point out any infirmity in the judgment of the first appellate Court to demonstrate that the entire amount was paid by the plaintiff.

7. Even otherwise, there is one more defect in the suit. Though the sale deed has been executed between the plaintiff, defendants No.1 & 2 and the seller – Jani Begam, widow of Mir Munivar Musalman, but the plaintiff has only sought for declaration of title that she is the exclusive title holder of the suit land. The plaintiff did not seek any consequential relief of either setting aside the sale deed to the extent of conferring title to defendants No.1 & 2 and also did not even seek declaration that by the said sale deed no title has been conferred to defendants No.1 & 2, she ought to have sought consequential relief of declaration to the extent that the sale deed does not confer any title to defendants No.1 & 2 by producing the sale deed and by leading evidence as such, neither the sale deed was produced nor the relief that declaration of sale deed does not confer any title is sought for. As such, the relief prayed for could not have been granted by the Court. The first appellate Court has rightly set-aside the decree granted by the trial Court. It is neither perverse nor contrary to the record. The substantial question of law

is answered accordingly. The appeal deserves to be and is accordingly dismissed. No order as to cost(s).

8. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma