

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 163 of 2006****Reserved on : 05.04.2019****Delivered on : 02.05.2019**

1. Smt. Tijia Bai, aged about 52 years, W/o Nathanlal Jaiswal.
 2. Prahlad Jaiswal, aged about 34 years, S/o Natthanlal Jaiswal.
- Both R/o Shastri Ward/ Patpar, Near Gramin Police Station, Tahsil & O.P. Bhatapara, District- Raipur (C.G.)

---- Appellants**Versus**

1. Smt. Ramrajji Bai, aged about 68 years, W/o Sharan Singh Chhabada, Agriculturist Kholwa, R/o Kharora, Near Bus Stand, Kharora, District- Raipur (C.G.) Through Power of Attorney Satya Jeet Singh, S/o Shri Pratap Singh Saluja, R/o Balbhadra Ward, Bhatapara, District- Raipur (C.G.)
2. Prem Govindani, aged about 50 years, S/o Dayal Das Govindani, R/o Bhagat Singh Ward, P.S., Tahsil & Post Bhatapara, District- Raipur (C.G.)
3. State of Chhattisgarh, Through: District Collector, Raipur (C.G.)

---- Respondents

For Appellants	:	Mr. B.M. Rao, Advocate.
For Respondent No. 1	:	Mr. Goutam Khetrapal, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 21.04.2006/ 24.04.2006 passed by Additional District Judge, Bhatapara, District- Raipur (C.G.) in Civil Suit No. 25A/2005, wherein the said court declared that respondent No. 1 namely Smt. Ramrajji Bai/ plaintiff is

owner of the land bearing Survey No. 786/2, 786/3 & 786/5 area admeasuring 0.162, 1.052 & 0.405 Hectare respectively (total area 1.619 Hectare) situated at Village- Khulwa, Patwari Halka No. 25, Revenue Circle- Bhatapara, District- Raipur (C.G.) on the basis of sale deed executed in her favour on 11.05.1978 by Tijiabai for a cash consideration of Rs. 10,000/-.

2. As per version of the appellants, the suit land was recorded in the name of Smt. Tijiabai and Prahalad Jaiswal jointly, therefore, Tijiabai was not entitled to alienate the same. The entry in revenue record made in favour of respondent No. 1-Smt. Ramrajji Bai was challenged by appellant No. 1 and revenue court set aside the order of mutation in favour of respondent No. 1. Appellant No. 1- Tijiabai transferred the suit land to respondent No. 2 namely Prem Govindani by sale deed on 01.10.2003. On 13.09.2004, respondent No. 1- Ramrajji Bai filed a civil suit against respondent No. 2 & 3 which was decreed.
3. Learned counsel for the appellants submits as under:-
 - (i) Mutation in the name of Smt. Ramrajji Bai was canceled by order dated 03.12.1998 of Sub-Divisional Officer and revision against the said order before Additional Collector was dismissed vide order dated 05.01.2000, therefore, the title of Smt. Ramrajji Bai on the basis of sale deed was not effective.
 - (ii) The suit land was not recorded in the name of Smt. Tijiabai, therefore, she is not owner of the property and she is not in possession of the land, therefore, suit for declaration was not

maintainable because relief for possession was not prayed for under Section 34 of the Specific Relief Act, 1963. Finding arrived at by the trial court is liable to be reversed.

4. Per contra, learned counsel for respondent No. 1 submits as under:-

(i) Execution of sale deed in favour of Prem Govindani on 01.10.2003 and for declaring the same void, suit was filed by respondent No. 1 on 13.09.2004 which is within time.

(ii) Tijiabai executed sale deed in favour of Smt. Ramrajji Bai on 11.05.1978 and the land was mutated in her name in the year 1979 and she was in possession of the land. When she was in possession of the land, she was not required to seek relief of possession.

(iii) As the property in question is already sold by Tijiabai way back in the year 1978, she has left with no right to sell the same land again, therefore, sale deed executed in favour of Prem Govindani is *void ab initio*.

(iv) Smt. Ramrajji Bai was not party in the sale deed executed in favour of Prem Govindani, therefore, she was not under obligation to seek cancellation of the said sale deed and to pay *ad valorem* court fees.

5. I have heard learned counsel for the parties and perused the documents appended thereto.

6. A.P. Tamrakar- Sub-Registrar (PW-1) deposed before the trial court that Tijiabai executed sale deed in favour of Smt. Ramrajji Bai on her behalf and on behalf of her minor son Prahalad vide sale deed dated

09.05.1978 and execution of sale deed is dated 11.05.1978. Version of this witness is supported by version of Satyajeet Singh Saluja (PW-2) and Jagjit Singh (PW-4). All the witnesses have deposed before the trial court that Smt. Ramrajji Bai was in possession of the land after execution of sale deed. Though, Tijiabai deposed before the trial court that she did not sell the land in question, but statement of this witness which is recorded on 25.03.2006 is not sufficient to discard the sale deed executed by her in favour of Smt. Ramrajji Bai in the year 1978.

7. Unless, the sale deed is canceled, the same has binding effect on Tijiabai, therefore, evidence of Prahalad (DW-1) and Prem Govindani (DW-2) is not sufficient to discard the sale deed. From the evidence of witnesses adduced on behalf of Smt. Ramrajji Bai and the document Ex.P/8 & P/9 which is B-1 and Khasra entries Ex.P/15 respectively go to show that Smt. Ramrajji Bai was in possession of the land after execution of sale deed.
8. It is settled law that declaration of title is within exclusive jurisdiction of Civil Court, therefore, cancellation of mutation by revenue authority is not sufficient to dislodge entitlement of Smt. Ramrajji Bai over the land in question. When Tijiabai sold the land on 09.05.1978/11.05.1978, she has no right to transfer the land again in favour of any other person, therefore, the trial court is right in holding that the sale deed executed in favour of Prem Govindani on 01.10.2003 is not valid document.
9. It is also settled law that when no one can confer better title to other than what he/ she has, therefore, Prem Govindani has no right on the

basis of subsequent sale deed. Smt. Ramrajji Bai was not party in the second sale deed executed in favour of Prem Govindani, therefore, she was not under obligation to go for cancellation of this sale deed. Finding of the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court, therefore, the argument advanced on behalf of the appellant is not sustainable.

10. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of respondent No. 1- Smt. Ramrajji Bai on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear cost of respondent No. 1- Ramrajji Bai throughout.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge