

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 41 of 2005**

- Shivprasad Patel, S/o Kunuram Patel, aged about 36 years, Caste – Aghariya, Occupation – Agriculture, R/o village Litai Pali, Tahsil & District – Raigarh (C.G.) -- Appellant/Plaintiff

Versus

1. Todaram, S/o Vishesar Patel, aged about 40 years, Caste – Agharia, Occupation – Agriculture,
2. Jageshwar, S/o Vishesar, aged about 45 years, Caste – Agharia, Occupation – Agriculture,
3. Rooplal, S/o Jageshwar, aged about 21 years, Caste – Agharia, Occupation – Agriculture,

All resident of Village – Litai Pali, Tahsil & Distt. Raigarh (C.G.)

4. State of C.G. Through Collector, Raigarh.----- Respondents/Defendants

For Appellant	:Smt. Hamida Siddiqui, Advocate
For Respondent-4/State	:Ms.Neha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****18.04.2019**

1. This appeal has been preferred by the plaintiff under Section 100 of the Civil Procedure Code, 1908 (hereinafter referred to as the 'CPC') questioning the propriety of the judgment and decree dated 30.10.2004 passed by the 2nd Additional District Judge, Raigarh (C.G.) in Civil Appeal No.45-A/2003, by which, the lower appellate Court, while affirming the judgment and decree dated 02.08.2003 passed by the 4th Civil Judge, Class-2, Raigarh in Civil Suit No.91-A/2002, has dismissed the plaintiff's suit.

2. Briefly stated the facts of the case are that the plaintiff instituted a suit claiming declaration of title and injunction with regard to the property in question bearing Kh.No.250/1-ख, admeasuring 0.405 hectares situated at village Litaipali, Tahsil and District Raigarh, as described in detail in plaint Schedule-A.

According to the plaintiff, the suit property was recorded in revenue papers and the said entries were never questioned by the defendants either in appeal or in revision, and therefore, he was the owner of the suit property. It is pleaded further that on 16.05.1997, the defendants have tried to dispossess him, therefore, the plaintiff has been constrained to file the suit in the instant nature, instituted on 20.08.1997

3. While denying the aforesaid claim, it is pleaded by the defendants that their father Vishesar was the owner of the property in question. It is pleaded that by virtue of the forged document, the plaintiff has obtained the registered deed of sale in the year 1996 from their father Vishesar, however, their father has already expired even prior to the execution of the said sale. It is pleaded further that in absence of specific averments made in the plaint regarding acquisition of property in question, the plaintiff is not entitled to seek the ownership of the suit land. The claim is, therefore, liable to be dismissed.

4. After considering the evidence led by the parties and by considering the documentary evidence, the trial Court, by its judgment and decree dated 02.08.2003, has arrived at a conclusion that the plaintiff has not pleaded anywhere as to how and from whom he has acquired the suit property and has failed to produce any document showing his ownership over the suit land. As such, it cannot be held that the plaintiff has acquired any interest whatsoever over the property in question, as contended by him. In consequence, the trial Court has dismissed the suit.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the plaintiff.

6. Being aggrieved, the plaintiff has preferred this appeal. Smt. Hamida Siddiqui, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. She submits

further that by virtue of the registered deed of sale dated 14.10.1996, the plaintiff had purchased the suit property from his father. She submits further that a suit was earlier instituted by the plaintiff against his father where a decree was passed in his favour on 09.10.1996 whereby the plaintiff's father Kunuram was directed to execute the registered deed of sale in his favour and based upon that the alleged registered deed of sale dated 14.10.1996 was not only executed in his favour but the revenue papers have also been mutated. Without considering these material facts, the Courts below have committed an illegality in dismissing the plaintiff's claim.

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

8. A suit was made by the plaintiff claiming declaration of title and injunction with regard to the property in question bearing Kh.No.250/1-ख, admeasuring 0.405 hectares situated at village Litaipali, Tahsil and District Raigarh. According to the plaintiff, the revenue entries were made in his favour and the said entries were never questioned by the defendants either in appeal or in revision, therefore, he has acquired his valid right, title and interest over the property in question. Based upon it, the claim has been made. However, perusal of the record would show that prior to the execution of the alleged registered deed of sale dated 14.10.1996 (Ex.P.1/Ex.D.4), purported to have been executed by plaintiff's father Kunuram in his favour, a registered deed of sale in relation to the said property, i.e., Kh.No.250 admeasuring 0.405 hectares was executed on 07.03.1996 (Ex.D.2) by plaintiff's uncle, namely, Vishesar, who was the defendants' father. In such circumstances, it cannot be held that the plaintiff has purchased the said property from his father on 14.10.1996. Besides, a death certificate (Ex.D-13) of Vishesar was produced by the defendants, which shows that their father Vishesar has expired on 28.04.1994 even prior to the execution of the alleged sale on 07.03.1996 (Ex.D.2). It means

that when the said sale was executed on 07.03.1996, the defendants' father Vishesar had already expired. It, therefore, appears that the plaintiff has procured the forged document and has succeeded to get the revenue papers mutated in his name. As such, it cannot be held that he acquired any interest whatsoever over the suit property from defendants' father Vishesar. Not only this, the revenue entry, which was made in plaintiff's favour by virtue of order dated 27.01.1997 (Ex.P.7/Ex.D.11) passed by the Additional Tahsildar, Raigarh, was questioned by the defendants in appeal before the S.D.O., who in turn, set aside the same vide its order dated 26.06.2000 (Ex.D.5) while remanding the matter. As such, the plaintiff's claim, which was based completely on the basis of revenue papers, cannot be held to be sustainable. Pertinently to be noted here that while instituting a suit, the plaintiff has deliberately not pleaded regarding the acquisition of his title and has based his claim mainly upon the revenue papers. Thus, from stretch of any imagination, it cannot be held that the plaintiff has acquired any interest whatsoever over the suit property. The findings recorded by the Courts below are based upon due and proper appreciation of the evidence adduced by the parties, and therefore, deserve to be and are hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge