

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 14 of 2019

1. Shivdutt (Privious Minor), S/o- Makar Tandon, Aged about- 19 years
2. Ku. Shashikala, D/o- Makar Tandon, Aged about- 14 years, Minor represented through mother Smt. Atwara Bai, W/o- Makar Tandon, Aged about- 32 year

Both are R/o Village Pandripani ,Tahsil and District- Raigarh (C.G.)

----Appellants

Versus

1. Makar Tandon, S/o- Sundar Sai Tandon, Aged about- 34 years, Occupation-Cultivator, R/o- Village Pandripani, Tahsil and District- Raigarh (C.G.)
2. Shardakripa Buildtech Private Limited, Through- The Director Pankaj Agrawal, S/o- Prahladrai Agrawal, Aged about- 34 year, R/o- Gourishankar Mandir Chowk, Raigarh (C.G.)
3. Smt. Anuradha Agrawal, W/o- Sourabh Agrawal, Aged about- 27 years, R/o- Village Sahdevpali, Tahsil and District- Raigarh (C.G.)
4. State of Chhattisgarh, Through the Collector, Raigarh (C.G.)

---- Respondents

For Appellants : Mr. Bharat Rajput, Advocate

For State/Respondent : Mrs. Smita Jha, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

04/09/2019

1. This appeal is preferred against the judgment/ decree dated 27th September, 2018 passed in Civil Suit No. 152-A/2012 by the Fifth Additional District Judge, Raigarh (C.G.) wherein the said Court dismissed the suit filed by the appellant for declaration of title and permanent injunction of the property in question which is survey No. 71/4 area 0.405 hectare Situated at village- Pandripani, Tahsil & District- Raigarh and for declaring void sale deed executed by the respondent No.1

Makar Tandon and respondent No.2 Sharda Kripa Buildtech Private Limited.

2. As per case of the appellant, the above mentioned property in question is an ancestral property and it was sold by the respondent No.1- Makar Tandon who is the father of the appellants. By first sale deed the property in question was sold to respondent No. 2 by respondent No.1 and by second sale deed same property sold to respondent No. 3 by respondent No.2.
3. As per the case of the appellant, the property in question is ancestral property, therefore, respondent No.1 had no right to alienate the same without any legal necessity and sale deed is executed by commission of fraud and without consideration.
4. As per the appellant, the trial Court has failed to appreciate that disputed land is an ancestral property and same is alienated without consent of the appellant, therefore, finding of the trial Court is not proper. It is further case of the appellant that respondent No. 2 executed forged and fabricated sale deed and obtained signature of respondent No.1 who is uneducated person. As trial Court has not appreciated oral and documentary evidence finding of the trial Court is liable to be set aside.
5. It is the case where appellants are claiming property as ancestral property. For establishing the same they are required to prove that property was ever recorded in the name of their grand father namely Sundar Sai Tandon, no record

was produced before the trial Court to establish that property was ever recorded in the name of Sundar Sai Tandon.

6. No record produced by the appellant that property in question was inherited by Makar Tandon from his father. In absense of any documentary evidence it is not established that property in question is ancestral property. The property is not proved to be an ancestral property therefore, it is a property of Makar Tandon who has the right to alienate the same.
7. Makar Tandon has not challenged the validity of sale deed in question when parties who executed sale deed are not challenging, the appellant have no right to challenge the same because no right is passed to him through Makar Tandon. As Makar Tandon was owner of the property and he alienated the property, no title was passed to appellant for the said property.
8. The trial Court has elaborately discussed the entire evidence and recorded finding that property in question is not ancestral property and sale deed executed by Makar Tandon is not forged document. By document it is clear that sale deed executed as per law of the land which is section 54 of the Transfer of the Property Act- 1882 and Section 17 of the Indian Registration Act – 1908, the right is passed to respondent No.2 and he was the owner of the property after execution of the sale deed.
9. After reassessing the entire evidence this Court has no reason to record contrary finding, it is not the case where

respondents should be called for hearing again for full consideration of this appeal.

10. Accordingly, this instant appeal stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle