

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.398 of 2005**

Ishwar Prasad Upadhyay (Present Age 59 Years) S/o Of Shri Janak Ram Upadhyay, Aged About 55 Years R/o Village Changori, Tehsil Janjgir, District Janjgir -Champa Chhattisgarh **(Plaintiff/respondent)**

Versus

1. Smt. Mandakini Sharma, W/o Late Shri Malik Ram Sharma, Aged About 36 Years R/o Village Raak, Tehsil Masturi, (Sub - Tehsil Sipat), District Bilaspur (Chhattisgarh) **(Defendant / Appellant)**
2. Manharan Rathor, Shri Kashi Ram Rathor, Aged About 58 Years R/o Village Raak, Tehsil Masturi, (Sub-Tehsil Sipat), District Bilaspur (Chhattisgarh)
3. Manharan Lal Yadav, (Dead) Through Lrs.
 - 3.1- (i) Bahadur, S/o Late Manharan Lal Yadav, Aged About 35 Years R/o Village Raak, Tehsil Masturi, (Sub-Tehsil Sipat), District Bilaspur (Chhattisgarh)
 - 3.2- (ii) Smt. Shanti W/o Ramanand Yadav, Aged About 30 Years R/o Village Bilha, Tehsil Bilha, District : Bilaspur, Chhattisgarh
 - 3.3- (iii) Smt. Kanti, W/o Devcharan Yadav, Aged About 27 Years R/o Village Jali, Tehsil Kota, District : Bilaspur, Chhattisgarh
 - 3.4- (iv) Smt. Malti, W/o Saroj Yadav, Aged About 24 Years R/o Parsada, Tehsil Masturi, District : Bilaspur, Chhattisgarh
4. Chalharan Yadav, Late Shri Hari Ram Yadav, Aged About 37 Years R/o Village Raak, Tehsil Masturi, (Sub-Tehsil Sipat), District Bilaspur Chhattisgarh
5. Gore Lal Yadav Late Shri Hari Ram Yadav Aged About 32 Years R/o Village Raak, Tehsil Masturi, (Sub-Tehsil Sipat), District Bilaspur (Chhattisgarh)
6. Prem Lal Yadav, Late Shri Hari Ram Yadav, Aged About 28 Years R/o Village Raak, Tehsil Masturi, (Sub-Tehsil Sipat), District Bilaspur (Chhattisgarh)
7. Smt. Bisahin Bai Yadav W/o Shri Tirith Ram Yadav Aged About 34 Years R/o Village Jairamnagar, Tehsil Masturi, District Bilaspur Chhattisgarh
8. Smt. Sahin Bai, W/o Shri Jagdish Yadav, Aged About 26 Years R/o Village Karumahu, Tehsil Janjgir, District Janjgir - Champa Chhattisgarh
9. State Of Chhattisgarh, Through The Collector, Bilaspur.
**Defendants/respondents**

For Plaintiff	:	Mr. Ritesh Verma, Advocate
For Respondent No.8	:	Mr. Aman Tamboli, Advocate appears under instructions from Mr. R.S. Marhas, Advocate
For other Respondents	:	None appears even in the second round.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

26/02/2020

Heard.

1. This appeal is directed against impugned judgment and decree dated 07.07.2005 passed by the Additional District Judge in Civil Appeal No.10-A/2003, by which, the learned Lower Appellate Court, reversing the judgment of the Trial Court, has dismissed plaintiff's suit.

2. This appeal was admitted on following two substantial questions of law :

“1. Whether the Appellate Court was justified in reversing the well reasoned judgment passed by the Trial Court and thereby dismissing the suit of the plaintiff by recording a finding that the sale deed executed in favour of the plaintiff as sham transaction ?

2. Whether the findings of the Appellate Court is contrary to the oral and documentary evidence available on record and as such perverse ?”

3. The appellant-plaintiff filed a suit seeking declaration of title and possession on pleadings *inter alia* that the property in dispute was purchased by the plaintiff from Kalindari Bai vide sale deed dated 05.04.1972 for consideration of Rs.1,000/- and since the date of purchase, the plaintiff has remained in possession of the property in dispute and it was being cultivated through his agents. The cause of action stated was that sometimes in the year 1996, it was found that the defendants No.1 & 2 are interfering with the possession of the plaintiff stating that they are cultivating the land under instructions from its owner defendant No.3/Mandakini Sharma. The dispute led

to initiation of proceeding under Section 145, 146 of the Cr.P.C. and property was attached. Those proceeding culminated in issuance of order against the plaintiff and that gave rise to the cause of action for the plaintiff to remove the cloud on his title by seeking appropriate declaration and also recovery of possession because possession was handed over to the other party.

4. The defendant's case in their respective written statement was that there was no sale of the property by late Kalindari Bai in favour of plaintiff-Ishwar Prasad. The plaintiff-Ishwar Prasad was relative of late Kalindari Bai. Kalindari Bai was in need of loan. A sham document was prepared as security for repayment of loan. The property valued much higher than that shown as sale consideration of Rs.1,000/-.

5. Learned Trial Court decreed the suit holding that the plaintiff has acquired title by registered sale deed, defendants' case was liable to be disbelieved.

6. The judgment and decree of the Trial Court was challenged before the learned Lower Appellate Court. Learned Lower Appellate Court, upon reassessment of evidence on record, recorded a finding that the plaintiff failed to prove due execution of sale deed as lady from whom, property was claimed to have been purchased, was illiterate one and once the sale deed has been disputed, the burden was on the plaintiff to prove sale deed. It was also held by the learned Lower Appellate Court by recording a finding of fact that the possession of the property was never handed over to the plaintiff and it always remained in possession of Kalindari Bai and it never remained in plaintiff's possession as plaintiff/appellant was resident of another village.

7. Learned counsel for the appellant arguing on both substantial questions of law would submit that once a registered sale deed was executed in favour of plaintiff Ishwar Prasad, the defendant's case that it was sham transaction was liable to be disbelieved. His argument is that pleadings and evidence led by defendants are not enough to return a finding that the transaction was sham one and that late Kalindari Bai had executed a sale deed in favour of the plaintiff. He would argue that Kalindari Bai during her lifetime, never disputed the sale deed nor claimed any title in respect of the property. He would submit

that the plaintiff had purchased the property by registered sale deed. Merely, because the purchaser was illiterate lady, it could not be said that the burden would lie upon the plaintiff to prove the fact that it was duly executed. Relying upon the judgment of the Supreme Court in the case of **Jamila Begum (D) Thr. Lrs. v. Shami Mohd. (D) Thr. Lrs. and Anr., AIR 2019 SC 72**, he would submit that in such a case, burden of proof lies on party, who challenges validity of the sale deed.

8. Further submission of learned counsel for the appellant is that in the present case, the finding recorded by learned Lower Appellate Court that the property never remained in possession of the appellant/Ishwar Prasad is perverse because the documentary evidence, as contained in various revenue records was not given due weightage and the evidence of the plaintiff Ishwar Prasad (PW2) and that of Daras (PW3) with regard to possession has been wrongly disbelieved.

9. On the other hand, learned counsel appearing for respondent No.8, supporting the judgment and decree passed by the learned Lower Appellate Court, would submit that the finding recorded by learned Lower Appellate Court that the plaintiff never remained in possession is based on appreciation of evidence on record and in the absence of there being any ground that finding has been recorded without taking into consideration any oral and documentary evidence, could not be assailed as no substantial question of law would arise on such issue. He would further argue that the finding of the learned Lower Appellate Court that the sale deed under dispute and said to be executed by illiterate lady, the burden would be on the plaintiff to prove, does not suffer from any patent illegality or fundamentally flawed approach.

10. I have heard learned counsel for the parties and perused the records.

11. The first question of law framed by this Court as to whether the learned Lower Appellate Court was justified in holding that the sale deed executed in favour of plaintiff was a sham transaction is required to be considered in the light of pleadings of the parties and also oral and documentary evidence led by them to find out whether the findings in that regard are perverse, opposed to provisions of law or contrary to any admission of the parties or contrary to

any uncontroverted evidence. The second question of law as to whether the finding of the Appellate Court is contrary to oral and documentary evidence available on record and as such perverse is only a part of the first question of law.

12. Learned Lower Appellate Court, in order to come to the conclusion that the transaction between Kalindari Bai and appellant Ishwar Prasad was a sham transaction, has considered the matter on two aspects. Firstly, learned Lower Appellate Court has examined the evidence on record to find out whether there was due execution of sale deed. The second aspect which has been taken into consideration by learned Lower Appellate Court is whether the plaintiff had remained in possession of the property in dispute after alleged sale deed made in the year 1972.

13. As far as finding with regard to possession is concerned, this Court finds that the learned Lower Appellate Court has considered evidence led by the plaintiff as well as defendants on this aspect. The evidence of the plaintiff that he was in possession is based on the evidence of the plaintiff himself as Ishwar Prasad (PW2) and the evidence of his witness Daras (PW3). This evidence has been considered by the learned Lower Appellate Court in paragraph 19 onwards.

14. Learned Lower Appellate Court has disbelieved plaintiff's evidence of plaintiff being in possession mainly taking into consideration that the plaintiff himself has admitted that he is not residing in the village where the property is situated. Learned Lower Appellate Court has disbelieved the evidence of plaintiff witness Daras (PW3), taking into consideration that his evidence does not inspire confidence because he is not in a position to clearly state as to how much of the yield was used to be given by him to the plaintiff and what used to be retained by him and he is not even in a position to state as to at what rate, he has taken the agriculture activity on contract, from the plaintiff. It has also taken into consideration that the other person Nanki, who according to the plaintiff, was cultivating the land on behalf of the plaintiff, has not been examined. As far as revenue records are concerned, it has got only presumptive value and it cannot be treated as conclusive proof. It is open for the Court to examine oral evidence on record and to reach to the conclusion

with regard to the actual possession and therefore, the finding of the learned Lower Appellate Court with regard to possession is purely a finding of fact. The evidence of defendant has also been taken into consideration with regard to possession. Thus, the evidence of both the parties with regard to possession has been considered by the learned Lower Appellate Court and for valid reasons, a finding has been recorded that the plaintiff's evidence with regard to possession is liable to be disbelieved. Therefore, finding with regard to possession does not suffer from any perversity or patent illegality and therefore, the same is not liable to be interfered with.

15. True, it is that in the present case, the plaintiff came out with the case of sale deed, said to be executed by Kalindari Bai in favour of plaintiff/Ishwar Prasad. However, learned Lower Appellate Court has recorded that the lady/seller was an illiterate one and she only affixed her thumb impression. There is no evidence on record led by plaintiff that Kalindari Bai was a literate person. Relying upon the legal position that in case, the sale deed is disputed and the vendor is said to be an illiterate person, the plaintiff would be required to prove the sale deed does not appear to be based on any incorrect legal position. The decision relied upon by the appellant in this regard is distinguishable.

16. Learned Lower Appellate Court has minutely scrutinized the evidence on record and has come to the conclusion that the plaintiff has failed to prove due execution of sale deed in his favour and also that the evidence of Ishwar Prasad (PW2) does not prove passing of consideration in favour of Kalindari Bai by plaintiff and further that there is no other evidence to prove that Kalindari Bai intended to sell her property in favour of plaintiff. On the contrary, the plaintiff's admission in his cross-examination is that he does not know wherefrom the stamp paper was brought, who prepared it, has been taken into consideration.

17. Learned Lower Appellate Court has also taken into consideration that the plaintiff admits that contents of the sale deeds were not read over to Kalindari Bai. These findings recorded by the Court below cannot be said to be suffering from any patent illegality or perversity so as to make out a substantial question of law warranting interference with the impugned

judgment and decree passed by the learned Lower Appellate Court.

18. In the result, the appeal fails and is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha