

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 211 of 2010**

Purushottam Singh Thakur, Aged about 70 years, S/o
Late Shri Jodhan Singh Thakur R/o Suhela, Tahsil
Simga, Distt. Raipur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Chandra Shekhar, Aged about 47 years, S/o Shri
Jagannath Singh Baghel, R/o Village Bitkuli, Tahsil
Simga, District Raipur, Chhattisgarh.
2. State of Chhattisgarh, Through Collector, Raipur,
Distt. Raipur, Chhattisgarh.

---- Respondents/Defendants

For Appellant :- Mr. M.D. Sharma, Advocate
For State :- Dr. Veena Nair, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

15/09/2020

1. Proceedings of this matter have been taken up
through video conferencing.
2. Heard on admission and formulation of substantial
question of law in this second appeal preferred by
the appellant/plaintiff under Section 100 of the
CPC putting under challenge the impugned judgment
and decree by which the first appellate Court

affirmed the judgment and decree of the trial Court dismissing the suit of the plaintiff.

3. Mr. M.D. Sharma, learned counsel for the appellant/plaintiff, would submit that the two Courts below have committed illegality in dismissing the suit holding that the sale deed dated 19/06/1992 (Ex. D/1) executed by the plaintiff in favour of defendant No. 1 is a real sale deed and not a nominal sale deed executed for the purpose of security of loan taken by the plaintiff from defendant No. 1, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.

4. Plaintiff executed sale deed dated 19/06/1992 (Ex. D/1) in favour of defendant No. 1 for cash consideration of Rs. 5,600/- and thereby, delivered the peaceful possession of the suit property thereof. Thereafter, on 02/08/2005, plaintiff filed the suit for declaration of title and permanent injunction stating inter alia that the said sale deed (Ex. D/1) executed by him in favour of defendant No. 1 was not a real and outright sale, but was a nominal sale deed executed for security of loan, but since in the year 1997, defendant No. 1 got his name mutated in the revenue records, it

compelled him to file the suit for declaration of title and permanent injunction.

5. Defendant No. 1 set up a plea that Ex. D/1 was a real sale deed which was executed in the presence of the witnesses and thereafter, he has in the presence of the plaintiff got mutated his name in the revenue records, as such, plaintiff's suit is liable to be dismissed.

6. Learned trial Court, upon evaluation of oral and documentary evidence on record, dismissed the suit of the plaintiff which was then upheld by the first appellate Court in the appeal preferred by the plaintiff.

7. The two Courts below have clearly recorded a finding that the sale deed (Ex. D/1) was a real and outright sale executed by the plaintiff for a valid consideration in favour of defendant No. 1 and particularly, the fact of mortgage has not been incorporated in the sale deed as is required under Section 58(c) of the Transfer of Property Act, 1882, therefore, the sale deed dated 19/06/1992 (Ex. D/1) executed by the plaintiff in favour of defendant No. 1 is a real sale deed and not a nominal sale deed.

8. In view of the provisions contained under section 58(c) of the Transfer of Property Act, 1882 and in

absence of such a provision being made in the sale deed dated 19/06/1992 that it was a mortgage transaction, both the Courts below have rightly held that the sale deed (Ex. D/1) executed by the plaintiff in favour of defendant No. 1 is a real and outright sale deed and not a nominal sale deed executed for security of loan. Thus, the said finding recorded by both the Courts below in this regard is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record.

9. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet