

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.106 of 2008**

1. Bhojram, S/o Kailash Sahu, aged 32 years,
 2. Ramgopal S/o Kailash Sahu, aged 20 years,
 3. Jhulbai, Widow of Kailash Sahu, aged 45 years,
 4. Sukhdeo Singh, S/o Ganesh Singh, aged 34 years,
- All are R/o Village-Pode (Dalha), Tahsil-Janjgir,
District Janjgir-Champa (CG)

---- Appellants/LR's of Defendant No.2**Versus**

1. Jamuna Bai, W/o Shivcharan Rohidas, aged 41 years, Village-Panthi, Tahsil & District Bilaspur (CG)
2. Bhagwati Bai, W/o Damala Rohidas, aged 31 years, R/o Katghora, District Korba (CG)
3. Puriram, S/o Dheeru Rohidas, aged 28 years, R/o Village-Panthi, Tahsil & District Bilaspur (CG)
4. Jhunjhawa, S/o Bandhu, aged 58 years, R/o Panthi-Deori, Cultivation Village-Podi (Dalha), Tahsil-Janjgir District Janjgir-Champa (CG)

---- Respondents/LR's of plaintiff No.1 Dheeru

5. State of Chhattisgarh through Collector, Janjgir, District Janjgir-Champa (CG)

---- Respondents

For Appellants/LR's of Def.No.2:

Mr.Rajeev Shrivastava and Mr.Sourabh
Sahu, Advocates

For Res.No.1 to 4/LR's of plaintiff No.1:

Mr.A.D.Kuldeep, Advocate

For Respondent NO.5: Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**14.02.2020**

1. Heard on admission and for formulation of substantial question of law in second appeal preferred by the appellants/legal representatives of defendant No.2 and defendant No.1.

2. By the impugned judgment and decree, the Second Additional District Judge (F.T.C.), Janjgir in Civil Appeal No.13A/2007 reversed the judgment and decree dated 25.4.2001 passed by the Second Civil Judge Class-II, Janjgir in Civil Suit No.21A/96 and decreed the suit.

3. Mr. Rajeev Shrivastava, learned counsel for the appellants/legal representatives of defendant No.2 and defendant No.1, would submit that though Ganesh Singh, original holder, has sold the suit land bearing 397 area 1.98 acres by registered sale deed dated 20.4.65 (Ex.P-1) in favour of Dheeru, predecessor-in-title of the plaintiffs, but thereafter Ganesh Singh has also sold the suit land in favour of defendants No.2(A) and 2(B) by registered sale deed dated 11.2.85 (Ex.D-1) and they are bonafide purchasers and as such, the judgment and decree of the trial Court could not have been reversed by the first appellate Court by recording a finding which is perverse and contrary to record and the appeal deserves to be admitted by formulating the substantial question of law for determination.

4. Admittedly, the suit property was held by Ganesh Singh. He firstly sold the suit land to Dheeru by registered sale deed dated 20.4.65 (Ex.P-1) and thereafter again sold the suit land by registered sale deed dated 11.2.85 (Ex.D-1) in favour of defendants No.2(A) and 2(B). The

plaintiffs filed the suit stating that they are title-holders of the suit land and Ganesh Singh has no title to be again conveyed in favour of defendants No.2(A) and 2(B), as such, they are entitled for decree of declaration of title, possession and permanent injunction. The trial Court dismissed the suit finding no merit. On appeal being preferred by the plaintiffs, the first appellate Court has held that Ganesh Singh being title-holder has already sold the suit land by registered sale deed dated 20.4.65 (Ex.P-1) in favour of the plaintiffs predecessor-in-title Dheeru and therefore, Ganesh Singh has no right or title to transfer the same in favour of defendants No.2(A) and 2(B) and thereby decreed the suit.

5. The Supreme Court in the matter of Prahlad Pradhan and others v. Sonu Kumhar and others¹ relying upon its earlier decision of Eureka Builders v. Gulabchand² has held that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. It was observed as under:-

“7. Since Mangal Kumhar did not have an exclusive right, title or interest in the suit property, his widow Etwari Kumharin was not legally competent to sell the suit property to the appellants, purporting to be the sole owner of the property. Reliance is placed on Eureka Builders v. Gulabchand

1 (2019) 10 SCC 259

2 (2018) 8 SCC 67

wherein this Court held:

"35. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

36. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title or interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfer."

6. In view of aforesaid legal position, Ganesh Singh having already transferred the suit land in favour of Dheeru, plaintiffs' predecessor-in-title, could not have been transferred the suit land again in favour of defendants NO.2(A) and 2(B), as such, the first appellate Court has rightly held that Ganesh Singh has no right, title or interest to transfer the suit land in favour of defendants No.2(A) and 2(B) after having been transferred in favour of Dheeru, predecessor-in-title of the plaintiffs vide registered sale deed dated 20.4.65 (Ex.P-1) and as such, the first appellate Court has rightly reversed the judgment and decree of the trial Court, which is neither perverse nor contrary to record and the principle of law laid down in Prahlad Pradhan

(supra) squarely applies to the facts of the present case. I do not find any illegality or perversity in the said finding and even I do not find any substantial question of law for determination of this second appeal.

7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-