

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.144 of 2010**

Nohri Bai D/o Late Baisakhu, Caste Bargah, aged about 40 years, R/o Village Ghadganwa Gajmarwapara, Tahsil Khadganwa, Dist. Korea (CG)

---Appellant/Plaintiff

Versus

1. Lavkush Mishra, S/o. Sumant Mahraj Mishra, aged about 45 years, Resident of Village Charwaridand, P.S. & Tahsil Khadganwa, District Korea (CG)

2. State of Chhattisgarh Through The Collector, Baikunthpur, District Korea (CG)

---Respondents/Defendants

For Appellant/Plaintiff:

Mr. Sakti Raj Sinha, Advocate

For Respondent No.2: 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 this second appeal preferred by the appellant/plaintiff on admission and formulation of substantial question of law.

3. By the impugned judgment and decree, the first appellate Court has dismissed the appeal

preferred by the appellant/plaintiff affirming the judgment and decree of the trial Court dismissing the suit.

4. Mr. Sakti Raj Sinha, learned counsel for the appellant/plaintiff, would submit that both the Courts below have committed legal error in not granting decree by declaring the sale deed dated 20.2.95 (Ex.D-2) executed by the plaintiff and her mother in favour of defendant No.1 as null and void, it was forged and fabricated sale deed, which was never executed by the plaintiff and her mother in favour of defendant No.1, as such, findings recorded by both the Courts below are perverse and the appeal involves substantial question of law for determination.

5. The suit property was originally held by Baishahu. He died leaving his widow Munni Bai and daughter i.e. plaintiff-Nohri Bai, they sold the suit property on 20.2.95 (Ex.D-2) for cash of ₹ 20,000/- in favour of defendant No.1 and delivered peaceful possession and in their presence, name of defendant No.1 was recorded in revenue records. Plaintiff's mother Munni Bai died on 5.6.2004 and thereafter the plaintiff filed the suit on 14.6.2005 for declaration of

title, permanent injunction and for declaring the sale deed dated 20.2.95 (Ex.D-2) as null and void, which was dismissed by the trial Court holding that the plaintiff being party to sale deed ought to have sought cancellation of sale deed and ought to have paid ad-valorem court fees on sale amount and also held that execution of sale deed by the plaintiff and her mother in favour of defendant No.1 has been proved as witnesses to sale deed Jambala Singh (DW-2) and Jailal (DW-3) both have been examined, as such, title has been passed in favour of defendant No.1 and that finding has been upheld by the first appellate court in appeal preferred by the appellant/plaintiff.

6. The plaintiff being party to sale deed ought to have sought cancellation of sale deed and ought to have paid ad-valorem court fees on sale amount in view of the provisions contained in Section 7(iv)(c) of the Court-fees Act, 1870 and further that execution of sale deed by the plaintiff and her mother Munni Bai has been proved by witnesses to sale deed i.e. Jambala Singh (DW-2) and Jailal (DW-3), as such, findings of two Courts below about the suit

being not properly constituted as cancellation of sale deed was not sought by the plaintiff and ad-valorem court fees has not been paid on sale amount and similarly execution of sale deed by the plaintiff and her mother in favour of defendant No.1 held to be duly proved are finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality 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/-