

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.360 of 2010**

Gun Sagar S/o Tilakram, aged about 55 years, by caste Kewat, R/o Village Kasaiya, Tahsil Gharghoda, District Raigarh

**----- Appellant/Plaintiff**

**Versus**

1. Pawan Kumar S/o Jawaharmal, aged about 41 years, by caste Agrawal, occupation cultivation and business, R/o. Gharghoda, P.S., Tahsil and District Raigarh (CG)

2. Narayan S/o Jagatram (Dead), through Legal Heirs

(a) Dwarika S/o Narayan (died issue less)

(b) Govind S/o Narayan

Both by caste Kolta, occupation cultivation, R/o Village Chhotemuda, Tahsil Gharghoda, District Raigarh (CG)

**----- Defendant No.1.**

3. State of Chhattisgarh, through Collector, Raigarh (CG)

**----- Respondents/Defendants**

4. Bodhram S/o Tilak Ram, Dead, Through Legal Heirs

(a) Venudhar S/o Bodhram

(b) Munudai Wd/o Bodhram

Both by caste Kewat, occupation – cultivation, R/o Village Kasaiya, Tahsil Gharghoda, District Raigarh (CG)

**----- Plaintiff No.2/Respondent No.4**

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For Appellant/Plaintiff:

Mr.Awadh Tripathi and Mr.Vivek  
Tripathi, Advocates

For Respondent No.1: None present

For Res.No.2 : Mr.B.D.Guru, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Judgment On Board**

**2/3/2020**

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellant/plaintiff are as under:-

- "i. Whether the first appellate court was justified in reversing the well reasoned finding recorded by the trial court while allowing the appeal ? and
- ii. Whether the first appellate court was justified in holding that the plaintiff's suit was time barred ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. The suit property was originally held by plaintiffs' father Tilakram Kewat, he sold the suit property in favour of defendant No.1-Narayan by registered sale deed dated 15.3.71 (Ex.D-4C) for cash consideration of ₹1000/- and thereafter name of defendant No.1 was mutated in revenue records by order dated 17.4.94, which the plaintiffs challenged before the Sub-Divisional Officer, Gharghoda by filing an appeal. The SDO dismissed the appeal on 14.12.98 as barred by limitation and further appeal and revision were also dismissed by the Collector and the Commissioner respectively. Order of the Commissioner, Bilaspur Division, Bilaspur dismissing the appeal on

31.5.1999 has been filed as Ex.P-5. In the meanwhile, defendant No.1 sold the suit property in favour of defendant No.2 on 14.2.1997 (Ex.D-1). Thereafter as late as on 23.2.2001 the plaintiffs who are successors of Tilakram Kewat, filed a suit that alienation made by their father Tilakram Kewat in favour of defendant No.1 on 15.3.71 (Ex.D-4C) and consequent alienation made by defendant No.1 in favour of defendant No.2 are void and inoperative and decree for declaration and further decree for possession, if any, be granted in their favour. The trial Court decreed the suit, which the first appellate Court reversed dismissing the suit of the plaintiffs, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff No.1, in which substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment.

3. Mr. Vivek Tripathi, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in dismissing the suit by setting aside the judgment and decree of the trial Court as sale deed was never executed by the plaintiffs' father Tilakram in

favour of defendant No.1 and the suit was within limitation and therefore, it could not have been interfered with by the first appellate Court, as such, the appeal deserves to be allowed and the judgment & decree of the first appellate Court be set aside and that of the trial Court be restored.

4. On the other hand, Mr.B.D.Guru, learned counsel for respondent No.2, would support the impugned judgment & decree and submit that sale deed was executed by the plaintiffs' father in favour of defendant No.1 way back on 15.3.71 and thereafter defendant No.1 sold the suit land in favour of defendant No.2 on 14.2.1997 (Ex.D-1) and now defendant No.2 is in possession over the suit land, as such, the first appellate Court has rightly held the suit to be barred by limitation, which is neither perverse nor contrary to record and sale deeds are not void by virtue of Section 23 of the Indian Contract Act, 1872 (hereinafter called as 'Act of 1872').

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

6. It is not in dispute that the suit property was owned by the plaintiffs' father Tilakram Kewat. He

executed sale deed in favour of defendant No.1 on 15.3.71 (Ex.D-4C) and delivered him peaceful possession and defendant No.1 got his name mutated in revenue records by order of the Tahsildar, Gharghoda dated 17.4.94, against which, appeal was preferred by the plaintiffs before the Sub-Divisional Officer, Gharghoda, which was dismissed by the SDO on 10.12.98 and the Collector dismissed first appeal on 19.12.2000 and thereafter the plaintiffs preferred second appeal before the Commissioner, which was decided by the Commissioner on 31.5.1999 (Ex.P-5) and the suit was filed on 23.2.2001, which the trial Court decreed holding that the sale deeds executed by the plaintiffs' father Tilakram in favour of defendant No.1 and thereafter defendant No.1 executed sale deed in favour of defendant No.2 are void and ineffective, however, the first appellate Court reversed the judgment and decree of the trial Court. It is also not in dispute that sale deed dated 15.3.71 (Ex.D-4C) executed by the plaintiffs' father Tikalram in favour of defendant No.1 is registered instrument and executed for cash consideration of ₹1000/-, in which it has been clearly mentioned that he and his legal representatives will have no

objection in future in sale deed, it was executed for valuable consideration and it is registered instrument. The plaintiffs case is that their father Tilakram used to sign, but in sale deed, thumb impression has been marked on Ex.D-4C, as such, their father has not sold the suit property in favour of defendant No.1.

7. Ex.D-4C has been attested by two witnesses i.e. Sitaram Sharma and one other, but Sitaram Sharma (DW-5) has been examined by defendant No.1 to prove that consideration has been passed in favour of the plaintiffs' father and it was sold. Definitely, it has been filed after three years from the date of execution or registration of sale deed.

8. The Supreme Court in the matter of **Ramti Devi (Smt) v. Union of India**<sup>1</sup> dealing with the similar issue held as under:-

"2...As seen, the recitals of the documents would show that the sale deed was executed for valuable consideration to discharge pre-existing debts and it is a registered document. Apart from the prohibition under Section 92 of the Evidence Act to adduce oral evidence to contradict the terms of the recital therein, no issue in this behalf on the voidity of the sale-deed or its binding nature was raised nor a finding recorded that the sale deed is void under Section 23 of the Contract Act. Pleading itself is not sufficient. Since the appellant is seeking to have the document avoided or cancelled, necessarily, a

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<sup>1</sup> (1995) 1 SCC 198

declaration has to be given by the court in that behalf. Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred. Since the cause of action has arisen on 29-1-1947, the date on which the sale-deed was executed and registered and the suit was filed on 30-7-1966, the suit is hopelessly barred by limitation. The courts below, therefore, were right in dismissing the suit. The appeal is accordingly dismissed with costs."

9. Likewise, recently the Supreme Court in the matter of Jamila Begum (Dead) through legal representatives v. Shami Mohd. (Dead) through legal representatives and another<sup>2</sup> has held that a registered document carries with it a presumption that it was validly executed and it is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. It was observed as under:-

"36. As discussed, the suit was filed for declaration that the mortgage deed dated 21-11-1967 as well as sale deed dated 21-12-1970 executed by Wali Mohd. were not executed by him out of his free will and are void. In para (14) of the plaint, it is averred that the cause of action of the suit arose on 21-11-1967 and 21-12-1970. Under Articles 58 and 59 of the Schedule to the Limitation Act, 1963 in a suit filed for any declaration is to be filed within three years when the right to sue accrues. Under Article 59 of the Limitation Act, suit filed to cancel or set aside the instrument or decree, the suit has to be

filed within three years from the date when the facts entitling the plaintiff to set aside or cancel the instrument or decree became first known to him. Plaintiff Shami Mohd. has admitted in his evidence that he got knowledge about the execution of the sale deed dated 21-12-1970 on the third day of death of his father on 17-5-1971. The suit must have been filed within three years of the date of knowledge or the date of the sale deed but the suit was filed on 12-7-1978. In the case in hand, suit filed challenging the validity of the mortgage deed dated 21-11-1967 and sale deed dated 21-12-1970 is beyond the period of limitation of three years as prescribed under Articles 58 and 59 of the Schedule to the Limitation Act and barred by limitation."

10. Reverting to the facts of the present case, in the instant case, it is the case of the plaintiffs that defendant No.1 came to be registered as revenue records by order dated 17.4.94, thereafter, the plaintiffs preferred appeal before the SDO and the Commissioner, which were ultimately dismissed and thereafter they filed a suit on 23.2.2001. Since they came to know about the order of the Tahsildar dated 17.4.94, immediately thereafter within three years from that date they could have preferred suit under Article 58 of the Limitation Act, 1963 for declaration of their title and as such, the first appellate Court has rightly held the suit to be barred by limitation. Even otherwise, Ex.D-4C is registered document and it has been sold for

valuable consideration and therefore, it cannot be held to be invalid document under Section 23 of the Act of 1872. The plaintiffs simply filed a suit for declaration of sale deeds as invalid, whereas they could have sought cancellation of sale deeds as they are claiming through their father. Similarly, defendant No.1 sold the suit property to defendant No.2 vide registered sale deed dated 14.2.1997 (Ex.D-1). Sitaram (DW-5), witness to sale deed (Ex.D-4C), aged about 60 years, has been examined. He has clearly stated that Tilakram has sold the suit property in favour of Narayan for cash consideration of ₹1000/-. Nothing has been extracted in his cross-examination to disbelieve the said document, as such, the first appellate Court is justified in reversing the judgment and decree of the trial Court.

11. In view of the aforesaid analysis, I do not find any illegality or perversity in the judgment and decree passed by the first appellate Court. The substantial questions of law are answered accordingly.

12. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

**13.** Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-