

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 313 of 2010**

1. Hiraundi Bai D/o Shambhu, Caste Satnami, Aged about 67 years, R/o Village Dand, Tahsil Mungeli, District Bilaspur, Chhattisgarh.

2. Mana Bai W/o Ramkhilawan (wrongly mentioned Rakhilawan) Caste Satnami, Aged about 70 years, R/o village Bodsara, Tahsil Bilha, District Bilaspur, Chhattisgarh.

---Appellants/Defendants No. 2 and 3

Versus

1. Jamdas S/o Devlal, Caste Satnami, Aged about 40 years.

2. Narottam Das S/o Devlal, Caste Satnami, Aged about 27 years.

3. Juga Bai Wd/o Devlal, Caste Satnami, Aged about 65 years.

1 to 3 R/o Village Bodsara, Tahsil Bilha, Distt. Bilaspur, Chhattisgarh.

4. Rambai D/o Devlal, Caste Satnami, Aged about 42 years, R/o Village singarpur, Tahil Bhatapara, Distt. Raipur, Chhattisgarh.

5. Sambai, D/o Devlal, Caste Satnami, Aged about 25 years, R/o Village Araieband, Tahsil Takhatpur, Distt. Bilaspur, Chhattisgarh. **--- Plaintiffs**

6. State of Chhattisgarh, Through the Collector, Bilaspur, Chhattisgarh. **--- Defendant No. 4**

---- Respondents

For Appellants :- Mr. Rakesh Pandey, Advocate
For State :- Mr. Jitendra Pali, Dy. A.G.

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

01/09/2020

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 appellants/defendants No. 2 and 3 under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which the trial decreed the suit.
3. Mr. Rakesh Pandey, learned counsel for the appellants/defendants No. 2 and 3, would submit that both the Courts below have erred in granting decree in favour of the plaintiffs ignoring the fact that the sale made by defendants No. 1 and 2 in favour of defendant No. 3 on 15/12/2006 was not questioned by the plaintiffs before the trial Court as neither its setting aside was sought nor its cancellation was sought, therefore, without challenging the said sale deed dated 15/12/2006, plaintiff's suit was not maintainable, as such,

appeal be admitted by formulating substantial question of law for determination in this regard.

4. Learned trial Court has clearly that plaintiffs' predecessor-in-interest Devlal purchased the suit property from one Subaru by sale deed dated 27/12/1967 for cash consideration of ₹ 95/- and thereafter came into possession of the said suit property, which has been affirmed by the first appellate Court, whereas defendants No. 1 and 2, being the successors-in-interest of Shambhu sold the suit property in favour of defendant No. 3 by registered sale deed dated 15/12/2006.

5. True it is that the sale deed dated 15/12/2006 by which defendants No. 1 and 2 sold the suit property to defendant No. 3 was not challenged by the plaintiffs in their suit, but it is well-settled law that a person who does not have right title cannot confer title to another person, therefore, not laying challenge to the sale deed dated 15/12/2006 by the plaintiffs would not make any difference and the suit cannot be held to be not maintainable for not challenging the said sale deed dated 15/12/2006. Consequently, the first appellate Court is absolutely justified in affirming the judgment and decree passed by the trial Court.

6. 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