

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 07 of 2008****Judgment reserved on 17.07.2020****Judgment delivered on 10.08.2020**

1. Seetaram Suryavanshi, aged 50 years, son of Dukaluram

2. Rajram Suryavanshi, aged 52 years, son of Baisakhu Ram

3. Smt. Neerabai Suryavanshi, son of Dukaluram, aged 32 years,

Respondents No. 1 & 2 are resident of Village Semri, Tahsil & District – Bilaspur whereas Respondent No. 3 is resident of village Khaira, Tahsil Seeptat (Masturi), District – Bilaspur (C.G.)

----- Appellants/Defendants**Versus**

1. Anil Kumar Kaushik, aged 04 years, son of – Bedram Kaushik,

2. Sunil Kumar Kaushik, aged 03 years, son of – Bedram Kaushik,

Both are minors through natural guardian mother Smt. Ahilha Devi, son of Bedram Kaushik, resident of village – Semri, Tahsil & District Bilaspur (C.G.)

3. State of Chhattisgarh, through Collector, Bilaspur.

----- Respondents/Plaintiffs.

For Appellants	: Shri Barun Kumar Chakraborty, Adv.
For Respondents	: None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment [C.A.V.]**

(1) Final hearing of this second appeal has been conducted through video conferencing.

(2) The substantial question of law involved, formulated and to be answered in this second appeal preferred by defendants /appellants herein states as under:

“Whether both the Courts below were justified in holding that plaintiff has purchased the suit land bearing Khasra No. 508 area 280 sq.ft. from defendants No. 1 to 3 by agreement which is an unregistered document and it confers no title upon the plaintiff by recording a finding which is perverse and contrary to the record ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court).

(3) The imperative facts required to be noticed for adjudication of this appeal are as under:

(3.1) Two plaintiffs namely Anil Kumar Kaushik & Sunil Kumar instituted a suit for permanent injunction and recovery of possession stating *inter alia* that they have purchased the land bearing Khasra Nos. 514/1 & 515/2, area 0.036 & 0.089 acres, respectively by registered sale deed dated 21.08.2001 (Ex.P-1) and also purchased the adjoining abadi land (suit land) bearing Khasra No. 508, area 280 sq.ft., for cash consideration of Rs. 60,100/-, on which the house and courtyard is situated but since the suit land is abadi land, it could not be registered in their

favour and possession of the said abadi land was also given by the defendants to them (plaintiffs) but later on forcefully possession has been taken by the defendants from them (plaintiffs), as such, the plaintiffs are entitled for recovery of possession of suit land bearing khasra No. 508, area 280 Sq.ft. and also be restrained the defendants from interfering with the possession with regard to the land bearing Khasra Nos. 514/1 & 515/2, area 0.036 & 0.089 acres, respectively.

(3.2.) Resisting the suit, defendants filed written statement stating *inter alia* that plaintiffs' claim is false and frivolous and by the alleged agreement to sell (Ex.P-3), no title has been transferred in favour of the plaintiff and, therefore, the suit deserves to be dismissed.

(4) Trial Court, by its judgment and decree dated 13.03.2006, decreed the suit in favour of plaintiffs by granting decree of declaration of title and permanent injunction in favour of the plaintiffs.

(5) The plaintiff preferred first appeal there-against. The first appellate court, re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court, against which the second appeal has been preferred which, substantial

question of law has been formulated and set out in the opening paragraph of the judgment.

(6) Mr. Barun Kumar Chakraborty, learned counsel appearing for the appellants / defendants would submit that agreement (Ex.P-3) is only an agreement to sell dated 21.8.2001 for cash consideration of Rs.60,100/- and it has not followed by registered instrument and, therefore, in view of Section 54 of the Transfer of Property Act, 1882 (henceforth "TP Act, 1882"), no title has been transferred in favour of plaintiffs, as such, both the courts below have ignored the provision contained in Section 54 of the TP Act as the sale of immovable property exceeding Rs.100/- must be evidenced by registered instrument and, therefore, judgment and decree of both the courts below deserves to be set aside.

(7) None for the respondents/plaintiffs, though served.

(8) I have heard learned counsel appearing for the appellant and considered his rivals submissions made hereinabove and went through the record with utmost circumspection.

(9) Plaintiffs claimed the suit land (abadi land) bearing Khasra No. 508, area 280 sq.ft and house and courtyard constructed therein on the basis of agreement to sell dated 28.1.2001 (Ex.P-3) and said to have obtained

possession thereof by unregistered instrument.

(10) The question is whether by way of unregistered instrument, the plaintiffs can claim title over the suit land.

(11) Section 54 of the Transfer of Property Act, 1882 states as under :-

"54."Sale" defined. - "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made. - Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract of sale. - A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

(12) Careful perusal of the aforesaid provision would show that the sale of immovable property exceeding Rs.100/- can only be made by registered instrument. In the instant case, admittedly, the agreement to sell (Ex.P-3) dated 21.1.2001 is of Rs.60,100/-, but it is only an contract to sell, which does not confer any title as per definition appended to Section 54 of the Transfer of Property Act, 1882 and, thereafter, sale deed has not been executed by the defendants in favour of the plaintiffs. Therefore, in absence of registered instrument, no title has been transferred in favour of the plaintiffs and also they did not acquire any title over the suit land bearing Khasra No. 508, area 280 sq.ft. and house and courtyard constructed therein. Thus, both the courts below have committed legal error in granting decree of declaration of title and permanent injunction in favour of the plaintiffs *qua* Khasra No. 508, area 280 sq.ft. by holding that by way of unregistered instrument, title has been transferred in favour of the plaintiffs, which is in teeth of provision contained in Section 54 of the Transfer of Property Act, 1882.

(13) Accordingly, the judgment and decree of the trial Court as affirmed by the first appellate Court granting decree of declaration of title and permanent injunction with regard to Khasra No. 508, area 280 sq.ft. is partly

set aside. However, the decree with regard to Khasra Nos. 514/1 & 515/2, area 0.036 & 0.089 acres, respectively shall remain intact.

(14) The second appeal is allowed to the extent indicated hereinabove. No costs.

(15) Decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

