

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.304 of 2008****Judgment reserved on: 13-10-2020****Judgment delivered on: 14-12-2020**

Ram Avtar Kori, S/o Late Shri Kanhaiya Kori, aged about 55 years, R/o Madhuban Road, Dayalband, Bilaspur (C.G.)

(Plaintiff)

---- Appellant

Versus

1. Madanlal Bhardwaj, S/o Gopi Prasad Bhardwaj, R/o Village Kharkundi, Tah. & Distt. Bilaspur (C.G.)
2. Bilasa, S/o Late Shri Kanhaiya Kori, aged about 55 years, R/o Village Bandhara, Tah. & Distt. Fatehpur (U.P.)
3. Rajrani, D/o Late Shri Kanhaiya Kori, aged about 53 years, R/o Chingrajpara, Tah. & Distt. Bilaspur (C.G.)
4. Rajkumari (Died and deleted)
5. Shiv Kumari (dead) through legal representatives

5(I) Suresh Kori, S/o Late Shiv Kumari, Aged about 20 years,

5(II) Aman Kori, S/o Late Shiv Kumari, Aged about 18 years,

Both are residents of Fatehpur, Tehsil and Distt. Fatehpur (U.P.)

(Defendants)

---- Respondents

For Appellant / Plaintiff: -

Mr. Sushil Dubey and Mr. Aman Upadhyay,
Advocates.

For Respondent No.1 / Defendant No.1: -

Mr. Subhash Yadav, Advocate.

For Respondents No.2, 3, 5(I) and 5(II): -

None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the plaintiff / appellant was

admitted for hearing by formulating the following substantial question of law: -

“Whether transfer/sale of *Abadi* land is complete without delivery of possession of the land along with superstructure in favour of the purchaser?”

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

2. The suit property including suit land with kutcha house situated therein was purchased by father of the plaintiff, who was earlier defendant No.2 Kanhaiya Kori, by registered sale deed dated 29-2-1968 (Ex.D-4) from one Rajim Bai and he remained in possession and the said kutcha house was constructed by him. Defendant No.2 Kanhaiya Kori sold the suit property in favour of defendant No.1 Madanlal Bharadwaj by sale deed dated 21-1-2003 (Ex.D-1). Thereafter, the plaintiff, son of original defendant No.2, filed suit on 24-1-2003 stating inter alia that though his father defendant No.2 (who died during the pendency of suit) has purchased the suit land in his own name, but sale consideration was paid by him, and it was got registered in the name of his father defendant No.2 on which his father had no right and title and therefore he had no right to alienate the suit property in favour of defendant No.1 and he sought decree for declaration of title and permanent injunction in which defendant No.1 setup the plea that he has purchased the suit property by registered sale deed and there is presumption that it is valid transfer of title and valid title has been passed in favour of defendant No.1

therefore the suit deserves to be dismissed.

3. The trial Court after appreciating oral and documentary evidence available on record decreed the suit granting decree for declaration of title and permanent injunction in favour of the plaintiff which was reversed by the first appellate Court on appeal being preferred by defendant No.1 leading to filing of second appeal by the plaintiff in which substantial question of law has been formulated and set out in the opening paragraph of this judgment for the sake of completeness.
4. Mr. Sushil Dubey, learned counsel appearing for the appellant herein / plaintiff, would submit that by the alleged transfer Ex.D-1, no title has been transferred in favour of defendant No.1, as the plaintiff remained in possession of the suit land and transfer of suit land, which is abadi land, without delivery of possession along with superstructure, no title has been passed and as such, decree passed in favour of the plaintiff would not have been set aside by the first appellate Court.
5. Mr. Subhash Yadav, learned counsel appearing for defendant No.1 / respondent No.1 herein, would support the impugned judgment & decree of the first appellate Court.
6. None present for respondents No.2, 3, 5(I) and 5(II) herein, though served.
7. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.

8. It is not in dispute that the plaintiff's father, who was earlier defendant No.2, purchased the suit property from one Rajim Bai by Ex.D-4 and at that time, the plaintiff was said to be minor. It is the case of the plaintiff that he paid the consideration amount, but his father defendant No.2 got the sale deed registered in his own name, however, since he is residing therein and his father has divorced his mother Ramkali by *chodchutti* and he is missing and defendant No.1 is residing in the suit accommodation as title holder. The plaintiff claimed declaration of title and permanent injunction over the said land without seeking declaration stating that the sale deed by his father (defendant No.2) in favour of defendant No.1 is bad, as such, sale deed by his father defendant No.2 in favour of defendant No.1 was even not sought to be questioned in the civil suit, but the trial Court decreed the suit holding the plaintiff to be title holder which the first appellate Court has reversed holding that valid title has been passed in favour of defendant No.1 by defendant No.2 by Ex.D-1 and the plaintiff has failed to prove that the suit land was not purchased by his father by sale deed dated 29-2-1968 (Ex.D-4), but it was purchased by the plaintiff by paying consideration amount to the seller concerned.

9. The question framed is based on Section 54 of the Transfer of Property Act, 1882 which 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 for 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.”

10. According to paragraph 4 of Section 54 of the TP Act, delivery takes place when the seller places the buyer or such person as the buyer directs, in possession of the property. Delivery may be actual or constructive, or both. If the property is vacant, the buyer can be placed in actual physical possession, but if it is occupied by tenants, possession would have to be constructive, as by asking the tenants to attorn to the buyer. According to the ordinary acceptance, there are only three requisites to complete a transfer by sale, (1) that a person must agree to transfer his ownership to another person; (2) that other person must agree to accept such transfer; and (3) price must be paid or agreed to be paid and both persons must be competent to contract. As such, under Section 54 of the the TP Act, there is transfer of ownership

and exchange for a price.

11. It is the case of the plaintiff that possession has not been transferred to defendant No.1, therefore, sale is not complete without delivery of possession. Non-delivery of possession does not affect the conveyance of title. What is transferred for consideration is the right of ownership. Right to possession is incidental to right of ownership. One who is a owner can bring an action for recovery of possession. Once the right, title and interest are sold, on payment of sale consideration the person in possession, is either a permissive holder like tenant or a person holding adversely to the interest of true owner. In either event person in possession has no title. Since delivery of physical possession is not an essential ingredient of sale, that circumstance by itself can have no relevance to decide the intention. When title is transferred and the person who has purchased the property has title over the suit property, merely because he has not been given possession, non-delivery of possession could not affect the title of the person who has purchased the property.

(See G. Hampamma v. Kartigi Sajjivalada Kalingappa¹.)

12. As such, in the present case, by registered sale deed Ex.D-4, the original defendant No.2 has purchased the property and valid title has been transferred in his favour. Even otherwise, the plaintiff has not questioned the title of defendant No.1 either by seeking declaration that sale made by defendant No.2 as owner in favour of defendant No.1 is invalid or void or

¹ AIR 1990 Karnataka 128

otherwise. As such, the first appellate Court is absolutely justified in holding that defendant No.1 is title holder of the suit land and the plaintiff has no right, title and interest over the suit property and rightly reversed the judgment and decree of the trial Court and consequently, the substantial question of law is answered accordingly. I do not find any merit in this appeal. The second appeal is liable to be and is accordingly dismissed. No order as to cost(s).

13. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma