

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.307 of 2008

Shyam Kumar, S/o Madho Prasad Kesharwani, Aged about 41 years,
Occupation Business, R/o Ward No.5, Nagar Panchayat Area,
Sarangarh, Tahsil Sarangarh, Distt. Raigarh (C.G.)

(Defendant No.1)

---- Appellant

Versus

1. Om Narayan, S/o Banshidhar Chandra, Aged about 31 years,
Occupation Agriculturist

2. Vishnu Narayan, S/o Banshidhar Chandra, Aged about 37 years,
Occupation Agriculturist,

Note: Both R/o Village Kosir, Tahsil Sarangarh, Distt. Raigarh (C.G.)
(Plaintiffs No. 1 & 2)

3. Narsingho (Dead) Through Legal Heirs

3a. Ghasneen (Died and deleted)

3b. Dilip, S/o Narsingho, Aged about 41 years

3c. Chaitmati, S/o Narsingho, Aged about 33 years,

Respondents No.3b and 3c are Agriculturists, R/o Chhote Mathpara,
Near Tulsi Watch Centre, Behind Kutchery, Sarangarh, Tahsil Sarangarh,
Distt. Raigarh (C.G.)

4. Shanker, S/o Late Ganesh Ram, Aged about 56 years, Occupation
Agriculturist, R/o Chhote Mathpara, Near Tulsi Watch Centre, Behind
Kutchery, Sarangarh, Tahsil Sarangarh, Distt. Raigarh (C.G.)

5. Mst. Bhukhin (Died and deleted)

6. Ghono @ Dashrath (Dead) Through Legal Heirs

6(i) Ram Kumar, S/o Ghono @ Dhono, Aged about 45 years

6(ii) Kartikram, S/o Ghono @ Dhono, Aged about 40 years

Note: Both are R/o Chhote Mathpara, Tulshigadhi Dukan Ke Pass,
Sarangarh, Distt. Raigarh (C.G.)

7. Mst. Tilaipalheen @ Guruwari (Died and deleted)

8. Ghasiya, S/o Late Ramlal Kahar, Agriculturist, R/o Chhote Mathpara,
Near Tulsi Watch Centre, Behind Kutchery, Sarangarh, Tahsil Sarangarh,

Distt. Raigarh (C.G.)

9. Gangaram (Dead) Through Legal Heirs

9(a) Kotmarheen, Wd/o Gangaram, Aged about 52 years

9(b) Umesh, S/o late Gangaram, Aged about 18 years

9(c) Kumari Suruchi, D/o Late Gangaram, Aged about 13 years

9(d) Kumari Jyoti, D/o Late Gangaram, Aged about 10 years

9(e) Kumari Preeti, D/o Late Gangaram, Aged about 7 years

9(f) Durga, S/o Late Gangaram, Aged 4 months

Note: Respondents No.(a) to (f) are all residents of Chhote Mathpara, Near Tulsi Watch Centre, Behind Kutchery, Sarangarh, Tehsil Sarangarh, Distt. Raigarh (C.G.) Respondents No.(c) to (f) are minors and they are represented through their natural guardian and mother Respondent No. (a) Kotmarheen, Wd/o late Gangaram.

10. Sahebram (Dead) Through Legal Heirs

10(a) Samarin, Wd/o late Sahebram, Aged about 46 years

10(b) Kumari Parvati, D/o late Sahebram, Aged about 17 years

10(c) Kumari Kumkum, D/o Late Sahebram, Aged about 6 years

Note: Respondents No.(a) to (c) are all residents of Chhote Mathpara, Near Tulsi Watch Centre, Behind Kutchery, Sarangarh, Tehsil Sarangarh, Distt. Raigarh (C.G.) Respondents No.(b) & (c) are minors and they are represented through their natural guardian and mother Respondent No. (a) Samarin, Wd/o late Sahebram.

11. State of Chhattisgarh, Through Collector, Raigarh, Distt. Raigarh (C.G.)
(Defendants No.2 to 9)
---- Respondents

For Appellant/Defendant No.1: -

Mr. Ratan Pusty, Advocate.

For Respondents No.1 and 2 / Plaintiffs: -

Mr. H.S. Patel, Advocate.

For Respondent No.11 / State: -

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

10/02/2020

1. This second appeal under Section 100 of the CPC preferred by defendant No.1 was admitted for hearing by formulating the following substantial question of law: -

“Whether the finding recorded by both the Courts below that unregistered sale deed dated 12-01-1986 Ex.D-1 executed by Shankar in favour of the appellant herein does not confer title to the appellant, is in accordance with law?”

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

2. The plaintiffs filed suit for declaration of title and possession in respect of suit land bearing Khasra No.42/3, area 0.138 hectare = 0.34 decimal, situated at Village Sarangarh, Patwari Halka No.20, Revenue Inspector Circle and Tahsil Sarangarh, Distt. Raigarh on the strength of sale deed Ex.P-1 dated 18-1-1988 executed in their favour by defendants No.2 to 9 and alleging dispossession by defendant No.1 on the basis of unregistered sale deed dated 12-1-1986 (Ex.D-1) alleging cause of action to have accrued on 12-2-1993 when mutation in their favour was set aside by the Sub-Divisional Officer in appeal preferred by defendant No.1 relying upon the unregistered sale deed and remanded the matter for fresh consideration in which defendant No.1 filed his written statement disputing the claim of the plaintiffs and asserting his title over the disputed land on the basis of unregistered sale deed dated 12-1-1986 (Ex.D-1) executed by defendant No.3 Shankar followed by delivery of possession stating that the sale deed Ex.D-1 dated 12-1-1986 which was executed earlier will prevail over the subsequent sale deed Ex.P-1 dated 18-1-1988 executed in favour of the plaintiffs.

3. The trial Court decreed the suit holding that the unregistered sale deed dated 12-1-1986 (Ex.D-1) is a forged one and sufficient consideration has not been shown; conduct of vendor and purchaser was suspicious; no mutation was claimed by defendant No.1 on the basis of said sale deed Ex.D-1; and the document Ex.D-1 was scribed by document writer Bharatlal Thawait (DW-3) in violation of the M.P. Document Writers Licensing Rules, 1966 as the market value was not shown properly. The judgment & decree of the trial Court was affirmed by the first appellate Court in appeal preferred by defendant No.1 against which this second appeal has been preferred in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
4. Mr. Ratan Pusty, learned counsel appearing for the appellant herein / defendant No.1, would submit that inadequacy of consideration is not a ground available to third party to the contract to repudiate the transaction. He would further submit that the plaintiffs did not question the sale deed Ex.D-1 executed in their favour by defendant No.3 Shankar and they did not seek declaration of the document Ex.D-1 as null and void, yet the trial Court declared the said document fabricated.
5. Mr. H.S. Patel, learned counsel appearing for the plaintiffs / respondents No.1 & 2 herein, would support the impugned judgments & decrees and would submit that the appeal deserves to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. Concurrently both the Courts below held that the property was not held

by Shankar alone, it was held by Shankar & defendants No.2 to 9 including defendant No.3 – Shankar. The said finding is a finding of fact based on the evidence available on record which has not been seriously questioned even in this second appeal. Once this finding in respect of the suit property is accepted and suit property is held to be the joint family property of defendants No.2 to 9, the property could not have been alienated by defendant No.3 alone in favour of defendant No.1 without the consent of other coparceners. Even otherwise, both the Courts below on scrutiny of oral and documentary evidence on record clearly came to the conclusion that the document Ex.D-1 was reduced into writing on a plain paper, it was not even on a stamp paper, it was not registered and consideration amount has deliberately been shown to be ₹ 99/-, whereas at the time of alienation it was more than ₹ 100/-. Therefore, in order to avoid registration which is compulsorily registrable by virtue of Section 17 read with Section 49 of the Indian Registration Act, consideration amount of ₹ 99/- was shown. Moreover, no mutation was claimed by defendant No.1 on the basis of said sale deed. As such, concurrent finding of facts of both the Courts below is a finding of fact based on the evidence available on record, which is neither perverse nor contrary to record.

8. So far as the argument that challenge was not made to the sale deed dated 12-1-1986 (Ex.D-1) is concerned, same also deserves to be noticed for rejection because issue No.3 was expressly framed by the trial Court and it was tried by the trial Court and defendant No.1 has joined the issue and therefore this argument of non-challenge to the sale deed is hereby repelled.

9. Since the plaintiffs are purchasers of the suit land by registered sale deed Ex.P-1, they are entitled to file suit for declaration of title and possession in respect of the suit land. Therefore, it cannot be held that the suit was not competent and both the Courts below have committed illegality in holding that the appellant herein / defendant No.1 does not confer any title in his favour by unregistered sale deed executed by Shankar in his favour. The substantial question of law is answered accordingly and I do not find any merit in the second appeal. The second appeal deserves to be and is hereby dismissed. No order as to cost(s).

10. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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