

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.186 of 2009

1. Budhram, S/o Dhaniram Sahu, Aged about 70 years, Cultivator, R/o Village Badnara, P.O. Badnara, Tahsil Nawagarh, Sub Division Bemetara, District Durg (C.G.)
2. Santosh Kumar, S/o Budhram, Aged about 38 years, Cultivator, R/o Village Badnara, P.O. Badnara, Tahsil Nawagarh, Sub Division Bemetara, District Durg (C.G.)

(Defendants)
---- Appellants

Versus

Jakalu, S/o Gayaram (dead during pendency of suit having none except real brother Chaitram).
(dead-survived by none except co-plaintiff Chaitram D.H.)

1. Chaitram, S/o Gayaram, Aged about 74 years, Cultivator, R/o Village Badnara,,
(Plaintiff)
2. Top Singh, Aged about 55 years, S/o Chaitram, Cultivator, R/o Village Badnara, Tahsil Nawagarh (C.G.)
(Defendant No.3)
3. State of Chhattisgarh, Through Collector, Durg (C.G.)
---- Respondents

For Appellants / Defendants No.1 & 2: -

Mr. Arvind Dubey, Advocate.

For Respondent No.3 / State: -

Mr. Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

14/08/2020

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 defendants No.1 and 2 / appellants.

3. Mr. Arvind Dubey, learned counsel appearing for the appellants herein / defendants No.1 & 2, submits that the finding recorded by the first appellate Court dismissing the counter-claim and decreeing the suit of the plaintiff, is contrary to the oral and documentary evidence available on record and therefore the appeal deserves to be admitted for final hearing by formulating substantial question of law for determination.
4. The plaintiffs filed suit for declaration of title and other reliefs stating inter alia that they are title holders and possession holders of the suit land and the sale deed executed by Jaklu and Top Singh was never executed in favour of defendants No.1 & 2 and it is an unregistered document and it does not confer any title to them, therefore, the plaintiffs are entitled for decree as claimed in which defendant No.1 filed counter-claim on the basis of sale deed with no date (Ex.D-2) allegedly executed by Jaklu and Top Singh in their favour for cash consideration of ₹ 5,858/- and also claimed decree in their favour. There were two rounds of litigation and ultimately, the trial Court dismissed the suit and decreed the counter-claim and on appeal being preferred by the plaintiffs before the first appellate Court, the first appellate Court dismissed the counter-claim and decreed the suit. The defendants' counter-claim is based on Ex.D-2 which is undated and is alleged to have been executed by Jaklu – plaintiff No.1 (whose name was deleted as he died) and Top Singh who is defendant. The sale deed is admittedly of ₹ 5,858/- i.e. of more than ₹ 100/- and it is admittedly unregistered, therefore, in view of Section 54 of the Transfer of Property Act, no title has been transferred in favour of the defendants

by the alleged sale deed and as such, the defendants have no right, title over the suit land.

5. Mr. Dubey, learned counsel appearing for the appellants herein / defendants No.1 & 2, further submits that the plaintiffs have no right, title to file suit.

6. Gayaram had two sons Jaklu and Chaitram and Top Singh is son of Chaitram. Therefore, the defendants having setup title from the plaintiffs and they are ancestors, cannot say that they have no right, title over the suit land. The finding recorded by the first appellate Court is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any merit in the second appeal, it is accordingly dismissed, *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge