

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.176 of 2007**

Chemeli Bai, aged 38 years, wife of Ayodhya Prasad Soni, caste Soni, resident of village Lamna, P.S. Gaurela, tehsil Pendraroad, district Bilaspur (CG)

----- **Appellant/Defendant**

Versus

1. Goverdhan, aged 65 years, son of Shri Roopnath, Caste Kumhar, resident of village Lamna, P.S. Gaurela, tehsil Pendraroad, district Bilaspur (CG) (dead) ----- **Respondent/Plaintiff**

Through the legal representatives:-

(1-A) Sita Bai (died and deleted)

(1-B) Santoshi Bai, aged 18 years, Caste Kumhar, Resident of village Lamna, P.S. Gaurela, tehsil Pendraroad, district Bilaspur (CG)

2. Ayodhya Prasad, aged 45 years, caste Soni, son of Shri Dayaram, resident of village Lamna, P.S. Gaurela, tehsil Pendraroad, district Bilaspur (CG)

3. Mohammad Fakhuruddin (deleted)

----- **Respondents**

For Appellant/Defendant No.1: Mr.Somnath Verma, Advocate
For Respondent No.1-B/LR's of the Plaintiff:

Mr.Rakesh Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

22/06/2021

1. This second appeal preferred by defendant No.1 was admitted for hearing on 6.2.2020 by formulating the following substantial question of law for determination:-

"Whether the learned Lower Appellate Court was justified in reversing judgment and

decree of the trial Court, admitting evidence against the contents of the sale deed dated 15.03.1999 (Ex.D/1), in the absence of any proper pleading of fraud and evidence in that regard?"

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

2. The plaintiff (who died during the pendency of this second appeal) filed a suit for cancellation of sale deed dated 15.03.1999 (Ex.P-1/Ex.D-1) by which the suit land bearing Khasra No.335/1 area 1 acre situated at village Lamna, District-Pendra Gaurela Marwahi alleging that though he has sold the land bearing Khasra No.376/1 area 0.60 acre (60 decimal), but fraudulently and by playing fraud, defendants No.1 and 2 have got the suit land bearing Khasra No.335/1 area 1 acre recorded in sale deed, as such, the said land was never alienated and in fact, the land bearing Khasra No.376/1 area 60 decimal has been alienated, which has been done taking advantage of his illiteracy and even he is not able to sign in the papers, as such, sale of the suit land bearing Khasra No.335/1 area 1 acre is totally fraudulent act on the part of defendants No.1 & 2 and no title has been passed in favour of defendant No.1. Therefore, sale deed dated 15.03.1999 (Ex.P-1/Ex.D-

1) be declared void and decree for permanent injunction be passed in favour of the plaintiff.

3. Resisting the suit, defendants No.1 and 2 filed their joint written statement and denied the averments made in the plaint stating inter-alia that the plaintiff in open eyes sold the suit land bearing Khasra No.335/1 area 1 acre on 15.3.1999, which has duly been recorded in favour of defendant No.1 and she is in possession of the suit land and as such, the suit deserves to be dismissed.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 2.8.2001, dismissed the suit holding that the plaintiff has sold the suit land bearing Khasra No.335/1 area 1 acre and it has not been obtained by playing fraud. On appeal being preferred by the plaintiff, the first appellate Court reversed the judgment and decree of the trial Court and granted decree in favour of the plaintiff holding him to be title-holder of the suit land, against which, defendant No.1 preferred this second appeal under Section 100 of the CPC, in which one substantial question of law has been formulated by this Court, which has been set-out in opening paragraph of this judgment for sake of completeness.

- 5.** Mr.Somnath Verma, learned counsel for the appellant/defendant No.1, would submit that there is overwhelming evidence available on record to hold that the suit land bearing Khasra No.335/1 area 1 acre was alienated in favour of defendant No.1 and the plaintiff has failed to prove any fraud on the part of defendant No.1 and sale deed (Ex.P-1/Ex.D-1) has duly been proved in accordance with law, as such, finding recorded by the first appellate Court is absolutely perverse and contrary to record.
- 6.** On the other hand, Mr.Rakesh Thakur, learned counsel for respondent No.1-B/legal representatives of the plaintiff, would support the impugned judgment and decree and submit that finding recorded by the first appellate Court is well reasoned and well merited which requires no interference that too in appeal under Section 100 of the CPC and as such, the judgment and decree of the first appellate Court deserved to be upheld.
- 7.** I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
- 8.** Admittedly and undisputedly, sale deed (Ex.P-1/Ex.D-1) was executed by the plaintiff in favour of

defendant No.1 on 15.03.1999, in which Khasra No.335/1 area 1 acre is said to have been alienated in favour of defendant No.1, but thereafter on 28.10.99 the plaintiff filed the suit that he has not alienated the suit land bearing Khasra No.335/1 area 1 acre, but he has alienated the land bearing Khasra No.376/1 area 60 decimal, which the trial Court did not accept, but the first appellate Court reversed that finding and decreed the suit of the plaintiff.

9. It is the stand of defendant No.1 that the plaintiff did not own the land bearing Khasra No.376/1 area 60 decimal. The plaintiff in para-20 of his cross-examination has clearly admitted that he only own the land bearing Khasra No.376/2 area 40 decimal and the land bearing Khasra No. 376/1 area 40 decimal is owned by his brother Ramdhan as on own admission of the plaintiff that on the date of transfer i.e. 15.3.1999 or on the date of suit i.e. on 28.10.99, the plaintiff was not owner of the land bearing Khasra No.376/1 area 60 decimal and as such, his foundation of the suit that he has sold the land bearing Khasra No.376/1 area 60 decimal has no basis or his case as projected is not true. Apart from that, the plaintiff has also admitted the execution

of sale deed in the office of Registrar and also admitted his sign in the sale deed.

10. Now, the question is whether there is any fraud played in execution of sale deed dated 15.03.1999 (Ex.P-1/Ex.D-1), which was said to have been executed by the plaintiff in favour of defendant No.1 ?

11. In order to prove the execution of sale deed by the plaintiff in favour of defendant No.1, defendant No.1 has examined as many as 5 witnesses, two are official witnesses. Prahlad Dwivedi (DW-1) is In-charge Sub-Registrar on the date of registration of sale deed. In para-2, he has clearly stated that on the date of sale, the contents of sale deed (Ex.P-1) was explained to the seller and consideration amount was also informed to him and it has been admitted by seller and sale deed was registered in favour of defendant No.1, though he has been subjected to cross-examine, but nothing has been extracted to disbelieve his statement in chief. Similarly, Ayodhya Prasad (DW-2) has stated that the suit land was also measured by Patwari and Patwari has also issued the revenue documents showing the title of the land, which was at that very time suit land bearing Khasra No.335/1 in favour of the

plaintiff. Similarly, Man Singh (PW-3) is also villager. He has also stated about the measurement and revenue documents having been given by patwari to the plaintiff. Fakhruddin (DW-4) is document writer. He has clearly stated that at the instructions of plaintiff-Goverdhan he has drafted sale deed as per revenue documents (vikri chat) as well as rin pustika, which the plaintiff has accepted and thereafter sale deed was executed. Luklata Prasad (PW-5) is patwari. He has clearly stated about measurement of suit land, issuance of revenue documents (vikri chat). He has also stated that the plaintiff has also shown the land to be sold in favour of defendant No.1. He has been subjected to cross-examination, but nothing has been brought against defendant No.1.

- 12.** Thus, a careful perusal of statements of the plaintiff and defendant's witnesses would show that the plaintiff was admittedly not owner of the land bearing Khasra No.376/1 area 60 decimal on the date of alienation of sale deed and he was owner and title-holder of the land bearing Khasra No.335/1 area 1 acre, of which he has obtained revenue documents from patwari Luklata Prasad (PW-5) before alienating the suit land and also got the land

measured by defendant No.5 in presence of defendants witnesses No.2 and 3 and thereafter presented the document for registration in the office of Sub-Registrar to which Prahlad Dwivedi (DW-1) has explained the contents of sale to the plaintiff and after having been accepted he proceeded to register sale deed in favour of defendant No.1, as such, there is overwhelming evidence available on record to hold that the plaintiff has openly and with all alertness executed sale deed in favour of defendant No.1 of suit land bearing Khasra No.335/1 area 1 acre, which he was owning at that time and valid title has been transferred in favour of defendant No.1, as such, the first appellate Court is absolutely unjustified in holding that the plaintiff has not transferred the suit land bearing Khasra No.335/1 area 1 acre in favour of defendant No.1.

13. On the basis of aforesaid discussion, I am unable to sustain the judgment and decree of the first appellate Court and accordingly, it is set-aside and that of the trial Court is hereby restored meaning thereby the suit filed by the plaintiff would stand dismissed.

14. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear

their own cost(s).

15. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-