

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 99 of 2012**

Kishore Chand Bhoi, S/o Sankarshan Bhoi, Aged about 72 years, R/o 52/1, Bajrang Chowk, Mathpara, Mahamaya Mandir Ward, Raipur, Tahsil and Distt. Raipur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Pavitra Kumar Guha, S/o Late Surendra Kumar Guha, Aged about 62 years, R/o MIG – 2/107, Hudko, Bhilai, Distt. Durg, Chhattisgarh.
2. Smt. Leela Sahu, Aged about 52 years, W/o Dutiya Sahu, R/o Bajrang Chowk, Mathpara, Mahamaya Mandir Ward, Raipur, Tahsil and Distt. Raipur, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. Anurag Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

22/03/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and

decree by which trial Court dismissed the suit of the plaintiff.

2. Mr. Anurag Singh, learned counsel for the appellant/plaintiff, would submit that both the Courts below have committed illegality in holding that plaintiff is not entitled for decree for declaration of title and permanent injunction by recording a finding which is perverse and contrary to the record, as such, the appeal be admitted by formulating substantial question of law.
3. Plaintiff is admittedly the tenant of Pradyuman Kumar Guha, who let out the suit accommodation to the plaintiff. Thereafter, Pradyuman Kumar Guha died and the suit accommodation was inherited by defendant No. 1 who became the landlord and from whom plaintiff is said to have purchased the suit accommodation by entering into agreement to sale dated 16/08/1995, but it is the case of the plaintiff that defendant No. 1 has illegally executed sale deed dated 29/10/1999 (Ex. D-4c) in favour of defendant No. 2 and has alienated the suit accommodation in his favour.

4. Both the Courts below have dismissed the suit holding that plaintiff has failed to prove that he has purchased the suit accommodation by valid agreement to sale and rather held that defendant No. 1 has rightly alienated the suit accommodation in favour of defendant No. 2 by registered sale deed dated 29/10/1999 (Ex. D-4c).

5. The concurrent finding recorded by both the Courts below holding that plaintiff is only the tenant and he has not purchased the suit accommodation either by agreement to sale or by sale deed is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record and even if it is held that plaintiff has purchased the suit accommodation by agreement to sale, then his remedy would be to file a suit for specific performance of contract and he is not entitled for decree for declaration/permanent injunction in view of the provisions contained under Section 41(h) of the Specific Relief Act, 1963. As such, the appeal does not involve any substantial question of law.

6. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet