

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 91 of 2012**

1. Noni Bai W/o Chhote Nanku @ Biashu, Aged about 65 years.
2. Gangaram S/o Chhote Nanku @ Biashu, Aged about 33 years.
3. Balakram S/o Chhote Nanku @ Biashu, Aged about 23 years.
4. Ramprasad S/o Chhote Nanku @ Biashu, Aged about 24 years.

All are by Caste Mouwar R/o Village Thakurpali,
Tahsil Sarangarh, Distt. Raigarh, Chhattisgarh.

---Appellants/LRs. Of Plaintiff

Versus

1. Chhatarbai W/o Nanku, Aged about 51 years, Caste Mouwar, Village Thakurpali.
2. Govind S/o Mahesh, Caste Satnami.
3. Hemlal S/o Mahesh, Caste Satnami.
4. Naindas S/o Mahesh, Caste Satnami.
5. Gahin Wd/o Mahesh, Caste Satnami.

All are R/o Village Khursi, Tahsil Sarangarh,
Distt. Raigarh, Chhattisgarh.

--- Respondents/Defendants

For Appellants :- Mr. R.K. Pali, Advocate

For Respondents :- None

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

01/02/2021

1. This second appeal preferred by the appellants/LRs. of the plaintiff was admitted for hearing on 13/01/2016 by formulating the following substantial question of law :-

"Whether the Courts below were justified in dismissing the suit by holding that the plaintiffs have failed to prove purchase of the land in dispute by Chhote Nanku, despite evidence of Dhanka Ram (P.W.2), an attesting witness of the sale deed and the evidence of continuance possession of the plaintiffs over the land in dispute and admission of plaintiffs claim by defendants No. 2 to 5/legal representatives of vendor – Mahesh ?"

[The parties will hereinafter be referred to as per their status given and ranking shown before the trial Court.]

2. The original plaintiff Chhote Nanku instituted a suit principally against defendant No. 1 who is his brother's widow for declaration of title and permanent injunction stating *inter alia* that he is the real purchaser of the suit land bearing Khasra No. 275/1 area 0.202 hectare situated at Village Thakurpali, Distt. Raipur which he purchased from one Mahesh vide registered sale

deed dated 06/03/1992 (Ex. P/1) for a cash consideration of Rs. 11,000/-, as such, he is entitled for decree as claimed and to get his name mutated in the revenue records as the title-holder of the suit land.

3. Resisting the suit, defendant No. 1 filed her written statement stating that the suit land was purchased by her husband Bade Nanku vide registered sale deed dated 06/03/1993 (Ex. D/1) from Mahesh.
4. Defendants No. 2 to 5, who are the legal heirs of Mahesh, have also filed their written statement and have admitted that Mahesh sold the suit land in favour of the plaintiff i.e. Chhote Nanku.
5. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit vide its judgment and decree dated 29/03/2011, holding that the word 'Chhote' was inserted in the sale deed just before Nanku in Ex. P/1, however, the said word is missing in Ex. D/2 which is a certified copy of the sale deed executed by Mahesh in favour of Nanku, as such, it cannot be held that plaintiff is the

real purchaser of the suit land, which was then agreed and concurred by learned first appellate Court in the appeal preferred by the appellants/LRs. of plaintiffs vide impugned judgment and decree dated 26/11/2011 against which this second appeal has been preferred in which substantial question of law has been formulated and set out in the opening paragraph of the judgment.

6. Mr. R.K. Pali, learned counsel for the appellants/LRs. of plaintiff, would submit that both the Courts below have concurrently erred in not appreciating the oral and documentary evidence on record properly as firstly, the attesting witness of the sale deed namely Dhanka Ram (P.W. 2) has been examined and he has clearly stated that the suit land was purchased by Chhotte Nanku, secondly, defendants No. 2 to 5 who are legal heirs of the seller Mahesh have also stated that the suit land was sold by Mahesh to Chhote Nanku and lastly, Makbook Ahmad Khan (P.W. 3), officer from the office of Sub-Registrar, Sarangarh has been examined who brought the original sale deed and clearly stated that the suit land was purchased by

Chhote Nanku, as such, the overwhelming evidence on record has been overlooked by both the Courts below and plaintiff's suit has wrongly been dismissed by holding that plaintiff has failed to establish execution of the sale deed in his favour.

7. None for respondents, though served.
8. I have heard learned counsel for the appellants, considered his submissions and went through the records with utmost circumspection.
9. The only question for consideration herein is whether the original plaintiff Chhote Nanku is the real purchaser of the suit land vide Ex. P/1.
10. Both the Courts below have disbelieved the sale deed (Ex. P/1) only on the ground that the word 'Chhote' has been inserted before the name Nanku and therefore, it cannot be held that plaintiff is the real purchaser of the suit land.
11. It is the case of the plaintiff that he purchased the suit land from one Mahesh whose legal heirs have been impleaded as a party defendant to the suit being defendants No. 2 to 5 who have clearly admitted in their written

statement that Mahesh sold the suit land in favour of Chhote Nanku. Apart from this, the attesting witness of the sale deed namely Dhanka Ram (P.W. 2) has been examined as a witness on behalf of the plaintiff and he has categorically admitted that suit land was purchased by plaintiff Chhote Nanku and he has signed the sale deed in the office of the Sub-Registrar signifying the fact that Mahesh has sold the suit land in favour of Chhote Nanku. Not only this, the officer from the office of the Sub-Registrar, Sarangarh namely Makbool Ahmad Khan (P.W. 3) has also been examined who brought the original sale deed and stated the fact that the suit land has been purchased by Chhote Nanku from one Mahesh on 06/03/1993 by registered sale deed.

12. The aforesaid overwhelming evidence clearly establishes in fact, that Chhote Nanku has purchased the suit land from Mahesh and merely on the basis of some discrepancy in other certified copy of the sale deed in which the word 'Chhote' has been omitted and it has been inserted in front of the name Nanku cannot be a ground to disbelieve the plaintiff, particularly

when the legal heirs of Mahesh i.e. defendants No. 2 to 5, the attesting witness namely Dhanka Ram (P.W. 2) and further when the officer from the Office of the Sub-Registrar, Sarangarh has been brought before the Court which indicates only one thing that the suit land has been purchased by the plaintiff. Not only this, from the evidence of possession led by the plaintiff over the suit land, it cannot be held that he is not the real purchaser of the said suit land vide sale deed dated 06/03/1993 (Ex. P/1).

13. Consequently, the aforesaid finding recorded by the trial Court affirmed by the first appellate Court holding that plaintiff is not the real purchaser of the suit land on the strength of the sale deed (Ex. P/1) is perverse and contrary to the record and is hereby set aside and it is declared and decreed that plaintiff is the title-holder of the suit land bearing Khasra No. 275/1^ख area 0.202 hectare situated at Village Thakurpali, Tahsil Sarangarh, Distt. Raipur and accordingly, on that basis, plaintiff (now his LRs.) is entitled to get his name mutated in the revenue records.

14. The second appeal is allowed to the extent indicated herein-above. No cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet