

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 320 of 2017**

- Kamal Kedia S/o Abirchand Kedia Aged About 51 Years R/o R-8, Anupam Nagar, Raipur, Chhattisgarh Age Of The Appellant Is Not Mentioned In The Cause Title Of The Impugned Order But Is Being Done In This Memo Of Appeal, Name Of The Father Of The Appellant Is Also Wrongly Mentioned As Amirchand In The Cause Title Of The Impugned Order And Which Is Accordingly Corrected Hereinabove, Address Of The Appellant Mentioned In The Cause Title Of The Impugned Order Is Also The Old Address And Therefore The New And Correct Address Is Being Mentioned Hereinabove. Def. No. 2, Chhattisgarh

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1. Dr. Meghraj S/o Sri Khillumal Ramnani Aged About 79 Years R/o Mamta Maternity Home, Jawahar Nagar, Raipur, District Raipur, Chhattisgarh Age And Complete Address Of The Res. No. 1 Is Not Mentioned In The Cause Title Of The Impugned Order But Is Being Done In This Memo Of Appeal Plaintiff, Chhattisgarh
2. Anupam Grih Nirman Sahkari Samiti Maryadit, Anupam Nagar, Tehsil/ District Raipur, Chhattisgarh Def. No. 1, District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Sumesh Bajaj, Advocate.
For respondent No.1	:	Mr. Rajeev Shrivastava, Sr. Advocate with Mr.Sourabh Sahu, Advocate.
		Mr. Sumit Jhawar, Advocate has been appointed and appeared as Commissioner.

Hon'ble Shri Justice Narendra Kumar Vyas**Order on Board****08-12-2021**

1. The appellant has filed the present appeal against the judgment and decree dated 7-4-2017 passed by the learned 2nd Additional District Judge, Raipur (CG) in Civil Suit No.45-A/2002 whereby learned trial court has allowed the

claim of the plaintiff ie., respondent No.1 and held as under:

- (i) It is declared that the sale deed dated 6-11-1998 executed by the defendant No.1 in favour of defendant No.2 is not binding on the plaintiff, being *void ab initio*;
- (ii) Plaintiff shall pay a sum of Rs.25 lacs only to the defendant No.2 towards cost of improvement made during pendency of appeal, within a period of one month from today.
- (iii) Defendant No.2 shall handover possession of the suit property to the plaintiff within a period of three months;
- (iv) In the facts and circumstances, parties shall bear their respective costs”.

2. This Court while admitting the appeal on 31-7-2017 has stayed the effect and operation with respect to the possession part of the decree is concerned. During pendency of this first appeal, appellant and respondent No.1 have settled their dispute and compromise application under Order 23 Rule 1 and 3 of the CPC was filed by the appellant and respondent No.1 on 5-7-2021 and relevant portion thereof is extracted below:

- 1. That, the respondent No.1, as plaintiff, had filed the instant suit based on his claims on the shit plot situated at Shri R3am Nagar Scheme Phase-2, (Anupam Nagar), Raipur bearing plot No.R-8 area admeasuring 7765 square feet.
- 2. That, the respondent No.2 has not yet appeared in the instant appeal however this makes no difference for the purpose of this application as the respondent No.2 was contesting against the respondent No.1 and was just supporting the case of the appellant and as such had no independent say apart from the case of the appellant.
- 3. That, the appellant and the respondent No.1 have now entered into a settlement/com,promise and in lieu of which the appellant has paid an amount of Rs.2.0 crores (Rs. Two crores) to the respondent No.1”.

3. In pursuance of the compromise arrived at between the appellant and respondent No.1, this court vide its order dated 22-10-2021 has directed that the appellant and respondent No.1 shall appear before the Additional Registrar (J) before this court for recording their statements on 10-11-2021. On that day, no statement was recorded because of personal difficulty of respondent No.1 as he is 85 years old person and is unable to travel from Raipur to Bilaspur. Considering this aspect of the matter, this court vide its order dated 2-12-2021 directed the appellant and respondent No.1 to record their statements through the Commissioner and accordingly, Mr. Sumeet Jhavar, Advocate is appointed as Commissioner and in pursuance of this court's order dated 2-12-2021 the statements of appellant and respondent No.1 were recorded on 4-12-2021 before the Commissioner which are extracted below.

"Commissioner before oath Statement"

Mr. Shri Kamal Kedia, s/o. Abir Kedia, aged about 55 years, resident of R-8, Anupam Nagar, Raipur Tehsil, District Raipur (CG). Oath has been given by me today at A-105 Swarnabhoomi Vidhan Sabha Road Raipur, Tehsil District Raipur, Chhattisgarh on 4-12-2021. He said that whatever he says, he will tell the truth to the right person, there is no temptation and pressure of any kind on him:-

1. I, personally know the respondent No.1 Megharaj Ramnani Atmakch Khelumal Ramnani aged is about 84 resident of Mamta Nursing Home Raipur Tahsil Distgrict Raipur Chhattisgarh present address -105 Swarnabhoomi Vidhan Sabha Road, Raipur, Tehsil District Raipur, Chhattisgarh, for the past several years,
2. There is a dispute going on between me and the respondent No.1 regarding Shri Ram Nagar Society Phase-2 plot number 8 area 7765 square feet (presently known as R-8, Anupam Nagar) and presently the first appeal is pending before the Hon'ble High Court in which I appellant Kamal Kedia and respondent No.1 namely Dr. Meghraj Ramnani have voluntarily without any inducement

and pressure, settled the dispute out of the court.

3. As per the agreement reached by me with the respondent No.1 Dr. Megharaj Ramnani have relinquish/abandon his title right on the above land in favour of the me, forever and I have given Rs.2 crore to the Dr. Meghraj Ramnani against that settlement.
4. I and the Dr. Meghraj Ramnani have jointly submitted an application under Order 23 Rule 1 and 3 of the Code of Civil Procedure before the Honorable High Court along with my affidavit, which I have read and understood and signed it before a notary as it is true and correct which is acceptable to me.

The above statement has been read by the Kamal Kedia and accepting it as a true and correct without any pressure and fear due good conscious put his signature in this statement before me on 4-12-2021.

Sd/-

Sd./-

Kamal Kedia

Sumit Jhawar

Appellant

Commissioner.

4-12-2021

4-12-2021".

"Commissioner before oath Statement"

Mr. Meghraj Ramnani s/o. Kiloomal Ramnani age is about 84 years resident of Mamt4a Nursing Home Raipur Tahsil District Raipur Chhattisgarh, I present address -105 Swarnabhoomi Vidhan Sabha Road Raipur, Tehsil District Raipur, Chhattisgarh . Oath has been given by me today at his resident on 4-12-2021. He said that whatever he says, he will tell the truth to the right person, there is no temptation and pressure of any kind on him:-

1. I, personally know the appellant Shri Kamal Kedia s/o,. Abir Kedia, aged about 55 years, resident of R-8, Anupam Nagar, Raipur, Tehsil, District Raipur for the past several years.
2. There is a dispute going on between me and the appellant regarding Shri Ram Nagar Society Phase-2 plot number 8 area 7765 square feet (presently known as R-8, Anupam Nagar) and presently the first appeal is pending before the Hon'ble High Court in which I am the respondent

No.1, I and the appellant Kamal Kedia have voluntarily without any inducement and pressure, settled the dispute out of the court.

3. As per the agreement reached by me with the appellant, I have relinquish/abandon my title right on the above land in favour of the appellant forever and I have received Rs.2 crore from the appellate against it.
4. I and appellant Kamal Kedia have jointly submitted an application under Order 23 Rule 1 and 3 of the Code of Civil Procedure before the Hon'ble High Court along with my affidavit, which I have read and understood and signed it before a notary as it is true and correct which is acceptable to me.

The above statement has been read by the Dr. Meghraj Ramnani and accepting it as a true and correct without any pressure and fear due good conscious put his signature in this statement before me on 4-12-2021.

Sd/-

Sd./-

Dr. Menghraj Ramnani

Sumit Jhawar

Respondent No.1

Commissioner

4-12-2021

4-12-2021".

4. Learned counsel for the respondent No.1 would submit that during pendency of this suit, respondent No.1 has deposited the amount of Rs.25,00,000/- before the trial court on 2-2017. Since the compromise has been arrived at between the appellant and respondent No.1, this court directs that respondent No.1 is at liberty to withdraw the said amount from the trial court which has been deposited on 2-5-2017 to which learned counsel for the appellant has no objection.
5. In view of the settlement arrived at between the appellant and respondent No.1, the judgment and decree dated 7-4-2017 passed by the 2nd Additional District Judge, Raipur is set aside. The compromise dated 5-7-2021 will be part of the decree. Consequently, the judgment and decree 7-

4-2017 passed by the First Appellate Court is modified to the extent indicated above.

6. Accordingly, the instant first appeal is disposed of in terms of the compromise arrived at between them.

Sd/-

(Narendra Kumar Vyas)

Judge

Raju