

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.152 of 2012****Reserved on 16.02.2021****Pronounced on 19.02.2021**

Arun, S/o Rupchand Rawat, Aged About 40 Years, R/o Village Mudgelmal, P.S. Devbhog, Tahsil Mainpur, District Raipur, Chhattisgarh (Plaintiff). **---- Appellant**

Versus

1. Tikeshwar, S/o Shobha Ban Yadav, Aged About 41 Years, R/o Village Mudgelmal, P.S. Devbhog, Tahsil Mainpur, District Raipur, Chhattisgarh (Defendant No.1).
2. Lakhidhar, S/o Butu Mali, R/o Village Mudgelmal, P.S. Devbhog, Tahsil Mainpur, District Raipur, Chhattisgarh (Defendant No.2).
3. Balbhaddar, S/o Hagru Mali, R/o Village Dabrimuda, P.S. Devbhog, Tahsil Mainpur, District Raipur, Chhattisgarh (Defendant No.3).
4. State of Chhattisgarh, through the Collector, Raipur, Chhattisgarh. **---- Respondents**

For Appellant	:	Shri Goutam Khetrapal, Advocate appears along with Shri Rohan Patnaik, Advocate
For Respondent Nos.1 to 3.	:	Shri Jitendra Nath Nande, Advocate.
For State/Respondent No.4	:	Shri Sameer Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay S. Agrawal

CAV Judgment/Order

1. This Appeal has been preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') questioning the legality and propriety of the judgment and decree dated 14.12.2011 passed by the Additional District Judge, Gariyaband, District Raipur (C.G.) in Civil Suit No.3-A/2010, whereby the trial Court has dismissed the Plaintiff's claim. The parties to this appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the Plaintiff/Arun instituted a suit seeking cancellation of the registered deed of sale dated 10.03.2000 executed by him in favour of Defendant No.1/Tikeshwar and subsequent alienation as made by him on 07.04.2006 in favour of Defendant No.2/Lakhidhar and Defendant No.3/Balbhaddar, by submitting *inter alia* that the alleged sale was obtained by the Defendant No.1 with connivance with his father-in-law namely Rameshwar by playing fraud upon him. According to him, the property in question was agreed to be sold orally for a consideration of Rs.80,000/- upon receiving an earnest amount of Rs.14,000/- from the Defendant No.1 and the rest of the sale consideration was required to be paid at the time of its registration. It is pleaded further that the Defendant No.1 and his father-in-law, while showing him a cheque amounting to Rs.72,000/- assured him to make the balance amount of consideration, immediately upon its encashment and on this

pretext succeeded to get the sale deed executed on 10.03.2000 and in turn, the said Defendant No.1/Tikeshwar has sold the same to the Defendant Nos.2 & 3 namely Lakhidhar and Balbhaddar by executing a nominal deed of sale on 07.04.2006 for a consideration of Rs.76,000/-. It is pleaded further that since the entire sale consideration of the said land was not paid despite the assurance given by him, therefore, he has been constrained to institute a suit in the instant nature, instituted on 21.01.2010.

3. While contesting the aforesaid claim, it is pleaded by the Defendants that the alleged sale dated 10.03.2000 was duly executed by Plaintiff in favour of Defendant No.1 after obtaining the entire sale consideration from him while putting him in possession thereof. It is contended further that after acquiring the valid right, title and interest, the said Defendant has sold it to the Defendant Nos.2 & 3 and the Plaintiff being a stranger has no right whatsoever to question the same. It is contested further on the ground that the suit as framed questioning the alleged sale executed on 10.03.2000 much beyond the prescribed period of 3 years from its execution is barred by time and deserves to be dismissed.
4. The trial Court after considering the evidence led by the parties arrived at a conclusion that, by virtue of the alleged registered deed of sale dated 10.03.2000 (Ex.P-1), the Defendant No.1 has purchased the suit property from the Plaintiff and thereafter he sold it to the Defendant Nos.2 & 3 by executing a registered deed of sale dated 07.04.2006 (EX.P-2). It held further that the suit as

framed much beyond the prescribed period of 3 years is barred by time and accordingly dismissed the claim.

5. Mr. Goutam Khetrpal, learned counsel for the Appellant/Plaintiff submits that the finding of the Court below holding that the alleged sale (Ex.P-1) was validly executed and is barred by time is apparently contrary to law. It is contended that despite the execution of the alleged sale (Ex.P-1), Defendant No.1 has neither paid the entire sale consideration nor was put in possession over the suit land, as such, the Court below ought to have held that the alleged deed of sale (Ex.P-1) was obtained by the Defendant No.1 by playing fraud upon him. Having failed to consider the said fact in its proper manner, the Court below has erred in dismissing the claim.
6. On the other hand, learned counsel for the Respondents have supported the impugned judgment and decree as passed by the trial Court.
7. I have heard learned counsel for the parties and perused the entire record carefully.
8. From perusal of the record, it appears that by virtue of the registered deed of sale dated 10.03.2000 (Ex.P-1), the Plaintiff has sold the property in question bearing Khasra No.162, admeasuring 2.03 hectares, situated at Village Kharipathra, Tehsil Mainpur, District Raipur (C.G.) to Defendant No.1/Tikeshwar for a consideration of Rs.60,000/- while putting him in possession thereof, as evidenced by the endorsement

made therein. It appears further that the alleged suit land was thereafter sold by him (Defendant No.1/Tikeshwar) to Defendant Nos.2 & 3 (Lakhidhar and Balbhaddar) by executing a registered deed of sale dated 07.04.2006 (Ex.P-2).

9. It is to be noted at this juncture that the execution of the alleged sale (Ex.P-1) purported to have been executed by the Plaintiff in favour of Defendant No.1 was not disputed by the Plaintiff. What is disputed by him is that, it was in fact agreed to be sold for a consideration of Rs.80,000/- upon receiving the earnest amount of Rs.14,000/- from him (Tikeshwar) and, who had assured him to pay the rest of the sale consideration at the time of its execution. The burden to establish the alleged fact that the rest of the sale consideration was not paid by said Defendant was, therefore, upon the Plaintiff, but he failed to adduce any cogent and reliable evidence in this regard to prove the same.
10. Moreover, according to Section 54 of the Transfer of Property Act 1882, the sale could be made by way of registered document, if the value of the immovable property is Rs.100/- or more as required under Section 17 of the Indian Registration Act, 1908. Here in the instant matter, the registered deed of sale was executed on 10.03.2000 by the Plaintiff in favour of the Defendant/Tikeshwar. The ownership of the property in question was, thus, transferred to the said Defendant on the strength of the execution of the said registered deed of sale (EX.P-1). It appears further that alienation as made in favour of the said Defendant was questioned only when it was sold by him to

Defendant Nos.2 & 3 on 07.04.2006 (Ex.P-2) and as the Plaintiff was not the party to the alleged sale and, therefore, being a stranger, he has no right to question the same.

11. That apart, the suit cannot be held to be instituted in time as required under Article 59 of the Indian Limitation Act 1963, as it was instituted on 21.01.2010, i.e., much after the prescribed period of 3 years from the date of execution of the alleged sales (Ex.P-1 & Ex.P-2). Therefore, the trial Court has not committed any illegality in dismissing the claim by holding it to be hopelessly barred by time.
12. Consequently, the appeal being devoid of merits is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge