

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.366 of 2006**

1. Vedeshi, Aged about 55 years, S/o. Ramprasad Satnami,

2. Smt. Nanhe Bai, Aged about 52 years, W/o. Videshi Satnami,

Both above R/o. Village Sendari, Tahsil Bhatapara, District Raipur (CG)

---- Appellants/Plaintiffs

Versus

1. Bhagwan Das S/o. Bhagela Satnami, Aged about 50 years, R/o. Village Sendari, Tahsil Bhatapara, District Raipur (CG)

2. Ghumman Das (died) through LR's

2A. Balraj Gehani S/o Late Ghumman Das, aged about 56 years,

2B. Inder Lal Gehani, S/o Late Ghumman Das, aged about 49 years,

2C. Bharat Lal Gehani, S/o Late Ghumman Das, aged about 46 years,

All above R/o-Sector-5/127, 128, 129 Taigore Nagar, Raipur, District Raipur Chhattisgarh

3. Ramkishun S/o. Ramratan Satnami, Aged about 50 years, R/o. Sakti Ward, Bhatapara, Tahsil Bhatapara, District Raipur (CG)

4. State of Chhattisgarh, Through Collector, Raipur, District Raipur (CG)

---- Respondents/Defendants

For Appellants/Plaintiffs:

Mr. Anurag Singh, Advocate

For Respondent No.1/Defendant No.1:

Mr. Raghvendra Pradhan, Advocate

For LR's of Respondent No.2/Defendant No.2:

Mr. K. Rohan, Advocate

For Respondent No.3/Defendant No.3:

None present

For Respondent No.4/State:

Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****9/7/2021**

1. Proceedings of this matter have been taken-up through video conferencing.
2. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellants/plaintiffs are as under:-

"1. Whether the registered deed of sale dated 23.01.1985 (Ex.P.8) executed by Sirumal in favour of Plaintiff No.1 Videshi has rightly been refused by the Courts below for want of the description of the property i.e., Khasra No.2/1 admeasuring 0.528 hectares ?

2. Whether the Courts below have erred in disbelieving the due execution of registered deed of sale dated 12.04.1989 (Ex.P.9) executed by Defendant No.3 Ramkishun in favour of Plaintiff No.2 Smt.Nanhebai on the basis of irrelevant considerations ?"

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

3. The suit land bearing Khasra No.2 area 2.144 hectare situated at village Sendari, Patwari Halka No.42, Tahsil Bhatapara was earlier held by Bhagela, father of defendant No.1. It is the case of the plaintiffs that Bhagela sold the entire suit land by registered sale deed dated 29.5.68 in favour of Sirumal and

Sirumal came in possession of the entire suit land. Thereafter in the year 1975 said Bhagela started interfering with possession of Sirumal, therefore, Sirumal filed Civil Suit No.43A/75 against Bhagela seeking permanent injunction, in which the trial Court by its judgment and decree dated 26.1.1977 restrained Bhagela from interfering with peaceful possession of Sirumal therein and thereafter Sirumal remained in possession. It is further case of the plaintiffs that said Sirumal out of the suit land bearing Khasra No.2 area 2.144 hectare, sold 1.616 hectare of land to defendant No.3-Ramkishun on cash consideration of ₹4000/- by registered sale deed dated 19.2.79 and placed him in possession, which was also certified in the name of defendant No.3, which was later on renumbered as Khasra No.2/2 area 1.616 hectare and remaining land i.e.0.528 hectare renumbered as Khasra No.2/1 remained in the name of Sirumal. In the meanwhile, Bhagela died in the year 1980. It is also the case of the plaintiffs that defendant No.1 on 11.11.81 harvested the crop sown by Sirumal and said Sirumal filed a suit for damages against Bhagwandas and his son Dahar bearing Civil Suit No.9B/82, which was decreed on 30.6.84 for a sum of ₹750/- against Bhagwandas and his son Dahar. It is also case of the

plaintiffs that Ramkishun also filed Civil Suit No.43A/80 against Bhagwandas and another restraining the defendants therein from interfering with his peaceful possession, which was decreed against defendant No.1 herein on 15.12.86 vide Ex.P-3 and first appeal preferred by Bhagwandas was also dismissed vide Ex.P-5 and it is brought on record that second appeal preferred by Bhagwandas was also dismissed by this Court being Second Appeal No.87/1998 on 11.8.2016. Thereafter, plaintiff No.1 purchased the suit land bearing Khasra No.2/1 area 0.528 hectare from Sirumal by registered sale deed dated 23.1.1985 (Ex.P-8) and plaintiff No.2 purchased the suit land by registered sale deed dated 12.4.1989 (Ex.P-9) bearing Khasra No.2/2 area 1.616 hectare from Ramkishun and they are said to come in possession over the suit land and their names have also been certified. It is the case of the plaintiffs that in Section 145 CrPC proceedings, the Sub-Divisional Officer, Balodabazar found the possession of defendant No.3-Ramkishun, which was set-aside by the Additional Sessions Judge, Balodabazar on 22.8.97 and thereby defendant No.1 made an application for mutation of his name in revenue records, which was accepted by the Naib-Tahsildar, Bhatapara, which was also challenged by the

plaintiffs, but thereafter decided to file civil suit stating inter-alia that the plaintiffs are title-holders of the suit land and defendant No.1 has no right and title over the suit land and the defendants be restrained from interfering with their peaceful possession over the suit land.

4. Resisting the suit, defendant No.1 filed his written statement and denied the averments made in the plaint stating inter-alia that his father has never executed sale deed dated 29.5.68 in favour of Sirumal as it was only executed for security of loan, which his father has taken from Sirumal as Sirumal was involved in the business of moneylending, as such, sale deed executed by his father is not binding on him. It was also pleaded that against the order of the Additional Sessions Judge, Balodabazar revision preferred by the plaintiffs has also been dismissed by the High Court, as such, he prayed for dismissal of suit.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and dated 23.1.2006, dismissed the suit holding that the plaintiffs have failed to prove title on the basis of Ex.P-8 and Ex.P-9. On appeal being preferred by the plaintiffs, the first appellate Court concurred with the judgment and decree of the trial

Court and dismissed the appeal also, resulting into filing of this second appeal under Section 100 of the CPC, in which two substantial questions of law have been formulated, which have been set-out in opening paragraphs of this judgment for sake of completeness.

6. Mr. Anurag Singh, learned counsel appearing for the appellants/plaintiffs, would submit that though part of Ex.P-8 i.e. copy of sale deed by which part of suit land was purchased by plaintiff No.1 from Sirumal, but description of the suit land was missing and certified copy was filed before the trial Court, but it was not considered by the trial Court, yet the suit has been dismissed holding that sale deed (Ex.P-8) has not been proved in accordance with law. He would further submit that sale deed dated 12.4.89 (Ex.P-9) executed by defendant No.3-Ramkishun in favour of plaintiff No.2 has been duly proved as defendant No.1 did not deny specifically in written statement filed before the trial court and also in statement before the trial Court, defendant No.1 did not specifically deny that no such sale deed was executed by Ramkishun in favour of plaintiff No.2, whereas in earlier Civil Suit No.43A/80 (Ex.P-3) filed by defendant No.3-Ramkishun from whom plaintiff No.2 has purchased the suit land, the trial Court clearly recorded the finding that

Ramkishun is title-holder of the suit land bearing Khasra No.2/2 area 1.616 hectare and the aforesaid judgment and decree (Ex.P-3) has been affirmed by the first appellate Court by the judgment and decree dated 11.9.98 vide Ex.P-5 and the judgment and decree (Ex.P-5) has further been affirmed by this Court in Second Appeal No.87/1998 on 11.8.2016, as such, title of Ramkishun is not in dispute and it has attained finality and once sale deed dated 12.4.89 (Ex.P-9) is not challenged, it could not have been disbelieved by the trial Court holding that it has not been proved in accordance with law. He would rely upon the judgments of the Supreme Court in the matters of **Muddasani Venkata Narsaiah (Dead) Through Legal Representatives v. Muddasani Sarojana¹, Smt.Bayanabai Kaware v. Rajendra S/o Baburao Dhote² and Jaspal Kaur Cheema and another v. Industrial Trade Links and others³**.

7. On the other hand, Mr.Raghvendra Pradhan, learned counsel for respondent No.1/defendant No.1, would submit that both the Courts below have concurrently and rightly held that the document (Ex.P-8) has not been proved as main part of sale deed by which description of the suit land is given is missing and not filed before the trial Court and even certified

1 (2016) 12 SCC 288

2 (2018) 1 SCC 585

3 (2017) 8 SCC 592

copy of missing page was sought to be produced before the trial Court, but it was not proved by examining the officers from the office of Sub-Registrar where the sale deed was executed, therefore, the finding recorded by two Courts below holding the sale deed (Ex.P-8) to be not proved is in accordance with law and such a finding is based on evidence available on record and it need not be interfered with in the jurisdiction under Section 100 of the CPC. He would further submit that both the Courts below have rightly disbelieved that execution of registered sale deed dated 12.4.89 (Ex.P-9) executed by defendant No.3-Ramkishun in favour of plaintiff No.2-Smt.Nanhebai has not been proved by recording correct finding, which is also based on evidence available on record, which also need not be interfered with. He would rely upon the judgment of the Supreme Court in the matter of **Thulasidhara & Another v. Narayanappa & others**⁴.

8. Mr.K.Rohan, learned counsel for legal representatives of respondent No.2/defendant No.2 would support the contentions raised by learned counsel for the appellants/plaintiffs.

9. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove thoughtfully and also went through the

4 (2019) 6 SCC 409

records with utmost circumspection.

Answer to substantial question of law No.1:-

10. A careful perusal of Ex.P-8 would show that though sale deed has been executed by Sirumal in favour of plaintiff No.1, but part of sale deed giving description of the suit land including boundaries of the land is completely missing and not filed before the trial Court and on that basis, the trial Court reached to the conclusion that from perusal of Ex.P-8, it is not apparent and evident the land was sold by Sirumal in favour of plaintiff No.1 and consequently, reached to the conclusion that plaintiff No.1 has failed to prove that the suit land bearing Khasra No.2/1 area 0.528 hectare was sold by Sirumal in favour of plaintiff No.1 and that finding has also been affirmed by the first appellate Court. So far as the production of relevant pages are concerned, both the Courts below have rightly not accepted that plea because mere production of some missing pages, it cannot be proved that it is a part of Ex.P-8. The right course available to plaintiff No.1 was to file certified copies of entire sale deed (Ex.P-8) and after taking permission from the Court to lead secondary evidence could have proved the said document in accordance with law specially by calling the

officers from the office of Sub-Registrar, where the said sale deed was executed by Sirumal in favour of plaintiff No.1. Since that course has not been followed, the finding of two Courts below that sale deed (Ex.P-8) has not been proved in accordance with law and by Ex.P-8 no title has been transferred in favour of plaintiff No.1 is correct finding of fact based on evidence available on record, as such, finding of two Courts below to that extent is hereby re-affirmed. The first substantial question of law No.1 is answered in favour of the defendants and against the plaintiffs.

Answer to substantial question of law No.2:-

- 11.** It is the case of the plaintiffs that plaintiff No.2 has purchased the suit land bearing Khasra No.2/2 area 1.616 hectare from Ramkishun on 12.4.89 (Ex.P-9) and came in possession of the suit land. At the risk of repetition, it is appropriate to mention here that originally the suit land was held by Bhagela, father of defendant No.1 and Bhagela has executed sale deed dated 29.5.68 in favour of Sirumal and Sirumal sold the suit property i.e. Khasra No.2/2 area 1.616 hectare to defendant No.3-Ramkishun on 19.2.79. Ramkishun also filed Civil Suit No.43A/80 against defendant No.1-Bhagwandas for restraining defendant

No.1 herein to interfere with his possession. The trial Court decreed the suit filed by Ramkishun-defendant No.3 herein by the judgment and decree dated 15.12.1986 (Ex.P-3) though it was suit for permanent injunction simpliciter, yet the trial Court had framed an issue as to whether the suit land was earlier held by Sirumal. In suit filed by Sirumal being Civil Suit No.43A/75, on 26.2.1977 decree for permanent injunction was granted in his favour and against Bhagela, father of defendant No.1 herein and also held Sirumal has sold the suit land bearing Khasra No.2/2 area 1.616 hectare in favour of defendant No.3-Ramkishun on 19.2.79 and restrained defendant No.1 to interfere with his peaceful possession and thereafter Ramkishun has sold the suit land in favour of plaintiff No.2 on 12.4.89 (Ex.P-9) and said to have been placed in possession.

12. It is the case of plaintiff No.2 that Bhagela tried to interfere with his possession leading to filing of the suit before the trial Court. Plaintiff No.2 in her suit pleaded that she purchased the suit land bearing Khasra No.2/2 area 1.616 hectare from Ramkishun and she has been placed in possession thereafter.

13. A careful perusal of written statement would show

that defendant No.1 did not specifically deny the execution of sale deed by Ramkishun in favour of plaintiff No.2 and he asserted that the suit land was never sold by his father Bhagela in favour of Sirumal, it was executed for security of loan and that is not binding on defendant No.1, as such, execution of sale deed by Ramkishun in favour of plaintiff No.2 was not specifically denied by defendant No.1.

14. At this stage, it would be appropriate to notice

Order 8 Rule 5 of the CPC which states as under:-

"5. Specific Denial.-(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the fact contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

15. The Supreme Court in the matter of M.

Venkataramana Hebbar (Dead) by LRS. v. M. Rajagopal

Hebbar and others⁵ has clearly held that averment made in the plaint not disputed in written statement would be deemed to be admitted.

- 16.** The Supreme Court in the matter of **Jaspal Kaur Cheema** (supra) has held that plaint allegation must be specifically denied. It was observed as under:-

"7. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short 'the Code'), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in *Badat and Co. v. East India Trading Co.*⁶, *Sushil Kumar v. Rakesh Kumar*⁷ and *M. Venkataramana Hebbar v. M. Rajagopal Hebbar* (supra)."

- 17.** Defendant No.1 examined himself before the trial Court as DW-1. In his statement before the trial Court, he asserted that the suit land is an ancestral property and his father has not sold the suit property and never delivered any possession and he and his son both have birthright. In Section 145 CrPC proceeding, the order passed by the Sub-Divisional Officer, Balodabazar has been set aside by the Additional Sessions Judge, Balodabazar and maintained upto the

5 (2007) 6 SCC 401

6 AIR 1964 SC 538

7 (2003) 8 SCC 673

High Court and Sirumal was never in possession of the suit land, therefore, he could not have delivered the possession to Ramkishun and Ramkishun could not have delivered the possession to plaintiff No.2, but surprisingly defendant No.1 did not specifically state in examination-in-chief that sale deed was never executed by Ramkishun in favour of plaintiff No.2.

18. The Supreme Court in the matter of Muddasani Venkata Narsaiah (supra) has clearly held that the provisions contained in Order 8 Rule 5 of the CPC require pleadings to be answered specifically in written statement. It was observed as under:-

"14. Coming to the question whether execution of sale deed in favour of plaintiff has been proved, the High Court has held that the sale deed has not been proved for want of examination of Buchamma. The High Court has ignored the pleadings of the parties and the evidence on the question of execution of sale deed which establishes that sale deed had been executed by Buchamma in favour of the plaintiff. In the written statement filed on behalf of the defendants, the sale deed was denied for want of knowledge. A perusal of same indicates that the authority of Buchamma to execute the sale deed in favour of the plaintiff was put into question. Defendant 3 Sarojana in her deposition in court did not deny the fact that sale deed was executed by Buchamma in favour of the plaintiff. She has stated that she was not aware whether Buchamma has executed any sale deed in favour of the plaintiff. She only asserted that she was the adopted daughter of Yashoda.

14. It is settled law that denial for want of knowledge is no denial at all. The execution of the sale deed was not specifically denied in

the written statement. Once the execution of the sale deed was not disputed it was not necessary to examine Buchamma to prove it. The provisions contained in Order 8 Rule 5 require pleadings to be answered specifically in written statement. This Court in *Jahuri Sah v. Dwarika Prasad Jhunjhunwala*⁸ has laid down that if a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of existence of fact, not even an implied denial. Same decision has been followed by Madhya Pradesh High Court in *Dhanbai v. State of M.P.*⁹ The High Court of Madhya Pradesh in *Samrathmal v. Union of India*¹⁰ relying on *P.L.N.K.L. Chettyar Firm v. Ko Lu Doke*¹¹ and *Lakhmi Chand v. B. Ram Lal Kapoor Vakil*¹², had also opined that if the defendant did not know of a fact, denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.

15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal v. Debnath Bhagat*¹³. This Court repelled a submission on the ground that same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.*¹⁴."

8 AIR 1967 SC 109

9 AIR 1979 MP 17

10 AIR 1959 MP 305

11 AIR 1934 Rang 278

12 AIR 1931 All 423

13 AIR 1963 SC 1906

14 AIR 1958 P&H 440

19. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in Muddasani Venkata Narsaiah (supra), it is quite vivid that in third round of litigation with respect to the suit land bearing Khasra No.2/2 area 1.616 hectare, vide Ex.P-3 the Civil Court has already been held that Sirumal had title over the suit land and he has sold the suit property bearing Khasra No.2/2 area 1.616 hectare to defendant No.3-Ramkishun and Ramkishun has title over the suit land and granted permanent injunction in his favour and the judgment and decree of the trial Court was affirmed by the first appellate Court in first appeal (Ex.P-5) and it is stated at the Bar that Second Appeal No.87/1998 preferred by Bhagwandas has been dismissed by this Court on 11.8.2016, as such, title of Ramkishun has already become final and his possession over the suit land has also become final.

20. Both the Courts below have dismissed the suit of the plaintiffs on the count that sale deed dated 12.4.89 (Ex.P-9) has not been proved in accordance with law. It has already been noticed hereinabove that defendant No.1 did not specifically challenge the execution of sale deed by defendant No.3-Ramkishun in favour of plaintiff No.2, rather he kept insisting

that he was title-holder and his father has never alienated the suit property in favour of Sirumal, whereas in civil suit filed by Sirumal, Bhagela, father of defendant No.1, was restrained vide Ex.P-1 and thereafter, again in second civil suit filed by Sirumal, defendant No.1 was subjected to damages amounting to ₹750/- and in third civil suit being Civil Suit No.43A/80 filed by defendant No.3-Ramkishun from which plaintiff No.2 has purchased the suit property, decree for permanent injunction was granted in his favour, as such, despite the title and possession of Ramkishun having been affirmed upto this Court, defendant No.1 did not take specific plea with regard to sale deed executed by defendant No.3-Ramkishun in favour of plaintiff No.2 and did not put any question to plaintiff No.2 and also did not deny the execution of sale deed. Defendant No.1 did not deny the fact that sale deed was executed by Ramkishun in favour of plaintiff No.2, as such, sale deed (Ex.P-9) has not specifically questioned by defendant No.1 either by filing written statement or by the statement which he made before the trial Court and even their witnesses have not seriously disputed the sale deed executed by Ramkishun in favour of plaintiff No.2.

21. The Supreme Court in the matter of Muddasani Venkata Narsaiah (supra) has also held that third party cannot question the execution of sale deed on the ground of non-passing of amount of consideration.

22. In the instant case, title of Sirumal and thereafter title of Ramkishun from whom plaintiff No.2 has purchased has been declared by the trial Court vide Ex.P-3 in a civil suit by Ramkishun and that has been affirmed by the first appellate Court and the second appellate Court also and plaintiff No.2 has purchased the suit land bearing Khasra No.2/2 area 1.616 hectare from Ramkishun, therefore, defendant No.1 has no right or authority to question the sale deed executed by Ramkishun in favour of plaintiff No.2. In this regard, para-17 of the judgment of Muddasani Venkata Narsaiah (supra) is pertinent which states as under:-

"17. It is also settled law that passing of consideration under a sale deed cannot be questioned by third party. Defendant 3 has not been able to establish her case that she is an adopted daughter of the deceased Yashoda and thus, she being the third party, could not have questioned the execution of the sale deed by Buchamma on the ground of passing of consideration as rightly laid down by the High Court of Madhya Pradesh in Ramjilal Tiwari v. Vijai Kumar¹⁵. The High Court of Patana has also held that passing of consideration can be questioned by a party or his representative in Akli v. Daho¹⁶. Similar is the view of the High

15 1970 MPLJ 50

16 AIR 1928 Pat 44

Court of Nagpur in Maroti Bansi Teli¹⁷. Thus, the High Court has erred in law on this ground also in dismissing the suit."

23. As such, finding recorded by two Courts below that sale deed executed by defendant No.3-Ramkishun in favour of plaintiff No.2 has not been proved is not based on evidence on record. So far as, the ground raised by defendant No.1 that Bhagela has not transferred the suit property in favour of Sirumal and it was only executed for security of loan is no longer res-integra as in Civil Suit No.43A/80 (Ex.P-3) it has already been held by the Civil Court as affirmed by the first appellate Court on 11.9.98 vide Ex.P-5 and the second appellate Court that Bhagela has sold the suit land in favour of Sirumal and Sirumal was title-holder of the suit property, as such, both the Courts below are absolutely unjustified in holding that plaintiff No.2 has failed to establish title over the suit land by sale deed (Ex.P-9), as such, this substantial question of law is answered in favour of plaintiff No.2 and against defendant No.1.

24. Consequently, second appeal filed on behalf of plaintiff No.1-Videshi is hereby dismissed affirming the judgment and decree of the trial Court and the first appellate Court and second appeal filed on

behalf of plaintiff No.2-Smt.Nanhe Bai is allowed.

- 25.** It is ordered and decreed that plaintiff No.2-Smt.Nanhe Bai is title-holder & possession holder of suit land bearing Khasra No.2/2 area 1.616 hectare situated at village Sendari P.H.Ho.42 R.N.M. Tahsil Bhatapara, District Bhatapara-Balodabazar and defendant No.1 himself or through his representative/agent is restrained from interfering with her peaceful possession over the suit land.
- 26.** Accordingly, second appeal filed by appellant No.1/plaintiff No.1 is dismissed and second appeal filed by appellant No.2/plaintiff No.2 is allowed to the extent indicated hereinabove. No cost(s).
- 27.** Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-