

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 49 of 2007****Reserved on 22.01.2021****Pronounced on 28.01.2021**

1. Suresh Kumar Dubey S/o Late R.B.Dubey, aged about 48 years by caste Brahmi, R/o Anand Nagar, Raipur, District-Raipur.
2. Mahesh Dubey S/o late R. B. Dubey aged about 49 years by caste Brahmi, R/o Anand Nagar, Raipur

---- Appellants**Versus**

1. Nidhi Sharma D/o Shinarayan Sharma aged about 29 years by caste Brahmin, R.o Opp: Irrigation Rest House, Civil Lines Raipur C.G.
2. Janak Singh Thakur S/o late Thakur Singh Thakur aged about 39 years R.o village Sarona P.O. Pt. Ravishankar Shukla University, Raipur C.G.
3. Ramji Singh Thakur S/o Late Thakur Singh Thakur aged about 52 years
4. Bansh Singh Thakur S/o late Thakur Singh Thakur aged about 49 years
5. Smt. Gulaba Bai Thakur W/o Late Thakur Singh Thakur All R/o Village Sarona, P.O. Post Ravishankar University Raipur
Through Power of Attorney Janka Singh Thakur S/o late Thakur Singh Thakur R/o Village Sarona P.O. Pt R.S. Shukla University Raipur C.G.
6. State of Chhattisgarh Through Collector, Raipur, District-Raipur, C.G.
7. Ratan Chand Jain S/o Mangilal Jain aged about 44 years R/o Tagour Nagar, Raipur C.G.
8. Prakash Chand Golechha S/o Late Milap Chand Golechha, aged about 44 years, R/o Bairan Bazar C.G.
9. Sandeep Verma S/o D.P. Verma aged about 36 years R/o Navjeevan Society Raipur C.G.
10. Rajesh Parakh S/o sampat Lal Parakh aged about 30 years R/o Shailendra Nagar Raipur C.G.

---- Respondents

For Appellants:	Shri Raghvendra Pradhan, Advocate.
For Respondents No.1 to 5:	None, though served.
For Respondent No. 6:	Shri Udhaw Sharma, Govt. Advocate.
For Respondents No. 7 to 10:	Shri Vaibhav Tiwari, Advocate.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**CAV Judgment/Order**

1. This appeal has been preferred by the Plaintiffs under Section 96 of the Code of Civil Procedure, 1908 questioning the legality and propriety of

the judgment and decree dated 06.01.2007 passed by Third Additional District Judge, Raipur (C.G.) in Civil Suit No.3-A/2007, whereby the claim for injunction in a mandatory form has been refused. The parties to this appeal shall be referred hereinafter as per their description in the trial Court.

2. The facts essential to be stated for adjudication of this appeal are that a suit for injunction in a mandatory form has been instituted by the Plaintiffs seeking a direction against the Defendants, particularly Defendant No.1 Nidhi Sharma and Defendants No. 4 to 7 (Ratan Chand Jain, Prakash Chand Golechha, Sandeep Verma and Rajesh Parekh) for execution of a registered deed of sale in respect of the property in question, i.e., part of Khasra No.245/41 admeasuring 0.50 acres of land, which is situated at village Sarona, Tehsil and District Raipur. According to the Plaintiffs, the property in question, which was owned by Defendant No.2- Janak Singh Thakur, Defendants No.2'A' to 2'C', namely, Ramji Singh, Banshi Singh and Smt. Gulaba Bai, all are the heirs of one Thakur Singh was agreed to be sold by them in favour of Plaintiff No. 2 Mahesh Dubey by virtue of an agreement to sale dated 24.07.1994. It is pleaded in the plaint that since Plaintiff No.1 Suresh Kumar Dubey, the elder brother of said Mahesh Dubey, was in need of money, therefore, he took a loan amount of Rs.50,000/- from Defendant No.1 Nidhi Sharma and for the security of it, an agreement to sale dated 10.02.1998 was executed between them, wherein it has been agreed that he (Plaintiff 1) will get the sale deed executed in her favour on 13.02.1998 from those owners with regard to the property in question and in the event of payment of said loan amount by 11.02.2001, she (Defendant No.1) will transfer the same in his

favour. According to the further averments made in the plaint, Defendant No.1, despite receiving the said loan amount, has refused to execute the sale deed in his favour in spite of repeated oral requests being made and instead sold it to Defendants No. 4 to 7 by virtue of a registered deed of sale dated 15.12.2000, therefore, they have been constrained to file the suit in the instant nature, instituted on 23.01.2004.

3. While denying the execution of the alleged agreement to sale dated 24.07.1994, Defendants 1 and 4 to 7 have contested the claim by submitting *inter alia* that by virtue of registered deed of sale, dated 13.02.1998, Defendant No.1 Nidhi Sharma had acquired her valid right, title and interest upon the property in question from its erstwhile owners and in turn, she sold it to Defendants No. 4 to 7 under the registered deed of sale dated 15.12.2000 and they have thus acquired their valid interest and the revenue papers were accordingly mutated in their favour. They contested further on the ground that instead of instituting a suit for specific performance of contract, the Plaintiffs are trying to set up their claim on the strength of the alleged agreement to sale, dated 24.07.1994, therefore, the claim as made is a frivolous one and legally not sustainable and liable to be dismissed with costs.

4. Plaintiff No.1-Suresh Kumar Dubey has examined himself as PW1 and stated in the line of the averments made in the plaint and his witness Ganesh Kumar Sharma was examined in order to prove the execution of the agreement, dated 10.02.1998 (Ex.P.1), said to have been executed in his favour by said Nidhi Sharma. While Defendant No.6, Sandeep Verma examined himself as DW1 and has stated in his evidence that the suit property was acquired jointly under the registered deed of sale, dated

15.12.2000 (Ex.D.1) from Defendant No.1 Nidhi Sharma and the revenue papers were duly recorded in their names and the Plaintiffs have never raised any objection in this regard.

5. After considering the evidence led by the parties, it has been held by the trial Court that in absence of producing the alleged agreement to sale, dated 24.07.1994 on record, it cannot be held that the erstwhile owners have ever agreed to alienate their suit property in favour of Plaintiff No.2, Mahesh Dubey. It held further while placing its reliance upon the registered deed of sale, dated 15.12.2000 (Ex.D.1) that Defendants No. 4 to 7 have acquired their valid interest by virtue of the said sale. It has been observed further that the Plaintiffs, merely on the basis of the alleged agreement, cannot be held to be acquired any interest, whatsoever, over the property in question so as to entitle them to institute the suit in the instant nature. As a consequence of it, the claim has been dismissed.

6. Shri Raghvendra Pradhan, learned counsel appearing for the Appellants/Plaintiffs submits that the trial Court, while placing its reliance upon the registered deed of sale, dated 15.12.2000 (Ex.D.1), has erred in holding that the Defendants No.4 to 7 have acquired their interest over the property in question. According to him, the Courts below ought to have seen and held that the erstwhile owners had already agreed to alienate their land in question in favour of Plaintiff No.2, Mahesh Dubey by way of an agreement to sale, dated 24.07.1994 and the registered deed of sale dated 13.02.1998 was executed in favour of Defendant No.1 Nidhi Sharma at the instance of Plaintiff No.1-Suresh Kumar, who is the real brother of said Mahesh Dubey, in pursuance of the agreement as executed between them on 10.02.1998 (Ex.P.1), and therefore, in such circumstances, the

Court below ought to have directed the Defendants No. 4 to 7 to execute the registered deed of sale in favour of the Plaintiffs.

7. On the other hand, Shri Vaibhav Tiwari, learned counsel appearing for Respondents No.7 to 10/Defendants No.4 to 7 has supported the impugned judgment and decree as passed by the trial Court.

8. I have heard learned counsel for the parties and perused the entire record carefully.

9. Undisputedly, the property in question was originally held by Janak Singh Thakur, Ramji singh Thakur, Bansi Singh Thakur and their mother Smt. Gulaba Bai, who sold the same to Defendant No.1 Nidhi Sharma by virtue of a registered deed of sale, dated 13.02.1998 and in turn, it was alienated by her to Defendants No. 4 to 7 under the registered deed of sale, dated 15.12.2000 (Ex.D.1). According to the Plaintiffs, an agreement to sale was executed by said erstwhile owners on 24.07.1994, whereby they had agreed to alienate the property in question in favour of Plaintiff No.2- Mahesh Dubey. It is alleged in the plaint that since Plaintiff No.1- Suresh Kumar Dubey was in need of money, therefore, he took a loan amount of Rs.50,000/- from Defendant No.1 (Nidhi Sharma) and for the security of it, an agreement was executed between them on 10.02.1998 (Ex.P.1) and based upon the terms and conditions as stipulated therein, the sale deed was required to be executed at the instance of Plaintiff Suresh Kumar in her favour and was thereupon required to be re-alienated to him on receiving the said loan amount from him. It, however, appears that at the relevant point of time, i.e., when the alleged agreement (Ex.P.1) was executed, Defendant No.1 (Nidhi Sharma) had not acquired any interest whatsoever over the property in question as the registered deed of

sale was executed in her favour subsequent to that, i.e., on 13.02.1998. It, therefore, appears that the Plaintiffs' entire allegations are baseless and have been made in order to put undue pressure upon the defendants. They even cannot place their reliance upon the said agreement (Ex.P.1) for execution of the sale deed in their favour from the said Defendant Nidhi Sharma based upon such a waste piece of paper.

10. Pertinently to be noted here further that the Plaintiff Suresh Kumar has initiated this action even without obtaining the Vakalatnama from his brother Mahesh Dubey. The action so initiated by him, therefore, cannot be appreciated. At the most, the claim for the specific performance of contract could have been instituted by said Mahesh Dubey based upon the alleged agreement to sale, dated 24.07.1994, but has failed to initiate such an action for the reasons best known to him and instead, the instant suit has been filed based upon such a frivolous document (Ex.P.1).

11. In view of the aforesaid background, it thus, appears that the entire action of the Plaintiffs shows their lack of bona fides, else, instead of filing a suit in the instant nature, they would have instituted a suit for specific performance of contract based upon the alleged agreement to sale, dated 24.07.1994 against the erstwhile owners of the property in question. Having failed to do so, the entire action of the Plaintiffs as initiated on the basis of the alleged agreement even without producing the same and that too based upon the baseless and frivolous document, like the alleged agreement dated 10.02.1998 (Ex.P.1), appears to be of their ulterior and mala fide motive by dragging the Defendants into such a wholly incompetent suit for over a decade, and therefore, it deserves condemnation which I indicate by imposing cost of Rs.5,000/- each

payable to Defendant No.1- Nidhi Sharma and Defendants No.4 to 7 (Ratan Chand Jain, Prakash Chand Golechha, Sandeep Verma & Rajesh Parakh) within a period of two months from today, failing which, the same shall carry interest at the rate of 6% per annum from the date of institution of the suit, i.e., with effect from 23.01.2004 till its realisation.

12. The appeal being devoid of merits is accordingly dismissed with costs, as indicated herein above.

13. A decree be drawn accordingly.

Sd/-

(Sanjay S. Agrawal)
JUDGE