CGHC010051822019

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 153 of 2019

1 - Hariram Nishad S/o Late Chamra Aged About 53 Years Occupation - Agriculture And Service, R/o Village Malda, Tahsil Pussaure, District Raigarh Chhattisgarh. (Plaintiff)

... Appellant(s)

versus

1 - Smt. Bhojmati W/o Kartikram Aged About 47 Years R/o Village Malda, Tahsil - Pussaure, District Raigarh Chhattisgarh

2 - Madhav Nishad S/o Late Chamra, Aged About 45 Years Occupation - Agriculture, R/o Village Malda, Tahsil - Pussaure, District Raigarh Chhattisgarh

3 - Smt. Padmavati D/o Late Chamra Aged About 44 Years W/o Goverdhan, R/o Village - Thakurpali, Tahsil - Sarangarh, District Raigarh Chhattisgarh

4 - Smt. Champabai D/o Late Chamra Aged About 43 Years R/o Village - Nawapara, Gharghoda, Tahsil - Gharghoda, District Raigarh Chhattisgarh

5 - State Of Chhattisgarh Through Collector, Raigarh, District Raigarh Chhattisgarh. (Defendants)

... Respondent(s)

For Appellant (s)	**:**	Shri Vivek Kumar Tripathi, Advocate
For Respondent No.5/ State	**:**	Shri Sabyasachi Choubey, Govt. Adv.

({Hon'ble Shri Justice Sachin Singh Rajput})

Order on Board

02/11/2026

Heard on admission.

Challenge in this appeal filed under Section 100 of Civil Procedure Code, 1908 (for short 'CPC') is to judgment and decree dated 14/11/2018 passed by the 2nd Additional District Judge, Raigarh (CG) in Regular Civil Appeal No.63/2018. By the impugned judgment and decree, the first appeal filed by the appellant/plaintiff under Section 96 of the CPC was dismissed and judgment and decree dated 30/04/2018 passed by the 1st Civil Judge, Class-I, Raigarh, CG in Civil Case No.19A/2015 was affirmed.

2. The parties are herein after referred to their status before the trial Court.

The plaintiff filed a suit for declaration of title, permanent injunction, confirmation of possession and declaring the registered sale deed dated 24/07/2013 as illegal, null and void in respect of properties comprised in piece of khasra No.333/1 area 0.087 hectare situated at Village-Malda, P.H.No.31, RIC–Pusour, Tahsil-Pusour, District-Raigarh, CG. (for short 'suit property').

3. As per pleadings of the plaint, the plaintiff and defendant No.2 to 4 had ancestral agricultural land comprised in piece of khasra No.194/5, 331/1 and 400/1 area 0.344, 0.174 and 0.105 hectares respectively, total three khasras, total area 0.623 hectares situated at village - Malda, P.H.No.31, RIC – Pusour, Tahsil-Pusour, District-Raigarh, CG. Name of defendant Nos.3 and 4 are formally recorded in the records of abovestated land and they do not have any right or title. It is the further pleading of the case that the suit property was purchased by Chamra i.e. father of the plaintiff from the earning generated from the ancestral property in the year 1967. Barring the agricultural land, there was no other source of income of Chamra. The suit property was partitioned about 30 years back during the life time of their father Chamra between the plaintiff and defendant No.2 to 4 according to which, the property comprised in khasra No.333/1 area 0.174 hectare, out of which, ½ portion of the area 0.087 hectare fell in share of the plaintiff and he is in possession of the said property and cultivating upon it. The properties comprised in piece of khasra No.194/5 area 0.344 hectare out of which 0.162 hectare and khasra No.400/1 area 0.105 hectare fell in the share of the plaintiff. Remaining property fell in share of defendant no.2. The share of khasra No.333/1 which fell in the share of the plaintiff area 0.087 hectare

was sold by the father Chamra to defendant No.1 vide registered sale deed dated 24/07/2013. Further case is that at the time of execution of the sale deed, the father of the plaintiff was aged about 80 years, his mental condition was not good as he was not keeping well and he was not in a position to understand the things and taking advantage of the same, defendant No.1 wheedling and influencing the father of the plaintiff, without payment of full consideration illegally got the sale deed registered in his name. The father of the plaintiff had no right to sell the suit property and the plaintiff and defendant No.1 had the right over the suit property since their birth. When plaintiff came to know about the sale deed on 10/09/2014 and after obtaining necessary documents, the suit for the abovestated relief was filed.

4. The defendant No.1 filed written statement and denied the averments of the plaint. It is pleaded that the seller Chamra had sold the property in possession and ownership for fulfilling the need of money. The sale deed is validly executed. The defendant No.1 has paid the entire sale consideration and the plaintiff was present at the time of registration of sale deed. The defendant No.1 is in possession of the suit property since purchase. No cause of action has arisen, thus the suit may be dismissed.

5. Following issues have been framed by the learned trial Court -

i. Whether the suit land being Schedule A is the plaintiff's partition land and hence he is its owner?

ii. Whether the sale deed dated 24.7.13 is illegal and void as it was executed illegally by defendant No.1?

iii. Whether the plaintiff is in possession of the suit land?

iv. Whether the possession of the plaintiff is being interfered with by the defendant No. 1?

v. Whether the plaintiff's suit is within the limitation?

vi. Whether the plaintiff properly valued the suit and paid the Court fee?

vii. Relief and Cost?

viii. Whether the suit land is plaintiff’s ancestral property?

6. The plaintiff examined himself and three other witnesses and exhibited 11 documents. The defendant No.1 examined herself and one other witness and

exhibited one document.

7. Learned trial Court decided the issue No.1 as not proved and ultimately, the suit was dismissed leading to filing of the First Appeal which was also dismissed vide impugned judgment and decree.

8. Learned counsel for the appellant submits that the learned Courts below has committed an error in holding that the partition of the suit property could not be proved by the plaintiff. The witnesses available on record clearly suggest that the suit property was purchased out of the fund generated from the ancestral property may in the name of father, however, it remains the ancestral property. He further submits that the entire sale consideration was not paid and the sale deed is bogus and sham and the property was recorded in the name of all the legal representatives of father of the plaintiff which goes to show that they had succeeded the property. Then taking advantage of mental condition of father of the plaintiff, the sale deed was executed. Thus, substantial question of law is proposed in the memo of appeal.

9. Learned State counsel submits that State is a formal party.

10. Heard learned counsel for the appellant and perused the record.

11. The plaintiff brought the suit firstly on the count that the property was purchased in the name of father out of the fund generated from the other ancestral property, but to prove this fact the burden lies upon the plaintiff. The second submission was made that there was a partition and the property was recorded in the name of legal representatives. The burden to prove the same also lies upon the plaintiff. The third contention is that the said sale deed was bogus one as no sale consideration was paid. The plaintiff, though from his evidence, tried to prove before the learned trial Court the abovestated facts, the learned trial Court framed an issue with regard to partition as issue no.1. On meticulous examination of the evidence decided the issue as negative which has been duly affirmed by the 1st appellate Court. This Court is not in agreement with the submission of Shri Tripathi that the finding of issue No.1 is contrary to the evidence.

12. The next issue is as to whether the sale deed dated 24/07/2013 is illegal and *void ab initio* as it has been executed illegally. A contention has been raised that the entire sale consideration was not paid. This contention is liable to be rejected in the light of judgment of Hon’ble Supreme Court in the case of **Dahiben vs. Arvindbhai**

Kalyanji Bhanusali (Gajra) dead through LRs and ors. reported in **(2020) 7 SCC 366.** Subsequently followed in the case of **Raziya Begum vs. Nafisa Begum Abdul Hamid & Ors.** reported in **2026 INSC 814**. There is presumption of genuineness and validity of the sale deed as held by the Hon'ble Supreme Court in the case of **Hemalatha (D) by Lrs vs. Tukaram (D) by Lrs.** reported in **2026 LiveLaw SC 79.**

13. The sale deed cannot be declared as bogus and sham simply at the drop of the hat. In order to prove the same, substantial evidence has to be on record. It is to be seen that during the lifetime, the father of the plaintiff did not challenge the sale deed. The finding recorded by the learned trial Court and affirmed by the 1st appellate Court on issue No.2 also appears to be based on proper appreciation of evidence. The last contention is that the suit property was purchased out of the funds generated from the ancestral property. From the evidence on record, it is quite apparent that rest of the properties were recorded as the ancestral property whereas this property was not recorded as an ancestral property and was only recorded in the name of father of the plaintiff. Thus, the learned trial Court has not committed any error of law in dismissing the suit of the plaintiff. The finding of fact recorded by the learned trial Court has been duly affirmed by the 1st appellate Court. The appeal is accordingly dismissed. Decree be drawn.

Sd/-

(Sachin Singh Rajput)
JUDGE

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