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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

S.A. No. 229 /2005.

APPELLANT
PLAINTIFF

✓ Naththuram S/o Sadhram Suryavanshi,
Aged about-59 years, Residence of .Village-
Jagmahant, Tahsil- Navagarh, District-
Janjgir-Champa.

VERSUS

RESPONDENTS
DEFENDANTS

1. ✓ (A) Sadhinbai D/o. Madho Suryavanshi,
Age- 40 years.

(B) Kirtan Bai S/o. Madho Suryavanshi,
Age-25 years.
Both are R/o. Jagmahant, Tahsil-
Nawagarh, District-Janjgir-Champa.
2. ✓ Jethu S/o Kholbahara Suryavanshi, Age- 32
years.
3. ✓ Badarabai Wd/o. Kholbahara Suryavanshi,
Age- 58 years, Respondents No. 2 & 3 R/o.
Jagmahant, Tahsil-Janjgir, District- Janjgir-
Champa (C.G.)
4. ✓ State of Chhattisgarh,
Through: The Collector, Janjgir
District – Janjgir-Champa (C.G.)

No. 1171105
Presented by Shri. C.P. Kharbore
dated 23-04-05

APPEAL UNDER SECTION 100 OF THE CIVIL
PROCEDURE CODE

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO.229 OF 2005

NATHTHURAM

Vs.

SADHIN BAI AND OTHERS

Shri Pushpendra Kumar Patel, learned counsel for the
appellant.

ORAL ORDER

(31.8.2005)

Sunil Kumar Sinha, J.

Shri Pushpendra Kumar Patel learned counsel for the
appellant.

Heard on admission.

This appeal has been directed against the impugned
Judgment and decree dated 23/2/2005 passed in Civil Appeal
No. 64-A/2004 by Third Additional District Judge (FTC),
Janjgir, Chhattisgarh, arising out of Judgment and decree
dated 31/8/2001 passed in Civil Suit No.4-A/92 by the Civil
Judge Class-I, Janjgir, Chhattisgarh.

The brief facts are that the appellant/plaintiff entered
into an agreement with the original defendant for purchase of
agricultural land for a consideration of Rs.12,000/- on
27/4/1987. According to the aforesaid agreement to sale, a
sum of Rs.3,500/- was paid by the purchaser at the time of
agreement and rest of the amount was agreed to be paid at the

time of registration and it was agreed between the parties that the registration of the document will be done by 20/03/1989. The copy of the agreement has been filed on record as Ex.P/1. This story set forth has been denied by the defendant in the written statement.

The Trial Court framed various issues in this case and after taking evidence, dismissed the suit of the plaintiff holding that the plaintiff could not establish that he entered into such an agreement with the defendant on 27/4/87. It was also held that the defendant had never agreed to sell his property to the plaintiff at any point of time.

Learned Trial Court vide its Judgment dated 30/08/2001 has discussed this aspect in para 5 and has giving many reasons. It has been held that in fact the documents Ex.P/1 i.e. the agreement to sale has not been established on record. The Trial Court has recorded a finding that there are many insertions and manipulations by different inks in the document Ex.P/1. It has also been held that even the khasra number of the land in the said document has been changed and the four corners of the Khasra number has been entered by a different ink in the said document.

The Trial Court has observed that Ex.P/1 has been written on a stamp paper and the stamp paper has been shown to be purchased by the defendant Madhav and his signature is there on the back portion of the stamp. However, in the main portion of the so called agreement to sale, there is a thumb impression showing to be the thumb impression of the defendant Madhavram. Though it has been submitted by the

plaintiff that the possession of the suit land was also delivered to the plaintiff in part performance of the agreement to sale dated 27/4/1987, but neither the Trial Court nor the First Appellate Court has recorded any positive finding in this regard. No separate issue in relation to delivery of possession in lieu of part performance of the agreement has been framed by the Trial Court.

In first appeal, the First Appellate Court has also taken the same view and has held that in fact the plaintiff could not establish that any such agreement to sale was executed in his favour by the deceased defendant Madhav.

In the facts and circumstances, it is clear that the Trial Court as well as the First Appellate Court have concurrently held that the plaintiff failed to establish that any such agreement to sale was executed by the defendant in his favour.

It is a settled position of law that the concurrent finding of the two Courts below should not be disturbed in the second appeal unless these findings are shown to be utterly perverse on the face of record.

Learned counsel for the appellant could not point out any such perversity, which may call for an interference of this Court for disturbing such concurrent findings recorded by the Courts below.

It has been held by the Apex Court in the matter of Thia garajan and others vs. Shri Venugopalaswamy B. Koil and others (2004) 5 SCC page 762 that a bare perusal of Section 100 CPC makes it clear that the scope and exercise of jurisdiction by the High Court in the second appeal under

Section 100 is limited to the substantial questions of law framed at the time of admission of the appeal or additional substantial questions of law framed at the later stage after recording reasons for the same. This makes it clear that the existence of a substantial questions of law is the *sine qua non* for the exercise of the jurisdiction under the amended provision of Section 100 of the CPC.

As to which would amount to substantial question of law has been dealt with by the Apex Court in the matter of Santosh Hazari vs. Purushottam Tiwari (2001)3 SCC 179 and it has been held that "a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involved in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of the fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the

indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

In the above facts and circumstances of this case and also on the basis of above pronouncements of the Apex Court, I am not incline to entertain this appeal because according to me, the present appeal does not involve any substantial questions of law to be considered by the High Court under Section 100 of the CPC.

There is not merit in this appeal.

It is dismissed at the admission stage itself. No costs.

Sd/-
Sunil Kumar Sinha
Judge