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C. S. 602 ✓

(4)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR

Single Bench

423

~~SECOND~~ ~~First~~ Appeal No. Of 2004

APPELLANT
PLAINTIFF

:- Rajaram, son of Samaylal Bhagel,
aged about 32 years, resident of
Village Kharra, Thasil Patan,
District Durg (Chhattisgarh)

P.R. No. 2093124
Presented by Shri. Pankaj Agarwal
dated 21-9-04

V E R S U S

RESPONDENTS
DEFENDENTS

- :- 1. Ganeshiya Bai, wife of Late Samaylal
Bhagel, aged about 45 years, resident
Of Village Kharra, Tahsil Patan,
District Durg (Chhattisgarh)
2. Samaylal, son of Dallu Bhagel, aged
about 57 years, resident of Village
Kharra, Tahsil Patan, District Durg
(Chhattisgarh),
3. State of Chhattisgarh, Through
Collector, Durg, District Durg
(Chhattisgarh).

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21/9/04
Clerk to A. G. Bilaspur

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No.473 of 2004****Appellant**
Plaintiff

Rajaram

*Versus***Respondents**
Defendants

1. Ganeshiya Bai
2. Samaylal
3. State of Chhattisgarh

(Second Appeal under Section 100 of the CPC)

Mr.H.B.Agrawal, Senior Advocate with Mr.J.K.Saxena, counsel for the appellant.

Mr.Praveen Dhurandhar, counsel for respondents No.1 and 2.

Mr.Sumit Jhanwar, Panel Lawyer for respondent No.3/State.

(SB: Hon'ble Mr. T.P. Sharma, J.)

JUDGMENT
(31-7-2014)

1. Present second appeal under Section 100 of the Code of Civil Procedure filed against the judgment & decree dated 19.7.2004 passed by the District Judge, Durg, in Civil Suit No.22-A/2003, affirming the judgment and decree dismissing the civil suit dated 14.5.2003 passed by the 2nd Civil Judge Class-I, Durg, in Civil Suit No.229-A/96 has been admitted for consideration on the following substantial question of law:-

"Whether the courts below were not justified in holding that the sale deed dated 03.10.1994 was void and invalid ?"

2. As per pleading of the appellant/plaintiff, partition took place between father of the present appellant, husband of respondent/defendant No.1 and grandmother of present appellant namely Ganeshiya Bai (not respondent No.1) relating to joint family property and finally partition order was passed on 30.9.94 vide Ex.D/6. After final partition, Ganeshiya, owner of the property in dispute, executed sale deed Ex.P/1 in favour of the present appellant on 3.10.1994 and transferred her interest upon the property. Respondent No.1, wife of deceased Ramlal i.e. aunt of the appellant, has filed mutation proceeding before the revenue Court and succeeded in mutation in her name in the land

purchased by the appellant after death of original seller. Thereafter she started interference in possession. On the basis of aforesaid interference, civil suit for declaration of title and permanent injunction was filed by the appellant.

3. By filing written statement, respondent No.1 has denied the adverse allegation and has pleaded that Ganeshiya Bai was seriously ill on 3.10.1994, she has not executed sale deed, partition order was under challenge and operation of the partition order was stayed by the revenue Court. The appellant was not in possession of the suit property, he was not sole owner of the property. Alleged partition order dated 30.9.1994 Ex.D/6 has already been quashed by the Sub Divisional Officer (R.), Patan vide order dated 13.3.95. Ganeshiya Bai was not competent to execute the sale deed in favour of the appellant. She is owner of half of the property which she has received in partition since long back. On the aforesaid pleading, dismissal of suit was claimed.
4. After providing opportunity of hearing to the parties, the trial Court has dismissed the suit and the appellate Court has dismissed the appeal filed on behalf of the appellant.
5. I have heard learned counsel for the parties, perused the judgment & decree impugned, judgment & decree of the trial Court and records of the Courts below.
6. Mr.H.B.Agrwal, learned Senior counsel appearing on behalf of the appellant vehemently argued that on the date of execution of sale deed i.e. 3.10.1994 as per defendants document Ex.D/6 Ganeshiya Bai was sole owner of the property, she had executed sale deed in favour of the present appellant on 3.10.1994 vide Ex.P/1 and has transferred her interest and possession. It was known to the respondents, but reason best known to the respondents, they have not filed any claim or counter-claim relating to aforesaid document. Document may be voidable, but not void, therefore, unless it is declared void document is valid, title has been passed upon the appellant. The respondents have not adduced any evidence to show that Ganeshiya Bai was not title holder of the property on the date of execution of sale deed or Ganeshiya Bai has not executed the sale deed. In absence of such proof, both the Courts below ought to have decreed the suit, but by not decreeing the suit both the Courts

below have committed illegality. Findings of both the Courts below are perverse.

7. On the other hand, learned counsel for respondents No.1 and 2 opposed the appeal and argued that Ganeshiya Bai, grandmother of the appellant, was not owner of the property. She was not competent to alienate the property. She was seriously ill and brought to Bhilai for treatment. She has not consciously executed the sale deed. Heavy burden to prove conscious and valid execution of sale deed by an illiterate woman was upon the appellant, but the appellant has failed to discharge his burden, therefore, by dismissing the suit and appeal both the Courts below have not committed any illegality.
8. In order to appreciate the arguments advanced on behalf of the parties, I have to examine the evidence adduced on behalf of the parties.
9. As per pleading and evidence, Ganeshiya Bai, grandmother of the appellant and mother-in-law of respondent No.1 has executed one document in the style of sale deed just after one month of alleged partition order Ex.D/6. Aforesaid partition order was quashed by the Sub Divisional Officer (R.), Patan in Revenue Case No.20-R/27/94-95 vide order dated 13.3.95 vide Ex.D/3. Appellant Rajaram has examined himself to prove his pleading. As per his evidence, he has purchased the property on payment of consideration of Rs.34,000/- to Ganeshiya Bai, his grandmother, who had executed sale deed Ex.P/1 on 3.10.94. In para 12 of his cross-examination he has admitted that it was joint family property purchased in the names of husband of respondent/defendant No.1 and his father. In para 13 he has further admitted that just before one and half months to two months of her death deceased Ganeshiya Bai, who has executed sale deed, came in his house. In para 14 he has further deposed that document was registered at Patan, stamp was purchased at Patan and deceased Ganeshiya Bai had put her thumb impression on the document Ex.P/1. As per Ex.P/1 money was not paid before the Registrar and endorsement has been made that आपस में भर पाये । The appellant has also examined attesting witness Harishchandra (AW-2). As per his evidence especially para 5 he was present at the time of preparation of sale deed and registration. He has signed on sale deed as attesting witness of sale deed after putting signature by deceased

Ganeshiya. He is resident of village Kharra where the appellant is also residing. As per his evidence, he was present since its inception. Actually he accompanied the deceased Ganeshiya from beginning and was also present till preparation of sale deed, signing, presentation and registration. In para 5 he has specifically deposed that money was not given before him, but she has admitted that she has received the money. The appellant has also examined another attesting witness Jhaduram (AW-3). He has deposed that Ganeshiya has executed sale deed Ex.P/1 and he has also signed as witness. In para 4 he has specifically deposed that he was called by Rajaram, he read the sale deed, Rajaram paid Rs.33-34000 in his presence to seller and currency notes were of Rs.100 and Rs.50 denomination.

10. Undisputedly, Ex.P/1 sale deed has been executed by an illiterate woman whose age was 70 to 80 years at the time of execution of sale deed (para 13 of the appellant's evidence). Initially she was residing with defendant No.1 and before one and half months to two months of her death she came to the house of the appellant and between the aforesaid intervening period she has executed sale deed in favour of her grandson. As per Ex.P/1, money was paid by the appellant to her, but not in presence of any of the witnesses or Registrar. The appellant himself has not deposed that when he paid the money and what was the mode. As per evidence of his witness Harishchandra (AW-2), money was not paid at the time of preparation of sale deed or registration, per contra, as per evidence of another attesting witness Jhaduram (AW-3), money not paid before him at the time of signing on the sale deed, it was Rs.33-34000 and currency notes were of Rs.100 and Rs.50 denomination.
11. As per Ex.D/6, just one month prior to execution of sale deed, Tahsildar has passed the order of partition and as per Ex.D/3, finally it was set aside. As per para 12 of cross-examination of the appellant himself, it was joint family property and jointly purchased in the names of husband of respondent No.1 and his father and alleged seller Ganeshiya, grandmother of the appellant, was not owner of the property. Aforesaid circumstances reveal that deceased Ganeshiya was not sole owner of the property, her age at the time of execution of sale deed was between 70 to 80 years, she died within a month of execution of such sale deed, she was staying with the appellant only for two months, the appellant has

failed to prove that how much money was paid, where it was paid and before whom it was paid, inter alia, evidence relating to payment of consideration is contradictory. In these circumstances, only inference was possible that illiterate woman Ganeshiya has not consciously and lawfully executed the sale deed, inter alia, as per Section 102 of the Evidence Act, the appellant has failed to prove the conscious and lawful execution of sale deed by illiterate woman of advance age.

12. On the basis of aforesaid evidence, both the Courts below have held that sale deed Ex.P/1 dated 3.10.1994 was void and invalid. By arriving at such finding, both the Courts below have not committed any illegality.
13. Consequently, substantial question of law formulated for decision of this appeal is decided as negative. I do not find any illegality in concurrent finding of fact of both the Courts below. On the basis of aforesaid decision on substantial question of law, the appeal is liable to be and is hereby dismissed.
14. Parties shall bear their own cost.
15. Advocate fees, if certified, as per schedule.
16. Decree be drawn up accordingly.

Sd/-
T.P. Sharma
Judge

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