
Samund Bai And Ors Vs Soncharan And Ors

First Appeal No. 143 Of 2014

Court: Chhattisgarh High Court

Date of Decision: Oct. 4, 2019

Acts Referred:

Code Of Civil Procedure 1908 " Section 96#Registration Act, 1908 " Section 4A

Citation: (2019) 10 CHH CK 0031

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Anish Tiwari, Ravindra Sharma, Ravish Verma

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 25-9- 2014 passed by the District

Judge, Janjgir-Champa (CG) in Civil Suit No. 7-A/2010 wherein the said court dismissed the suit filed by the original appellant Samund Bai and

appellant Motibai for declaring title over the land and not interfering with possession of land bearing survey Nos. 764/1 area 1 dismal, 766 area 3

dismal, 770 area 7 dismal total area 11 dismal and Abadi land Khasra No. 766/1 area 11 dismal total area 22 dismal in which house and kitchen garden

situated at village Khokri, Tahsil Pamgarh, District Janjgir-Champa, CG.

2. Suit was filed on the ground that Samund Bai was wife of Soncharan and appellant Motibai is daughter of said Soncharan. Soncharan was married

to Dhanbai also during the subsistence of his first marriage, therefore, said marriage is not valid. As per appellant, respondent Ukesh Kumari who is

daughter of Soncharan and Dhanbai is also not legitimate child. As per plaint averment, property in question is originally owned by the original

respondent No.1 Soncharan and said property was given to appellant in their share. Respondents No. 2 to 6 trying to interfere with possession of

property in question that sale deed has been executed in their favour. As per plaint averment, at the time of execution of sale deed Soncharan was

unable to understand the general thing and sale deed was executed on 15-8-2006 which is National holiday, therefore, it is clear that sale deed was

forged and fabricated. The trial court dismissed the suit against the factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under.

i) Sale deed executed by Soncharan on 15-8-2006 which is National holiday shows that sale deed is forged one. The trial court over looked this aspect

of the matter.

ii) The respondents side has not led any evidence as to in which circumstance the sale deed has been executed. When Soncharan was not in healthy

mind at that time, sale deed could not have been validly executed.

4. On the other hand, learned counsel for the respondents submits as under:

i) As per Section 4-A of the Registration Act, 1908 sale deed can be executed on holiday in special case or necessity.

According to Registration Manual (Executive direction) sale deed can be executed in office and in residence of the Registrar.

ii) Samund Bai was not examined before the trial Court, therefore, adverse inference should be drawn against her that land was allotted to her by

Soncharan.

iii) No document is produced regarding allotment of land in her favour. Appellant Motibai who is daughter of Samund Bai married with Ramayan

when she was aged about 12-13 years and she was residing at village Sonsari. She was never in possession of property in question.

iv) Purchaser was in possession of the property after sale deed was executed by Soncharan, therefore, finding arrived at by the trial court is not liable

to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether the property in question is ancestral property or whether it is property solely owned by

Soncharan.

7. Appellant side adduced evidence of Motibai (PW/1), Shiv Kumar Sahu (PW/2), Jetram (PW/3) and Boharan (PW/4) and produced documents

Ex.P/1 to P/14. As against this, respondents side adduced evidence of Jagsai (DW/1) and Durga Prasad (DW/2) and produced documents Ex.D/1 to

D/10. Documents Ex.P/1 to P/4 and P/12 to P/14 are records of right in which name of Soncharan was recorded as owner of the property in question.

There is nothing on record to show that property in question was ancestral property. From the evidence of both sides, it is clear that Soncharan

executed sale deed in favour of Jagsai as per Ex.D/1 and thereafter, land was recorded in the name of purchaser Jagsai as per Ex.D/8, D/9 and D/10.

8. From oral and documentary evidence of both sides, it is not established that property in question was allotted to Samund Bai or Modibai. Looking to

the entire evidence, the trial court opined that property in question was never allotted to Samund Bai or Modi Bai. After reassessing the evidence, this

court has no reason to take a contrary view. From the evidence it is established that Soncharan allotted 4.40 acres of land to appellant Motibai who is

his daughter. It is not proved by oral and documentary evidence that Samund Bai and Motibai were in possession of any land in question, therefore,

the trial court recorded a finding that question of interference with possession of appellant does not arise in the present case looking to their evidence.

As the property was solely owned by Soncharan he has all the right to alienate the property in question and same is alienated in favour of Jagsai who

is recorded owner of the property in question and possessed the property after execution of sale deed, therefore, the trial court recorded finding that

relief cannot be granted to the appellant.

9. It is further contended by learned counsel for the appellant that sale deed was executed in favour of Jagsai on 15-8-2006, therefore, same is a

forged document.

10. In view of this court, argument advanced on behalf of the appellant is without substance. As per Section 4-A of the Registration Act, 1908 sale

deed can be executed on national holiday in special case and as per Registration Manual (Executive direction) sale deed can be executed in office and

in residence of Registrar. When law permits the sale deed to be executed on holiday, there is nothing to say that sale deed is illegal because of its

registration on holiday. Accordingly, argument advanced on behalf of the appellant must fail. Finding arrived at by the trial court is not liable to be

disturbed. Argument advanced on behalf of the appellant is not liable to be sustained. The appeal is liable to be dismissed.

11. Accordingly, decree is passed in favour of the respondents and against the appellant as under.

i) Appeal is dismissed with cost.

ii) Parties to bear their own costs,.

iii) Pleader's fee, if certified, be calculated as per schedule or as per certificate, whichever is less.

iv) A decree be drawn up accordingly.