



2025:CGHC:15571

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**SA No. 524 of 2006**

**1 - Smt.Sulochana D/o Shri Santram Ganda, Aged About 38 Years R/o Village- Bonda, P.S.- Baramkela, P.S.- Sariya, Tahsil-Sarangarh, District-Raigarh (Chhattisgarh)**

**... Appellant**

**versus**

**1 - Jagat Ram (Died And Deleted) Through Lrs. As Per Honble Court Order Dated-07-08-2024.**

**1.1 - Smt. Potna Bai D/o Late Jagat Ram, W/o Heeralal, Aged About 50 Years R/o Village Mithumuda, Raigarh, P.S.-Jutmil, Raigarh (C.G.)**

**1.2 - Lal Sai S/o Late Jagat Ram, Aged About 47 Years R/o Village And Post- Bonda, P.S.-Sariya, Tahsil- Sarangarh, District- Raigarh (C.G.)**

**1.3 - Kumar Dansena S/o Late Jagatram, Aged About 45 Years R/o Village And Post- Bonda, P.S.-Sariya, Tahsil- Sarangarh, District- Raigarh (C.G.)**

**1.4 - Bhola Ram S/o Late Jagat Ram, Aged About 42 Years R/o Village And Post- Bonda, P.S.-Sariya, Tahsil- Sarangarh, District- Raigarh (C.G.)**

**1.5 - Smt. Rongo D/o Late Jagatram, W/o Daduram Dansena, Aged About 38 Years R/o Village And Post- Bauda, P.S.-Sariya, Tahsil- Sarangarh, District- Raigarh (C.G.)**

**2 - State Of Chhattisgarh, Through District Collector, Raigarh (C.G.)**  
**---- Respondents**

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KUMAR  
DESHMUKH

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**For Appellant : Shri A.N. Bhakta, Shri vivek Bhakta and Shri Dilesh Kurre, Advocates**

**For State : Shri K.L. Sahu, Dy. Govt. Advocate**

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**Hon'ble Shri Justice Narendra Kumar Vyas**  
**Order on Board**

**03.04.2025**

1. This appeal has been preferred by the appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the judgment and decree dated 16.06.2006 passed by the learned District Judge, Raigarh (C.G.) in Civil Appeal No.4-A/2006, whereby the first appellate Court has rejected the appeal filed by the plaintiff and affirmed the judgment and decree dated 22.12.2005 passed by the Civil Judge, Class-I, Raigarh, (C.G.) in Civil Suit No. 3-A/2005 whereby the suit filed by the plaintiff for redemption and grant of mesne profit has been dismissed.
2. The parties to this appeal shall be referred to hereinafter as per their description in the civil suit.
3. Briefly stated the facts of the case are that
  - 3.A) Plaintiff filed a suit before the learned Civil Judge, Class I Raigarh mainly contending that she is the owner of land Khasra No. 94/2K, area 0.385 Ha. situated at village – Bonda, P.H.N. 30, Tah. - Sarangarh, District – Raigarh (hereinafter referred to as 'the suit land'). The plaintiff took loan of Rs. 3000/- from the defendant and a mortgage deed to this effect that the property will be mortgaged for three years was executed before the Registrar, Sarangarh. As per the Mortgage Deed the suit land was in possession of the

defendant and he is taking mesne profit in place of interest. It is also the case of the plaintiff that she is entitled for redemption of mortgage and possession of suit property. The plaintiff to execute the mortgage deed has gone to the office of the Registrar for execution deed but keeping her in dark a sale deed was executed by the defendant for sale consideration of Rs. 5000/-.

3.B) Subsequently on the second day of the Holi festival of June 1995, when the plaintiff asked for the defendant to hand over the possession of the suit property as per the terms of the mortgage, the defendant asked to pay Rs. 18000/- with interest at the rate of 5% which arose dispute between them.

3.C) To settle the dispute a Panchayat meeting was called in the village but the defendant refused to hand over possession of the suit property. The plaintiff sent a registered notice dated 7-6-1996 in compliance of Section 83 of the Transfer of the Property Act to the defendant. The defendant refused to accept the notice which necessitated her to file suit for redemption of the mortgage and cancellation of sale deed dated 10.04.1992. It has also been prayed that the defendant is in possession of the land unauthorisedly and prayed for grant of mesne profit to the tune of Rs. 2000/- which comes to Rs. 6000/-.

3.D) The defendant filed written statement denying the allegation made in the plaint mainly contending that in the mortgage deed he has not put his signature therefore, it

cannot be said that it was a valid mortgage deed. It has also been contended that the sale deed dated 10.04.1992 has been executed in the presence of the witnesses and there is no mention of the redemption of the mortgage deed in the sale deed. A false and fabricated case has been projected by the plaintiff. The suit property has been purchased on the sale consideration of Rs. 5000/-. There was sale-purchase agreement between them and would pray for dismissal of the suit.

3.E) Learned trial Court on the pleadings of the parties as many as 5 issues. Issue No. 2 and 3 are important and they are extracted below :-

2. क्या वादी वाद पत्र की अनुसूची 'अ' में दर्शित भूमि का बंधकमोचन करा पाने, कब्जा पाने का अधिकारी है ?

3. क्या वादी वाद पत्र की अनुसूची 'अ' में दर्शित भूमि का मध्यवर्ती लाभ कुल 6000/- रुपये प्राप्त करने का अधिकारी ?

3.F) The plaintiff to substantiate her case has examined herself as PW/1, Bharat Lal Thawait as PW/2, Kalashram Mehar as PW/3, Satyendra Kumar Mehar PW/4, Ghurau as PW5, Hemlal as PW/6 and Tilak Ram Patel as PW/7 and exhibited documents i.e. Agreement (Ex.P/1), Gramsabha Resolution (Ex.P/2), Complaint to Collector (Ex.P/3), notice (Ex.P/4), returned envelop (Ex.P/5), receipt (Ex.P/6), Rejection Order dated 03.04.1997 (Ex.P/7), Mutation Paper (Ex.P/8) and sale deed (Ex.P/9). The star witness of the

plaintiff was herself. The plaintiff was extensively cross-examined by the defendant wherein she has admitted that she has put her signature in the sale deed Ex.D/1. She has also admitted that she has accepted before the Registrar that she is selling the suit property. She voluntarily stated that she had said this because Jagat Ram had said her to say so.

3.G) The defendant to substantiate his case has examined himself as DW/1 and Gopi as DW/2 and exhibited document the sale deed as Ex.D/1. The defendant in his examination in chief reiterated the stand taken by him in the written statement and stated that the suit property was purchased by him. The story projected by the plaintiff is false and fabricated.

3.H) Learned trial Court on the basis of evidence and materials on record, recorded its finding that plaintiff has unable to prove her case, the transfer of property was validly transferred by execution of sale deed Ex.D1 and dismissed the suit.

3.I) Aggrieved with the impugned judgment and decree passed by the learned trial Court, she filed first appeal before the learned District Judge, Raigarh. Learned District Judge, on appreciation of evidence and materials on record dismissed the appeal and recorded its finding that no condition has been mentioned in the agreement as well as the sale deed regarding mortgage of the suit property. As such, it has disbelieved the story of mortgage by the plaintiff. Being

aggrieved with the judgment and decree, she has preferred present Second Appeal before this Court.

4. Learned counsel for the appellant would submit that the finding recorded by the learned trial Court is perverse and contrary to the evidence. Learned trial Court has not taken in to consideration the provisions of Section 60 of the Transfer of Property Act which provides redemption of the mortgage. The plaintiff has been able to prove her case and also adduced evidence still learned appellate Court has dismissed the appeal on perverse finding as such, substantial question of law is involved in the second appeal and would pray for admission of the appeal.
5. I have heard learned counsel for the appellant and perused the record.
6. From the evidence and materials placed before the learned trial Court it is quite vivid that learned trial Court has recorded its finding that there is no iota of evidence to suggest that mortgage deed was executed and further the mortgage deed does not contain the signature of the defendant, as such, it cannot to be held to be legally constituted mortgage deed. The learned trial Court on the proper appreciation of the evidence, considering the materials on record has passed the judgment and decree which has been affirmed by the learned first appellate Court, thus, there is concrete finding of facts regarding non execution of mortgage deed which cannot be said to suffer from perversity or

illegality. Considering the well settled position of law that for admission of second appeal substantial question of law is *sine-quo-non*. In absence of any substantial question of law required to be adjudicated by this Court, the present second appeal deserves to be dismissed.

7. Accordingly, the present Second Appeal is dismissed at the stage of admission.
8. A decree be drawn up accordingly.

**Sd/-**  
**(Narendra Kumar Vyas)**  
**Judge**

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