

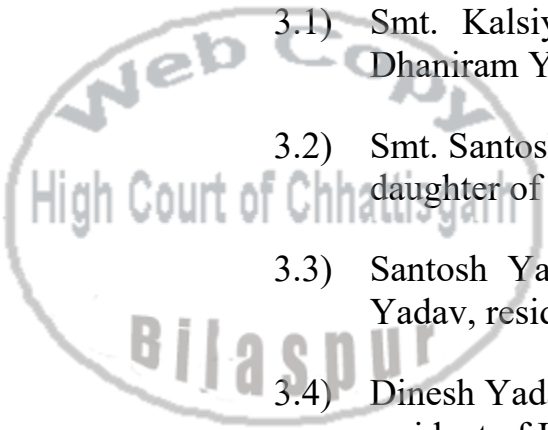
HIGH COURT OF CHHATTISGARH, BILASPURFA No.107 of 2016

{Arising out of judgment & decree dated 25-1-2016 passed by the Ninth Additional District Judge, Raipur, in civil suit No.139-A/15}

Bodhiram Yadav (Dead) Through Lrs.

---Original Plaintiff

- 1) Sonlal Yadav, aged about 50 years, son of Late Bodhiram Yadav, resident of Lalpur, Raipur (C.G.)
- 2) Maniram Yadav, aged about 64 years, son of Late Bodhiram Yadav, resident of Lalpur, Raipur (C.G.)
- 3) Dhaniram Yadav (Deceased), son of Late Bodhiram Yadav Through Legal Heirs
 - 3.1) Smt. Kalsiya Yadav, aged about 54 years, widow of Late Dhaniram Yadav, resident of Lalpur, Raipur (C.G.)
 - 3.2) Smt. Santoshi Yadav, aged about 34 years, wife of Santosh Yadav, daughter of Late Dhaniram Yadav, resident of Abhanpur (C.G.)
 - 3.3) Santosh Yadav, aged about 32 years, son of Late Dhaniram Yadav, resident of Lalpur, Raipur (C.G.)
 - 3.4) Dinesh Yadav, aged about 29 years, son of Late Dhaniram Yadav, resident of Lalpur Raipur (C.G.)
- 4) Prabhu Ram Yadav, aged about 56 years, son of Late Bodhiram Yadav, resident of Lalpur Raipur (C.G.)
- 5) Laxman Yadav, aged about 49 years, son of Late Bodhiram Yadav, resident of Lalpur Raipur (C.G.)
- 6) Lakhan Yadav (Deceased), son of late Bodhiram Yadav, through Legal Heirs
 - 6.1) Smt. Shakhun Bai Yadav, aged about 55 years, widow of Late Lakhan Yadav, resident of Lalpur, Raipur (C.G.)
 - 6.2) Kishore Yadav, aged about 27 years, son of Late Lakhan Yadav, resident of Lalpur, Raipur (C.G.)
 - 6.3) Ajay Yadav, aged about 20 years, son of Late Lakhan Yadav, resident of Lalpur, Raipur (C.G.)





- 6.4) Smt. Kiran Yadav, aged about 25 years, Daughter of Late Lakhan Yadav, resident of Zora, Labhandi, Raipur (C.G.)
- 6.5) Ku. Kavita Yadav, aged about 18 years, Daughter of Late Lakhan Yadav, resident of Lalpur, Raipur (C.G.)
- 7) Sobha Ram Yadav (Deceased), son of late Bodhiram Yadav, through legal heirs:
- 7.1) Smt. Bimla Yadav, aged about 40 years, widow of Late Sobha Ram Yadav, resident of Lalpur, Raipur (C.G.)
- 7.2) Kishan Yadav, aged about 26 years, son of Late Sobha Ram Yadav, resident of Lalpur, Raipur (C.G.)
- 7.3) Umesh Yadav, aged about 21 years, son of Late Sobha Ram Yadav, resident of Lalpur, Raipur (C.G.)
- 8) Smt. Kaushilya yadav, aged about 63 years, wife of Bharat Yadav, Daughter of Late Bodhiram Yadav, resident of Kota, Raipur (C.G.)
- 9) Smt. Ramseela Yadav, aged about 59 years, wife of Jadhish Yadav, Daughter of Late Bodhiram Yadav, resident of Fafadih, Raipur (C.G.)
- 10) Smt. Sumitra Yadav, aged about 49 years, wife of Jadhish Yadav, Daughter of Late Bodhiram Yadav, resident of Bayorn Bazar, Raipur (C.G.)
- 11) Smt. Sohadra Yadav, aged about 45 years, wife of Bhukhann Lal Yadav, Daughter of Late Bodhiram Yadav, resident of Tikarapara, Raipur (C.G.)

---- Appellants

Versus

- 1) Gurusharan Singh Bhatiya S/o Surjeet Bhatiya, Aged About 33 Years R/o Katora Talab, Raipur, Tahsil And District Raipur, Chhattisgarh
- 2) State Of Chhattisgarh, through-Collector, Raipur, District Raipur, Chhattisgarh

---- Respondents/Defendants

For Appellants	Mr. Ankur Agrawal, Advocate
For Respondent No.1	Mr. Ghanshyam Patel, Advocate
For Respondent-State	Mr. Sanjeev Agrawal, Advocate



Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Sanjay S. Agrawal

Judgment on Board

Per Goutam Bhaduri, J.

18-4-2024

1. Challenge in this appeal is to the judgment & decree dated 25-1-2016 passed by the Ninth Additional District Judge, Raipur, in civil suit No.139-A/15 whereby the suit preferred by the plaintiff for cancellation of sale deed has been dismissed. Being aggrieved by such judgment, the present appeal.

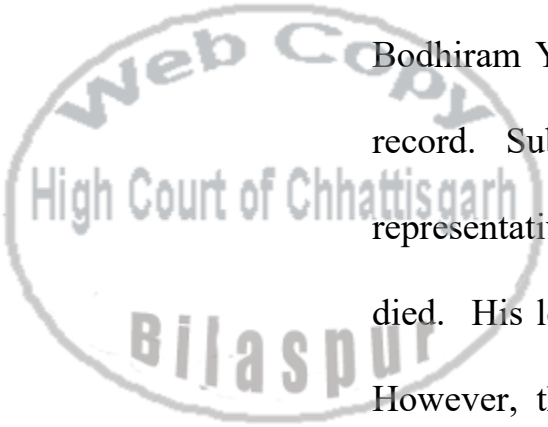
2. (i) The facts, in brief, as pleaded by the plaintiff, are that the plaintiff was the owner of land bearing khasra No.338/7 & 339/2 admeasuring 0.069 hectares and khasra No.338/13 & 339/4 admeasuring 0.263 hectares total admeasuring 0.332 hectares situated at village Devpuri, PH No.37, RI Circle Raipur-2, Tahsil & District Raipur. Plaintiff stated that apart from that land, the other lands bearing khasra No.338/8 admeasuring 0.218 hectares and khasra No.338/14 & 339/5 admeasuring 0.109 hectares total admeasuring 0.327 hectares was sold by the plaintiff Bodhiram Yadav on 13-7-2011. However, the suit land, which bears khasra No.338/7 & 339/2 admeasuring 0.069 hectares and land bearing khasra No.338/13 & 339/4 admeasuring 0.263 hectares, were never sold by the plaintiff to the defendant. Plaintiff also stated that when he received the mutation notice on 25-5-2015 he came to know about execution of sale deed.





(ii) According to the plaintiff, he was an illiterate person and because of old age he was not able to see and hear properly, as such, taking advantage of his old age few of the land brokers prepared the registry papers and on the sale deed, his thumb impression was obtained on 13-7-2011. Plaintiff further stated that, in fact, he has not executed the sale deed and without payment the land has been acquired. Plaintiff, therefore, filed a suit for declaration and cancellation of sale deed dated 13-7-2011.

3. The defendant No.1 remained *ex parte* in the suit.
4. During pendency of this appeal the sole appellant/plaintiff Bodhiram Yadav died, his legal representatives were brought on record. Subsequently, during pendency of this appeal, the legal representative No.2 of Bodhiram namely; Maniram Yadav also died. His legal representatives have not been brought on record. However, the right of suit survives on the part of other legal representatives.
5. The plaintiff Bodhiram Yadav examined himself as PW-1 and also examined Prema Bai (PW-2), Sheetal Prasad Sahu (PW-3) and Sanat Kumar Kurre (PW-4).
6. On the basis of material available on record, the learned trial Court dismissed the suit. Thus, this appeal.
7. Learned counsel appearing for the plaintiff would submit that by playing fraud with the plaintiff the alleged sale deed has been





executed. He would further submit that the learned trial Court completely misdirected itself to hold that the plaintiff could not have adduced the evidence as against Section 92 of the Evidence Act. To buttress his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of *Smt. Gangabai W/o Rambilas Gilda v Smt. Chhabubai W/o Pukharji Gandhi*.¹ According to the learned counsel, the trial Court completely recorded a wrong finding on the basis of statement of plaintiff and his witnesses, which remains unrebutted. Thus, the impugned judgment and decree is liable to be set aside.

8. Learned counsel appearing for the defendant No.1, *per contra*, would submit that the plaintiff has categorically failed to prove that the sale deed was sham and bogus. He would further submit that there is no specific pleading to this effect as to how the fraud was committed, therefore, in absence of any particulars, the statement of plaintiff cannot be accepted to be a gospel truth. He would submit that dismissal of the suit by the trial Court is well merited, which do not call for any interference of this Court.

9. We have heard learned counsel for the parties at length and perused the record with utmost circumspection.

10. From the record it is manifest that Maniram Yadav, son of Bodhiram, died on 28-5-2019. The said fact is evident from the death certificate (Ex.P/20C). No legal representatives of Maniram

1 (1982) 1 SCC 4



have been brought on record, therefore, the appeal would abate as against the deceased Maniram. Further more since legal representatives of Bodhiram were brought on record to carry forward the interest of Bodhiram, even in absence of Maniram no effect would be caused on the ultimate result.

11. Now coming back to the sale deed. We went through the pleading. The plaintiff Bodhiram in his plaint averments stated that he never executed the sale deed dated 13-7-2011 and he was an octogenarian and was not able to hear and see properly. Taking the advantage of it few of the land brokers got his thumb impression on sale deed and thereafter the sham sale deed was executed and fraud was played on him. The sale deed is Ex.P/4. Perusal of it would show that it is a sale deed for consideration of ₹ 46,50,000/-. There are two attesting witnesses namely; Anil & Naresh. The plaintiff executed the sale deed and got it registered. How the sale deed executed and which of the land broker obtained the thumb impression of the plaintiff by playing fraud has not been narrated in the plaint. When the registered sale deed has been executed and attesting witnesses are present, the plaintiff, in order to cancel such sale deed, was duty bound to explain as to how the fraud has been committed. Simple statement that by taking advantage of his old age, his thumb impression has been obtained by playing fraud will not be helpful. The allegation that the sale deed is outcome of fraud then the fraud is to be pleaded properly .



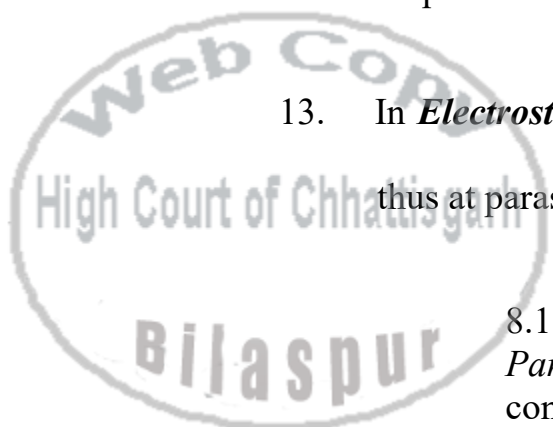


12. The supreme court in the matter of *electrosteel castings limited v uv asset reconstruction company limited and others*² has reiterated the earlier view expressed by the privy Council that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges and even as per order vi rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence particulars shall be stated in the pleading. Except the fact that being an octogenarian the thumb impression was obtained by misrepresentation that will not be any helpful to the plaintiff.

13. In *Electrosteel Castings Limited* (supra) the Supreme Court held thus at paras 8.1 & 9 :

8.1 Similar view has been expressed in *Ladli Parshad Jaiswal (1964) 1 SCR 270* and after considering the decision of the Privy Council in *Bharat Dharma Syndicate Ltd. vs. Harish Chandra (64 IA 146)*, it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in *K.C Sharma & Company {(2020) 15 SCC 209}* it is held that 'fraud' has to be pleaded with necessary particulars. In *Ram Singh {(1986) 4 SCC 364}*, it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation.

² (2022) 2 SCC 573





9. Having considered the pleadings and averments in the suit more particularly use of word 'fraud' even considering the case on behalf of the plaintiff, we find that the allegations of 'fraud' are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act.

14. Further the Supreme Court in the matter of **Ramesh B. Desai v Bipin Vadilal Mehta**³ has held that specific pleadings of fraud are required. At para 22 of the judgment it was observed as under:-

22. Undoubtedly, Order 6 Rule 4 CPC requires that complete particulars of fraud shall be stated in the pleadings. The particulars of alleged fraud, which are required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard.

15. The sale deed was stated to be by way of misrepresentation and fraud. While examining the list of evidence, it is apparent that the plaintiff alleges that two land brokers got his thumb impression by playing fraud. As to who were the land brokers and who obtained his thumb impression was required to be pleaded and proved. The evidence of the plaintiff and his witnesses is silent on this issue. The sale deed (Ex.P/4) would show that it was a registered sale deed and two of the witnesses were also present. At least some effort should have been made to summon them for evidence. Simply by oral statement that the thumb impression was obtained and fraudulently sale deed has been executed will not be helpful when the registered sale deed was executed.

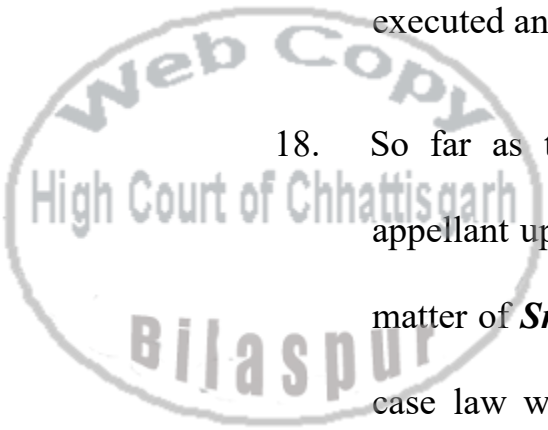
3 (2006) 5 SCC 638



16. The Supreme Court in the matter of *Jamila Begum (Dead) through legal representatives v Shami Mohd. (Dead) through legal representatives*⁴ held that when the sale deed is registered it reinforces valid execution of the sale deed and the undue influence or fraud, the burden of proof would be on the plaintiff.
17. Likewise, the Supreme Court in the matter of *Vimal Chand Ghevarchand Jain and Others v Ramakant Eknath Jadoo*⁵ held that a registered deed of sale carries presumption that the transaction was a genuine one. If execution of sale deed is proved, onus is on defendant to prove that the deed was not executed and it was a sham transaction.
18. So far as the reliance placed by the learned counsel for the appellant upon the decision rendered by the Supreme Court in the matter of *Smt. Gangabai* (supra) is concerned, reading of the said case law would reveal that it has dealt with second proviso to Section 92 of the Evidence Act. The Court observed that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms.

4 (2019) 2 SCC 727

5 (2009) 5 SCC 713





Therefore, the exception which is carved out would not be applicable in this case. Since the document is said to be sham and it would only apply to the cases when terms of such transaction by relying upon the document the plaintiff wants to sale further.

19. Applying the well settled principles of law and for the reasons stated hereinabove, in our considered view, the impugned judgment and decree is just and proper and the same does not warrant any interference of this Court.

20. In the result, the appeal, *sans* merit is dismissed. There shall be no order as to cost(s).

A decree be drawn accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Sanjay S. Agrawal)
Judge

Gowri

