

(2010) 11 CHH CK 0001
In the Chhattisgarh High Court
Case No : Second Appeal No. 43 of 2008

Umashankar Agrawal (dead) and Others	APPELLANT
Vs	
Daulatram Sahu	RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 11

Citation : AIR 2011 Chh 72

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—Heard on admission.

2. The Courts below have dismissed Plaintiff's suit for permanent injunction.

3. Undisputedly, the Plaintiff sold the suit shop to the Defendant by a registered sale-deed dated 12th May, 1997. At page 3 of the sale deed it was mentioned that the purchaser shall only be entitled to the ground floor and the area above the roof shall belong to the vendor. It was also mentioned that the purchaser shall be entitled to exercise Nistari in the front door of the shop as also in the area in front of the shop. However, no pakka construction shall be made in front of the shop. At page 5 of the sale deed, it was mentioned that the purchaser shall not be entitled to construct any basement or any pakka construction.

4. The suit was filed on the allegation that the Defendant is raising construction in violation of the restriction imposed in the demise.

5. Both the Courts below have dismissed the suit after holding that the Defendant has not constructed any basement; the Defendant has not raised any pakka construction in front portion and only a tin shed has been placed in the front portion and a shutter has been fixed in place of door. The first appellate Court has also recorded a finding on appreciation of evidence that the Defendant

has only changed flooring and has not constructed any basement.

6. Section 11 of the Transfer of Property Act reads thus:

11. Restriction repugnant to interest created.-Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

7. It is not the Plaintiff's case that the direction contained in the sale deed was made for the purpose of securing the beneficial enjoyment of his another property. There is no such statement in his deposition also. The only plea of the Plaintiff is that the subject consideration is putting him in inconvenience and is adversely affecting him. The condition imposed in the sale deed is thus contrary to the mandate of law contained in Section 11 of the Transfer of Property Act, therefore the suit preferred by the Plaintiff/Appellant has rightly been dismissed by the Courts below.

8. No substantial question of law arises in this appeal, which fails and is hereby dismissed.