

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 117 of 2006**

1. Shantiswaroop son of Ghanaram Sahu, aged about 30 years
 2. Vinod Kumar son of Ghanaram Sahu, aged about 27 years
- Both residents of village Koliyari, Tahsil Kurud, Distt. Dhamtari (CG)

---- Appellants**Versus**

1. Dashrath son of Sanwal Das (Sanwal) aged about 65 years
 2. Sanwal Das (Sanwal) son of Murha, aged about 67 years
- Both resident of village Koliyari, Tahsil Kurud, Distt. Dhamtari (CG)
3. State of Chhattisgarh through Collector, Dhamtari (CG)

---- Respondents

For appellants	: Mr. R.S. Patel, Advocate.
For Respondent No. 1 and 2	: Mr. Kunal Das, Adv.
For Respondent No. 3/State	: Ms. Sangita Mishra, PL

Judgment**10/09/2015**

1. Instant second appeal under Section 100 of the Civil Procedure Code is directed against the judgment and decree dated 6th August, 2005 passed by the Additional District Judge, Dhamtari in Civil Appeal No. 112A/2004 whereby and whereunder plaintiffs'/appellants' appeal has been dismissed affirming the judgment and decree dated 27-1-2000 passed in Civil Suit No. 102A/98 by the Civil Judge Class II, Dhamtari.
2. Facts of the case in brief necessary for disposal of the case are that plaintiffs/appellants filed a civil suit before the trial Court for possession and damages as they were owners of the suit land. The trial Court on a close scrutiny of evidence led and material placed on record dismissed the civil suit vide judgment dated 27-1-2000 holding that the plaintiffs have failed to prove that the suit lands are sold by defendant No. 1 and further that the registered sale deed was for the security of land and loan amount has been paid to the plaintiffs, the same document is destroyed. Learned trial Court further held that possession of the suit land with father of the plaintiffs was not proved and also dispossession by the defendant for the suit land was also not proved. Against the said judgment and decree, the plaintiffs preferred first appeal before the Additional Distt. Judge. The first appellate

court after re-appreciating entire material available on record, also dismissed the appeal and affirmed the findings recorded by the trial Court.

3. Against above judgment of the first appellate court, the instant second appeal is preferred by the plaintiffs on the ground that the two courts below failed to consider the evidence led and material placed on record. Hence both the judgments are erroneous. The evidence led is not appreciated and considered. The judgment and decree dated 30-10-1975 passed in Civil Suit No. 46A/74 by the Civil Judge Class I, Dhamtari was in favour of the appellant. The trial Court further failed to appreciate the statement of the plaintiffs' witnesses as well as documentary evidence. Hence it is prayed that the instant second appeal be admitted for hearing and after hearing on merit, judgments passed by both the courts below be set aside and the appeal be allowed.
4. I have heard learned counsel for the appellants on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgments and decree including records of the courts below.
5. Learned counsel appearing for the appellants supported the grounds taken in the second appeal and submitted that substantial question of law needs to be formulated along with admission of the appeal. He further submitted that substantial question of law as mentioned in the memo of appeal is involved. The appeal be admitted and disposed of accordingly.
6. A perusal of the entire facts goes to show that the trial Court on a detailed appreciation of evidence based his finding on oral and documents evidence and held that the registered sale deed was for security of loan and the loan amount has been repaid to the plaintiffs. Thereafter document was destroyed and the land in question was not with the possession of plaintiff's father and he was not dispossessed. The trial Court held that the suit land was not sold. The first appellate court also after consideration and appreciation held that there is no illegality or impropriety committed by the trial Court. The first appellate court in para 7 of the judgment discussed the judgment and decree dated 30-10-1975 passed in Civil Suit No. 46-A/74 and held that as the plaintiffs have not filed suit against the person who was in possession and landlord filed the civil suit against other hence the said judgment and decree was not executable.
7. Upon perusal of entire evidence, in the opinion of this Court, no substantial question of law requires to be formulated for hearing of the second appeal.
8. It is settled law that this Court cannot proceed to hear a second appeal

without there being any substantial question of law involved in the appeal. Existence of substantial question of law is *sine qua non* for the exercise of the jurisdiction under the amended Section 100 of the Code of Civil Procedure. The findings recorded by both the Courts below in the case are essentially finding of facts. Learned counsel appearing for the appellants failed to point out any substantial question of law which may arise for determination in the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss the appeal.

9. In view of above, since no substantial question of law arises for determination in the second appeal, this is not a fit case for admission. Consequently, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of Code of Civil Procedure.

10. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge