

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 478 of 2015

1. Kranti Kumar S/o. Dayaram, About about 52 Years,
2. Devkumar S/o. Dayaram, Aged about 54 Years,

Both are resident of Jawalpur, Tahsil and Police Station Baloda, District Janjgir Champa (C.G.)

---- Appellants/ Plaintiffs

Versus

State of Chhattisgarh, Through The Collector Janjgir Champa (C.G.)

---- Respondent

For Appellants	:-	Mr. Ramakant Pandey, Advocate
For Respondent/ State	:-	Mr. Anupam Dubey Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board By

16/02/2016

1. The instant Second Appeal is preferred against the judgment and decree dated 30.10.2014 passed by 3rd Additional District Judge, Janjgir District Janjgir Champa passed in Civil Appeal No. 43 A/2014 whereby the judgment and decree dated 23.11.2010 passed by 2nd Civil Judge Class-2 Janjgir District Janjgir Champa passed in Civil Suit No. 56 A/2008 was affirmed.

2. The appeal is preferred by the plaintiffs against the concurrent finding of facts. The brief facts of this case, according to the appellants/plaintiffs are that the appellants pleaded before the Court that the land bearing Khasra No. 3529/ 2 घ admeasuring 1.50 acres and Khasra No. 3539/2 ङ admeasuring 1.80 acres was in possession of the plaintiffs as an owner of the land thereof. It was further pleaded that the said suit land had devolved on appellant's father being the *Malgujar*. The said devolution was stated to be in the year 1959-60. It was further pleaded that during the life time of father, he was in possession of the land in 1973. In the year 1973, the father of the plaintiffs breathed his last and after the death of the father of the plaintiffs, the land came into the possession of the plaintiff in the year 1975 and partition was affected between two plaintiffs i.e. Kranti Kumar and Dev Kumar and they came into the possession of the respective land. It was further pleaded that in the year 1983, a notice was served to remove the encroachment to the plaintiffs, thereafter, an application was filed before the Tahsildar wherein a revenue case No. 10-A/76/1996-97 was registered and the order was passed in favour of the plaintiffs to grant lease of the land. Subsequently, after grant of lease the land had devolved on the plaintiffs under the Bhoomi Swami Right. Therefore, permanent injunction was claimed and the injunction was also prayed on the ground that Nayab Tahsildar has not afforded any opportunity of hearing and had directed for deletion of the name from the revenue record.
3. State filed it's reply and it was contended that the lease was never granted to the plaintiffs at any point of time and the plaintiff with the

connivance of the Patwari, the names of the plaintiff's were recorded and at no point of time lease was actually was granted to them.

4. Both the Courts below after evaluating the pleading and the evidence came to finding of fact that the plaintiffs have failed to prove to this fact, at any point of time the lease was granted in favour of the plaintiff and no evidence was adduced to substantiate fact, eventually, the suit was dismissed.
5. Counsel for the appellants would submit that the findings of both the Courts below are perverse, since there was no evidence adduced by the defendant/State as such the plaintiffs pleading was deemed to be admitted and suit should have been decreed.
6. Perused the judgment and decree and the pleading along with evidence. Perusal of the record would show that on the basis of document i.e. the lease the claim was preferred, i.e. grant of lease in revenue case No. 10-A/76/1996-97 was not produced before the Court. The order which was placed before the Court, on the contrary, i.e. of the revenue case No. 2-A-6/2006-07 records that no order to grant lease was passed, in favour of the plaintiff in the revenue case so pleaded. Therefore, the basis of which the plaintiff claimed their right i.e. grant of lease of lease was not placed before the Court. If the finding of revenue Court is examined in the subsequent revenue case it is otherwise. As appears no evidence is on record to consider the claim of the plaintiff on the basis of alleged lease. Therefore, on evaluating the primary evidence which is available on record it is clear that concurrent finding of fact by both the Courts below do not require any consideration as plaintiff himself has failed to produce evidence in support of his claim. Therefore, on evaluating the entire records, in my opinion, no

substantial question of law arises to consider the concurrent finding of fact arrived at by the learned both the Courts below.

7. Accordingly the instant Second Appeal is dismissed at the motion stage.
8. No order as to costs.

Sd/-
(Goutam Bhaduri)
Judge