

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 522 of 2015

Firteen Bai D/o Fulsingh @ Kulsingh, Aged About 44 Years Caste - Gond, R/o Village Banari, Police Station And Tahsil Janjgir, District Janjgir - Champa (Chhattisgarh)

---- Appellant

Versus

1. Premlal S/o Fulsingh @ Kulsingh, Aged About 40 Years R/o Village Banari, Tahsil Janjgir, District Janjgir - Champa (Chhattisgarh)
2. Chaitram S/o Fulsingh @ Kulsingh, Aged About 35 Years R/o Village Banari, Tahsil Janjgir, District Janjgir - Champa (Chhattisgarh)
3. Chandramoti W/o Kunjbihari Dewangan, Aged About 65 Years R/o Raipur, District Raipur (Chhattisgarh)
4. Kamala W/o Motilal Dewangan, Aged About 48 Years R/o Champa, Tahsil Champa, District Janjgir - Champa (Chhattisgarh)
5. Ramdhan S/o Kedar Sahu, Aged About 53 Years R/o Village Banari, Tahsil Janjgir, District Janjgir - Champa (Chhattisgarh)
6. State Of Chhattisgarh Through Collector Janjgir- Champa, District Janjgir - Champa (Chhattisgarh)

---- Respondents

For appellant - Shri Alok Tiwari, Advocate appears on behalf of Shri Yogesh Chandra, Advocate.

For respondent/State – Shri Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

17/02/2016

1. This instant appeal is against the judgement and decree dated 30/06/2015 passed in Civil Appeal No.47-A/14 by the Third Additional District Judge, Janjgir wherein judgement and decree passed in Civil Suit No.1-A/2004 dated 12/01/2009 has been affirmed.
2. Appeal is by the appellant/plaintiff. As per the case of the plaintiff it was pleaded that land bearing Khasra No.1860/7cha admeasuring 3 acres was granted to Phool Singh on government lease who is father of plaintiff Firteen Bai and defendants No.1 and 2 Premlal and Chaitram. Plaintiff Firteen Bai and defendants No.1 and 2 Premlal and Chaitram they are

brothers and sister. After death of Phool Singh, in the revenue records along with the plaintiff name of defendants No.1 and 2 Premlal and Chaitram were also recorded and the plaintiff being sister was given share in the crop. In the year 2001 defendants stopped cultivating the field and it was found that the said land has been sold in favour of defendants No.3 to 5 namely Chandramoti, Kamla and Ramdhan. It was pleaded that the land was held on government lease, therefore it was contended that property should not have been sold in favour of defendants No.3 to 5.

3. Defendants No.3 and 4, the purchasers, namely Chandramoti and Kamla denied the averments of plaint and it was contended that the plaintiff and the seller of the land namely Premlal and Chaitram has entered into unlawful agreement whereby these two brothers though have sold the property, now along with their sister wanted to take away the land back.

4. Defendants No.1 and 2 brothers and defendant No.5 admitted the claim of the plaintiff/sister.

5. After framing of the issues, the case was fixed for evidence on 27/11/2004. Thereafter, at the request of the plaintiff it was adjourned. However, plaintiff could not produce evidence and ultimately right to lead evidence of the plaintiff was closed and suit was dismissed for want of evidence.

6. Learned counsel for the appellant submits that appellant/plaintiff should have been given opportunity to lead evidence in this case and case should not have been dismissed simplicitor as sufficient ground exist to grant further opportunity and therefore prayed that second appeal be allowed.

7. I have perused the judgement and decree and orders of the court below. Order sheets would reflect that first the case was fixed for plaintiff

evidence on 27/11/2004, thereafter it was adjourned to 27/12/2004, 27/01/2005, 19/06/2006, 2/08/2006, 9/10/2007, 30/11/2007, 15/01/2008, 21/02/2008, 12/03/2008, 1/05/2008, 18/08/2008, 16/09/2008 and lastly on 12/01/2009. Therefore, 13-14 opportunity was given to adduce evidence to plaintiff. The order sheet further shows that during the intervening period of 12/03/2008, 18/08/2008 and 12/01/2009 last opportunity were granted to plaintiff, however no evidence was adduced by her. Though prayer was made to adjourn the case on the ground that son of the plaintiff was ailing, however no document have been filed to support such contention and even no effort have been made to file the application to get plaintiff examined on commission. Therefore, prima facie it appears that ample opportunities were granted to the plaintiff, however that was not availed by the plaintiff on some count or other and eventually it led to dismissal of the suit. Therefore, taking into totality of facts, dismissal of the suit for want of evidence cannot be faulted with as prima facie it appears that despite all opportunity granted, plaintiff failed to adduce any evidence. Consequently, taking into fact that case lasted from 2004 to 2009 only for evidence of the plaintiff and the plaintiff did not appear even in a single date, considering these facts, no substantial question of law arises for consideration in this second appeal.

8. Accordingly, second appeal is dismissed at the motion stage itself.

Sd/-

(Goutam Bhaduri)

JUDGE