

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 127 OF 2017**

1. Shankar Dev Pandey S/o Late Basant Dev Pandey, Aged About 70 Years R/o Village- Aasandih, Tahsil- Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
2. Ganesh S/o Shankar Dev Pandey, Aged About 46 Years R/o Village- Aasandih, Tahsil- Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
(Plaintiffs)

---- Appellants**Versus**

1. Sukhlal S/o Ribai Pando, Aged About 48 Years R/o Village- Aasandih, Tahsil- Wadrafnagar, District Balrampur-Ramanujganj, Chhattisgarh
2. State Of Chhattisgarh, Through The Collector, District Balrampur-Ramanujganj, Chhattisgarh(Defendants)

---- Respondents

For Appellants	:	Mr. D. N. Prajapati, Advocate
For Respondent No. 2/State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****08/11/2017**

Heard on admission.

1. This is plaintiffs' second appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment and decree dated 21/12/2016 passed by the Additional District Judge, Ramanujganj, District Surguja (Ambikapur) (now District Balrampur-Ramanujganj) (CG) in Civil Appeal No.11-A of 2015, by which, the lower appellate Court while affirming the judgment and decree dated 29/09/2015 passed by the Civil Judge Class-II, Wadrafnagar, District Balrampur-Ramanujganj (CG) in Civil Suit No. 9-A/2012, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiffs instituted a suit claiming declaration of title, injunction and possession with regard to the property in question bearing Kh. No. 1245 admeasuring 1.25 hectares and Kh. No. 1248 admeasuring 1.59 hectares, total admeasuring 2.84 hectares situated at village Aasandih, Tahsil Wadrafnagar, District Balrampur-Ramanujganj (C.G.). According to the plaintiffs, they were in possession over the suit properties since 1960 and pleaded that defendant No. 1 has initiated the proceeding under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') before the Sub-Divisional Officer, Wadrafnagar and the said authority vide its order dated 30/12/2011 has held that defendant No. 1 is in possession over the suit land. It is pleaded further that on the basis of the said order, defendant No. 1 is trying to interfere his peaceful possession, therefore, the plaintiffs have been constrained to file the suit of the instant nature, instituted on 07/09/2012.

3. Defendant No. 1 has contested the aforesaid claim and pleaded very specifically that the plaintiffs are not in possession over the suit property as claimed by them. It is contested further that the plaintiffs have obtained the revenue papers mutated on the basis of false and fabricated lease deed and contested further on the ground that the Sub-Divisional Officer, Wadrafnagar, in the said proceeding initiated under Section 145 of the CrPC, has come to the conclusion that defendant No. 1 is in possession over the suit property, therefore, the claim as made by the plaintiffs deserves to be dismissed.

4. The trial Court after considering the evidence led by the parties and that by considering the lease deeds (Ex. P-11 & Ex. P-12) has come to the conclusion that the plaintiffs have failed to establish their ownership with regard to the suit properties. It was held further that the plaintiffs are not in possession over the suit property. As a consequence, the trial Court has dismissed the plaintiffs' claim.

5. Being aggrieved, the plaintiffs have preferred an appeal as per the provision prescribed under Section 96 of the CPC. During pendency of the appeal, an application as required under Order 41 Rule 27 of the CPC was also made by the plaintiffs for production of additional documentary evidence in order to establish their claim over the suit properties. The lower appellate Court after considering the said application, has allowed the same and that by exercising the powers enumerated under Order 41 Rule 28 of the CPC has recorded the evidence in this regard and come to the conclusion that the plaintiffs are not the owner of the suit property. It held further that they cannot claim their right, title and interest on the basis of alleged lease deeds as there was no mention with regard to the suit property. Consequently, the lower appellate Court while affirming the judgment and decree of the trial Court, has dismissed the appeal.

6. Being aggrieved, the plaintiffs have preferred this appeal. Mr. D. N. Prajapati, learned counsel for the appellants submits that the judgment and decree as passed by the Courts below by disbelieving the alleged lease deeds (Ex. P-11 and P-12) has committed an illegality in arriving to a conclusion that the plaintiffs are not owners of the property in question. He submits further that the Sub-Divisional Officer, Wadrafnagar vide its order dated 30/12/2011 was not at all competent to hold the ownership of defendant No. 1 in relation to the property in question. He therefore submits that the judgment and decree as passed by the Courts below be set aside.

7. I have heard learned counsel for the appellants and perused the entire records carefully.

8. The plaintiffs entire case is based essentially on the ground that they are the owner of the property in question i.e. Kh. No. 1245 and Kh. No. 1248 admeasuring 1.25 hectares and 1.59 hectares respectively. Under such circumstances, the burden was heavily upon the plaintiffs to establish the fact

that under what basis they have acquired their right, title and interest over the suit properties . However, in their claim, it has not been pleaded even regarding their source of title and their reliance upon lease deeds (Ex. P-11 and Ex. P-12) would not confer any right upon them. In any case, a bare perusal of those lease deeds (Ex. P-11 and P-12) issued in favour of Shankar Dev Pandey (plaintiff No. 1) and his son Ganesh (plaintiff No. 2) would show that both the lease deeds are not with regard to the property in question. Besides, in order to establish their acquisition of right over the suit properties, the plaintiffs are required to produce the entire relevant papers with regard to issuance of those lease deeds. Having failed so and in absence of any cogent and reliable evidence, it can not be held that the plaintiffs have acquired any interest whatsoever over the suit properties. Accordingly, the findings so recorded by the Courts below based upon due and proper appreciation of the evidence led by the parties cannot be held to be a perverse one. Therefore, the same deserve to be and are hereby affirmed.

9. In view of the aforesaid discussions, I do not find any question of law, much less the substantial question of law which arise for determination in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge