

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 602 of 2016**

1. Ranjeet Dewangan S/o Shri Khemu Dewangan, Aged About 65 Years R/o Nayapara Ward Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
2. Vijay Dewangan S/o Shri Khemu Dewangan, Aged About 44 Years R/o Nayapara Ward Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh(Plaintiffs)

---- Appellants**Versus**

1. (A) Smt. Janmuna Bai W/o Late Shri Buddhu @ Budhram Kewat, Aged About 54 Years R/o Post Office Ward Amatalab Road Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
1. (B) Dilip Kumar Male Age - 33 S/o Late Shri Buddhu @ Budhram Kewat, R/o Post Office Ward Amatalab Road Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
1. (C) Om Kewat Male Age - 31 S/o Late Shri Buddhu @ Budhram Kewat, R/o Post Office Ward Amatalab Road Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
1. (D) Mukund Kewat Male Age - 26 S/o Late Shri Buddhu @ Budhram Kewat, R/o Post Office Ward Amatalab Road Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
1. (E) Nandkishore Male Age - 24 S/o Late Shri Buddhu @ Budhram Kewat, R/o Post Office Ward Amatalab Road Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
2. Smt. Laxmin Bai D/o Late Shri Ranchhor, Aged About 31 Years R/o Dhobi Chowk Tikarapara, Nayapara Ward Dhamtari, P.S. Kotwali, Civil & Revenue District Dhamtari, Chhattisgarh
 (Defendants)

---- Respondents

For Appellants:

Shri Sunil Sahu, Advocate.

For Respondents:

None.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****22.11.2017**

1. Heard on admission.
2. This is the plaintiffs' second Appeal against the judgment and

decree dated 25.10.2016 passed by the Additional District Judge, Dhamtari in Civil Appeal No. 201-A/2011 by which, the lower appellate Court, while affirming the judgment and decree dated 30.06.2011 passed by the 2nd Civil Judge, Class-I, Dhamtari in Civil Suit No. 74-A/2011, has dismissed the plaintiffs' Appeal.

3. The undisputed facts of the case are that the Plaintiffs Ranjeet Dewangan and Vijay Dewangan instituted a suit claiming possession with regard to the suit house described in plaint map as red ink. It is pleaded in the plaint that the said suit house situated in sheet No. 35 Khasra No. 832/1 of Plot No. 22 admeasuring 450 sq. feet was owned by his uncle, namely, Somu. It is pleaded further that said Somu, after obtaining the permission from Municipality in the year 1949 had constructed the said suit house and adjacent to this house i.e. Khasra No. 832/1 of Plot No. 23 admeasuring 207 sq. feet was given to one Bajrang Akhada by virtue of a registered deed of lease dated 12.12.1962. It is pleaded further in the plaint that the suit house was earlier given to one Brijbai on rent, but said Brijbai has obtained the adjacent land i.e. 832/1 illegally in her name and sold the same to defendant-Budhram by virtue of registered deed of sale dated 01.04.1991 and has handed over the suit house in the garb of said sale to him. Since the suit house was wrongly handed over by Brijbai to the defendant, therefore, the plaintiffs have been constrained to file the suit for obtaining the possession of the same.

4. The defendant has contested the aforesaid claim and denied very specifically that Brijbai has obtained the adjacent land illegally and sold the same to the defendant, as pleaded by plaintiffs. It is pleaded further by defendant that he has purchased the adjacent land of the said suit house

from Brijbai and is in possession over the same. The defendant has denied further that Somu was the owner of the suit house and, therefore, the plaintiffs being his legal representatives are not entitled to get the same.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that neither Brijbai was the tenant of said Somu nor said Somu was the owner of the said suit property. As a consequence, the trial Court has dismissed the suit.

6. The aforesaid finding of the trial Court has been affirmed further by the lower Court in an appeal preferred by the plaintiffs under Section 96 of the CPC. The appellate Court, in turn, after examining the documentary evidence placed on record, has observed at para 9 of its judgment that the plaintiffs have failed to produce any document of title showing ownership of their predecessor-in-interest namely Somu. In consequence, while affirming the finding of the trial Court, the lower appellate Court has dismissed the appeal.

7. Being aggrieved, the plaintiffs have preferred this Appeal. Shri Sunil Sahu, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below by holding that Somu was not the owner of the suit property is apparently contrary to law. He submits further that Somu had constructed the suit house only after obtaining the permission from Municipal Council in the year 1949 and without examining the revenue papers showing the name of Somu in its proper manner, the Courts below have erred in holding that Somu was not the owner of the suit property. He, therefore, submits that the judgment and decree as passed by the Courts below be set aside.

8. I have heard learned Counsel for the Appellants and perused the

entire record carefully.

9. Plaintiffs' suit is essentially based on the ground that one Somu was the owner of the suit house and adjacent to the said suit house the land bearing Khasra No. 832/1 of Plot No. 23 was sold by one Brijbai to defendant Budhram and in the garb of said sale, the possession of the suit house was handed over to him. In order to obtain the possession on the basis of title, the burden was heavily upon the plaintiffs to establish the fact that their predecessor- in-interest namely Somu was the owner of the suit house. However, from perusal of the entire documentary evidence would show that no document as such was placed on record showing the ownership of Somu. In absence of such a document, it is difficult to hold that Somu was the owner of the suit house and therefore the plaintiffs being his heirs are entitled to obtain the possession of it. The Courts, below after considering the evidence led by the parties have, therefore, rightly come to the conclusion that since Somu was not the owner of the suit property and, therefore, the plaintiffs are not entitled to obtain the possession of the suit house. The findings, so recorded, therefore, deserve to be and are hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE