

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 510 of 2007**

- Ramayan Prasad Soni S/o Ramsharan Sonar, R/o Village Baloda, Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh(Defendant)

---- Appellant**Versus**

- Smt. Dulaurin Bai (Dead) Through Lrs
1. (A) Ram Kumar Kashyap Male Age - 50 S/o Late Shree Mathura Prasad Kashyap, R/o Village Jhapeli, Tahsil Janjgir, Police Station Baloda, District Janjgir-Champa, Chhattisgarh
- Dinesh Kumar Dewangan S/o Ramkrishan Dewangan, R/o Jawalpur, Tahsil Baloda, P.S. Baloda, District Janjgir-Champa, Chhattisgarh(Plaintiffs)

---- Respondents

For Appellant:	Shri Ashok Kumar Swarnakar, Advocate.
For Respondent 1(A):	Shri Pragalbha Sharma, Advocate.
For Respondent Nos. 1 & 2	Shri R. S. Patel, Advocate

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

08.08.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 01.09.2007 passed by the District Judge, Janjgir-Champa in Civil Appeal No.21-A/2007 by which, the lower appellate Court, while affirming the judgment and decree dated 30.04.2007 passed by the 2nd Civil Judge, Class-I, Janjgir in Civil Suit No.450-A/2005, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff instituted a suit for injunction by submitting *inter alia* that she was the owner of the property in question bearing Khasra No. 3454/3 admeasuring 0.04 acres

purchased by her mother Tej Kunwar from one Madho Prasad by virtue of an unregistered deed of sale dated 20.09.1959 for a consideration of Rs. 98/-. It is pleaded further that the defendant Ramayan without any authority is trying to interfere her peaceful possession and therefore, she has been constrained to file the suit in the instant nature for injunction.

3. The defendant has contested the aforesaid claim by submitting *inter alia* that the plaintiff is not the owner of the said property nor her mother has purchased the said property in the year 1959. It is contested further on the ground that by virtue of registered deed of sale 10.02.1986 (Ex. D.- 1), the said property was purchased by him from one Ramgopal and denied further that he is trying to interfere in peaceful possession of the plaintiff.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the property in question belongs to the plaintiff and was purchased by her mother in 1959. As a consequence, the trial Court has decreed the plaintiffs' claim. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the defendant.

6. Being aggrieved, the Defendant has preferred this Appeal. Shri Ashok Kumar Swarnakar, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below is apparently contrary to law. He submits further that Dulaurin Bai, the plaintiff, never entered into the witness box, therefore, it cannot be held that the defendant is interfering in her peaceful possession with regard to the property in question. He submits further that plaintiff has not filed any demarcation report, therefore in absence thereof, it cannot be held that the suit property is the part of the plaintiff's land. He lastly submits that the

judgment and decree as passed by the Courts below be set aside.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. The Plaintiff's suit was for injunction in which it was alleged by her that the property purchased by her mother was trying to be encroached and interfered by the defendant. The defendant has denied this fact. However, perusal of the record would show that on 21.11.1998, an application was made by the plaintiff before the trial Court for appointment of Commissioner. The said application was objected by the defendant, but, it was allowed by the trial Court vide order dated 06.01.1990 by appointing the Commissioner. In pursuance of the direction issued by the trial Court, the Commissioner was appointed, who in turn, has submitted his report on 31.01.2001 before the trial Court. The Commissioner, so appointed has observed that the suit property is the part of Khasra No. 3454 which was purchased by plaintiff prior to defendant. The Commissioner's report was objected by the defendant before the trial Court however the same was rejected vide order dated 15.03.2001. The lower appellate Court by relying upon the said report, has come to the conclusion that the suit property is the part of the Khasra No. 3454 and belongs to the plaintiff as it was purchased by plaintiff's mother Tej Kunwar prior to defendant, purchase. This is a pure finding of fact arrived at upon due and appreciation of the evidence of the parties, vis-a-vis, the said report of the Commissioner. Therefore, the same cannot be held to be a perverse one. Accordingly, the findings as given by the Courts below deserves to be and are hereby affirmed.

9. Consequently, 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

Nikita