

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.42 of 2017**

Buddharam S/o Late Shri Sadhram, Aged About 80 Years R/o Dhardei,
Tehsil- Pamgarh, Revenue & Civil District Janjgir-Champa,
Chhattisgarh(Defendant No.1)

---- Appellants**Versus**

1. Ganga Prasad S/o Mahavir, Aged About 72 Years R/o Kotaod, Tehsil
Pamgarh, Revenue & Civil District Janjgir-Champa,
Chhattisgarh(Plaintiff)
2. State Of Chhattisgarh, Through: Collector Janjgir-Champa, Revenue &
Civil District Janjgir-Champa, Chhattisgarh(Defendant No.2)

-----Respondents

For Appellant: Shri Surfaraj Khan, Advocate.
For Respondents No.2/State: Shri RK Jaiswal, Panel Lawyer.

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

31.10.2017

1. This is the Defendant's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 16.11.2016 passed by the District Judge, Janjgir-Champa, District Janjgir-Champa in Civil Appeal No.06-A/2016 by which, the lower appellate Court, while affirming the judgment and decree dated 17.08.2015 passed by the 1st Civil Judge, Class-I, Janjgir, Distt. Janjgir-Champa in Civil Suit No.130-A/2007, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff-Ganga Prasad instituted a suit claiming declaration of title, injunction and also for possession by submitting *inter alia* that the suit property bearing Khasra No.1271/2 admeasuring 1.36 acres situated at village Dhardei, Tahsil

Pamgarh was originally held by his grandfather Gourha. It is pleaded further that after the death of Gourha, it was inherited by his sole son Mahavir, the Plaintiff's father and after the death of father, it was inherited by him. It is pleaded further that the Defendant has started claiming his ownership with regard to the property in question since November, 1984, therefore, the Plaintiff has been constrained in filing the suit in the instant nature, instituted on 23.07.1987.

3. The aforesaid claim of the Plaintiff has been contested by Defendant Buddhuram by submitting *inter alia* that his father Sadhram had purchased the suit property from Plaintiff's grandfather Gourha and since then, his father was in possession continuously over the said suit property. It is pleaded further that when the property was purchased by his father, it was not in his knowledge because he was minor at that relevant point of time. It is contested further on the ground that when he came to know that his father's name was not recorded in revenue papers on the basis of the alleged sale, therefore, he applied for mutation before the Nayab Tahsildar Pamgarh, who in turn, while registering the case as Revenue Case No.5-A/6/1984-85 and has passed the mutation order in his favour on 31.5.1986. He therefore pleaded that the Plaintiff's suit which is even otherwise barred by time, deserves to be dismissed.

4. The trial Court, after considering the evidence of the parties, has come to the conclusion that the suit property was originally held by Plaintiff's grandfather Gourha and held further that after the death of Gourha, it was inherited by his sole son Mahavir, the Plaintiff's father. It held further that the Defendant's father Sadhram had not purchased the property from the Plaintiff's grandfather as no document was produced in

this regard by the Defendant and observed further that the mutation order as passed by the Nayab Tahsildar on 31.5.1986 (Ex.D-2) would not confer any right, title or interest upon him. As a consequence, the trial Court, has decreed the suit.

5. Being aggrieved, the Defendant Buddhuram has preferred an Appeal as per the provision prescribed under Section 96 of the CPC. The appellate Court, in turn, has come to the conclusion that in absence of any deed, it cannot be held that the Defendant's father Sadhram had purchased the suit property from Plaintiff's grandfather Gourha. In consequence, the lower appellate Court, while affirming the finding of the trial Court, has dismissed the Appeal.

6. Being aggrieved, the Defendant has preferred this Appeal. Shri Surfaraj Khan, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below by holding that the Defendant's father Sadhram had not purchased the property from Plaintiff's grandfather is apparently contrary to law. He submits further that the mutation order was passed only on the ground that his father had purchased the suit property from the Plaintiff's grandfather. He submits further that without considering the said order (Ex.D-2) in its proper perspective, the Courts below have erred decreeing the Plaintiff's claim.

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

8. Undisputedly, the property in question bearing Khasra No.1271/2 area 1.36 acres situated at village Dhardei, Tahsil Pamgarh was originally held by the Plaintiff's grandfather Gourha. According to the Plaintiff's averment, the suit property was inherited by the Plaintiff's father Mahavir

after the death of Gourha and after his (Mahavir) death, it was inherited by Plaintiff Ganga Prasad. The property was thus inherited by Ganga Prasad by way of inheritance. The Defendant has, however, contested the suit mainly on the ground that his father Sadhram had purchased the suit property from Plaintiff's grandfather Gourha. In such circumstances, the burden was heavily upon the Defendant to produce at least the document in this regard in order to establish the fact that his father Sadhram had purchased the suit property from Gourha. However, the Defendant has failed to produce the same. In absence of any such document, the Courts below have not committed any illegality in holding that the Defendant's father had not purchased the property from Plaintiff's grandfather Gourha. Consequently, the findings so recorded by holding that the Plaintiff Ganga Prasad has inherited the property after the death of his predecessor interest cannot be held to be perverse as the same are based upon due and proper appreciation of the evidence led by the parties and therefore, deserve to be and are hereby affirmed.

9. 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