

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 218 OF 2017**

Ram Singh S/o Keju Ram, Aged About 49 Years Caste Ghasiya, Occupation Cultivation, R/o Village Arand P.O. Mohandi, Tahsil & Police Station Mahasamund, Revenue & Civil District Mahasamund, Chhattisgarh, Present Address Raman Mandir Ward, Aakhari Chuna Bhatti, Dabara Para, Raipur, Tahsil & Police Station Raipur Revenue & Civil District Raipur, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Ramji S/o Keju Ram, Aged About 54 Years Caste Ghasiya Occupation Cultivation, R/o Village Arand P.O. Mohandi Tahsil & Police Station Mahasamund, Revenue & Civil District Mahasamund, Chhattisgarh, Present Address Raman Mandir Ward, Aakhari Chuna Bhatti, Dabara Para, Raipur Tahsil & Police Station Raipur Revenue & Civil District Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Collector Mahasamund Revenue District Tahsil & Police Station Mahasamund Revenue & Civil District Mahasamund, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:	Mr. Amiyakant Tiwari, Advocate
For Respondent No. 2/State	:	Mr. R. K. Jaiswal, P. L.

Hon'ble Shri Sanjay Agrawal, J.**Judgment On Board****14/11/2017**

1. Heard on admission.
2. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') against the judgment and

decree dated 24/12/2016 passed by the First Additional District Judge, Mahasamund District Mahasamund (C.G.) in Civil Appeal No. H-07-A/2016, by which, the lower appellate Court while affirming the judgment and decree dated 31/01/2015 passed by the First Civil Judge Class-I, Mahasamund, District Mahasamund (C.G.) in Civil Suit No. 34-A/2013, has dismissed the plaintiff's appeal.

3. The undisputed facts of the case, are that, the plaintiff Ram Singh instituted a suit claiming injunction and damages to the tune of Rs.25,000/- by submitting *inter alia* that he is in possession over the suit property described in detail in plaint Schedule A & B. It is pleaded in the plaint that the suit property was purchased by him and his brother Ramji jointly and since the date of its purchased, he is enjoying the suit property on the basis of partition effected in view of the order dated 26/04/2010 as passed by Naib Tahsildar, Baghbahra. It is pleaded further that on 12/07/2013, defendant No. 1 has started interfering his peaceful possession, therefore, the plaintiff has been constrained to file the suit in the instant nature.

4. Defendant No. 1 Ramji has contested the aforesaid claim and denied very specifically that the suit property was purchased jointly by him with the plaintiff and in fact he alone had purchased the same by virtue of the registered deed of sales and is in possession since the date of its purchase. It is pleaded further that the plaintiff is not in possession over the suit property and no partition as such was ever made between them, therefore, the suit is liable to be dismissed.

5. The trial Court after considering the evidence led by the parties has come to the conclusion that the plaintiff is neither the owner of the suit property nor was found in possession thereof. 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 appellate Court in an appeal preferred by the plaintiff under Section 96 of the CPC. The lower appellate Court has held at para-21 of its judgment that the plaintiff was not in possession, therefore, he is not entitled to get the relief of injunction as claimed by him. In consequence, the lower appellate Court while affirming the judgment and decree of the trial Court, has dismissed the plaintiff's claim.

7. Being aggrieved, the plaintiff has preferred this appeal. Mr. Amiyakant Tiwari, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below by holding that the plaintiff is not in possession over the suit property is apparently contrary to law. He submits further that by virtue of the deed of partition (Ex. P-10), the partition order was passed by the concerned revenue authorities, therefore, the Courts below ought to have held that the plaintiff is in possession over the suit property. He lastly submits that without considering this documentary evidence in its proper perspective, the Courts below have committed an illegality in holding that the plaintiff is not in possession over the suit property, therefore, the judgment and decree as passed by the Courts below be set aside.

8. I have heard learned counsel for the appellant and perused the entire records carefully.

9. The plaintiff's suit is essentially made on the ground that the suit property was purchased by him and his brother Ramji jointly. In order to establish the said fact, the burden was heavily upon the plaintiff to produce the cogent and reliable evidence that it was purchased jointly by them. However, from perusal of the record would show that the said suit property was purchased only by Ramji (defendant No. 1). From perusal of the record would show further that the plaintiff Ram Singh himself has admitted in his evidence that he is not in possession over

the suit property and in fact, his brother Ramji is cultivating the property in question. The Courts below after considering the said fact that whether the plaintiff is in possession over the suit property or not, has held very specifically that the plaintiff is not in possession over the suit property. This is a pure finding of fact based upon due and proper appreciation of the evidence led by the parties. Since the plaintiff was not found in possession over the suit property, therefore, the Courts below have rightly come to the conclusion that under such circumstances, the plaintiff is not entitled to obtain the relief of injunction. Accordingly, the finding so recorded deserves to be and is hereby affirmed.

10. In view of the foregoing 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