

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 64 of 2016**

1. Goverdhan S/o Tulsi Ram Satnami, Aged About 50 Years R/o Village Rajpur, Post Bitkuli, Up Tahsil Nipania, Tahsil Bhatapara, P. S. Karhi Chauki, District Raipur (Chhattisgarh) At Present District Baloda Bazar (Chhattisgarh)
2. Jhaman Wd/o Tulsi Ram Satnami, Aged About 70 Years R/o Village Rajpur, Post Bitkuli, Up Tahsil Nipania, Tahsil Bhatapara, P. S. Karhi Chauki, District Raipur (Chhattisgarh) At Present District Baloda Bazar (Chhattisgarh)
3. Durga S/o Tulsi Ram Satnami, Aged About 40 Years R/o Village Rajpur, Post Bitkuli, Up Tahsil Nipania, Tahsil Bhatapara, P. S. Karhi Chauki, District Raipur (Chhattisgarh) At Present District Baloda Bazar (Chhattisgarh).....
(Defendants)

---- Appellants**Versus**

1. Mitthu S/o Nanki Satnami, Aged About 70 Years R/o Village Rajpur, Post Bitkuli, Up Tahsil Nipania, Tahsil Bhatapara, District Raipur (Chhattisgarh)at Present District Baloda Bazar (Chhattisgarh)
2. State Of Chhattisgarh Through Collector Raipur, District Raipur, (Chhattisgarh).....(Defendant No. 04)

---- Respondents

For Appellants	:	Shri L.C. Dash, Advocate.
For Respondents No.1	:	Mrs. Sareena Khan, Advocate.
For Respondent No.2	:	Shri R.K.Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****27/02/2017**

1. This is defendants' appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree dated 27.11.2015 passed by the Additional District Judge, Bhatapara, in Civil Appeal No. H-10A/2015, by which, the lower appellate Court while affirming the judgment of the trial Court dated

05.05.2011 has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiffs have instituted a suit for declaration of title and possession by submitting, inter alia, that they are the owners of the property in question bearing Kh.No.9/2, 14/2, 15/2 and 20/2 area 0.518 hectares situated at village Bamhanidih, Tahsil Bhatapara, District Raipur. It is pleaded by the plaintiffs that they have obtained a loan of Rs.6,000/- from the defendants and in lieu thereof pledged the property in question to them for its cultivation for a period of eight years. After the completion of the said period of eight years, the plaintiffs have demanded the possession of the suit property but it was refused. The plaintiffs have issued a notice and demanded the vacant possession of it, but despite of that, the defendants have not returned the suit property, and therefore, the plaintiffs have been constrained in filing the suit in the instant nature, instituted on 16.09.2008.

3. The defendants have contested the aforesaid claim of the plaintiffs by saying that they have not obtained the property in question by advancing loan amount of Rs.6,000/-, as alleged by the plaintiffs. It is contested mainly on the ground that an agreement to sale dated 22.04.1989 (Ex.D.1) was executed by the plaintiffs in their favour by delivering the possession of suit property. It is stated further that the suit as framed much beyond period of three years from the date of the alleged agreement, is liable to be dismissed on the point of limitation.

4. The trial Court, after considering the evidence of both the parties, has come to the conclusion that the defendants have advanced a sum of Rs.6,000/- and in lieu thereof, the plaintiffs have permitted the defendants to cultivate the property in question for a period of eight years. It held further that after completion of the said period of eight years, the defendants have failed to hand over the possession of the same to the plaintiffs and, the suit was filed within limitation. The trial Court, while considering the defence of the defendants has also held that no agreement to sale as such was executed by the plaintiffs in defendants' favour on 22.04.1989

(Ex.D.1). As a consequence, the suit was decreed in favour of plaintiffs directing the defendants to hand over the vacant possession of the property in question and to pay to the plaintiffs a sum of Rs.3,000/- per annum towards compensation from the date of decree till its realisation.

5. The aforesaid findings of the trial Court have been affirmed further by the lower appellate Court in an appeal preferred by the defendants under Section 96 of the Code of Civil Procedure, 1908. The appellate Court, while considering the evidence led by the parties, has also come to the conclusion that the property in question was pledged to the defendants in lieu of advance of Rs.6,000/- paid by them to the plaintiffs. It was held further that the suit was filed well in time.

6. Being dissatisfied with the aforesaid findings of both the Courts below, the defendants have filed this appeal.

7. Shri L.C.Dash, learned counsel for the appellants has submitted that the Courts below have erred in holding that they have obtained the possession of the property in question in lieu of the loan of Rs.6,000/- advanced by them to the plaintiffs. He submitted further that in fact they obtained the possession of the property in question by virtue of an agreement to sale dated 22.04.1989 (Ex.D.1). He submitted further that the suit as framed is much beyond period of three years from the date of the agreement, therefore, the suit is liable to be dismissed on the point of limitation. Lastly, it was submitted by him that the findings recorded by the Courts below are perverse in nature and deserve to be set aside.

8. I have considered the contention of the learned counsel for the appellants and perused the entire record carefully.

9. The plaintiffs have instituted the suit on 16.09.2008 on the premises that they have obtained the loan amount of Rs.6,000/- from the defendants and in lieu thereof, the property in question was mortgaged to the defendants for a period of eight years for their cultivation. The records of the Courts below would show that

when the defendants have refused to hand over the possession of the property in question even after the completion of eight years, the plaintiffs have been constrained in filing a suit for possession. The trial Court as well as the lower appellate Court have come to the conclusion concurrently that the alleged loan of Rs.6,000/- was advanced by the defendants to the plaintiffs and in lieu thereof, the possession of suit property was mortgaged to the defendants by the plaintiffs for a period of eight years. These findings are pure findings of facts which even do not involve any question of law, much less, the substantial question of law.

10. The appeal, being devoid of merit, is therefore dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
Judge