

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 187 of 2016**

1. Amod Singh S/o Shri Kunit Ram, Aged About 46 Years R/o Village- Naktikhar, Tahsil And District- Korba, Chhattisgarh
2. Ajeet Mahant S/o Shri Jhaduram Mahant, Aged About 49 Years R/o Village- Naktikhar, Tahsil And District- Korba, Chhattisgarh
3. Babu Singh S/o Shri Roop Singh, Aged About 55 Years Ex-Sarpanch, Village Naktikhar, R/o Village- Naktikhar, Tahsil And District- Korba, Chhattisgarh(Defendants)

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1. Jitendra Singh S/o Shri Balveer Singh, Aged About 38 Years R/o H I G 57, M P Nagar, Korba, Civil And Revenue District- Korba, Chhattisgarh
2. Harbhajan Singh S/o Shri Balveer Singh, Caste- Punjabi, Sikh, Through The General Power Of Attorney Holder, Balveer Singh, Son Of Shri Amar Singh, Aged About 53 Years, Caste- Punjabi Sikh, Resident Of H I G-57, Maharana Pratap Nagar, Korba, District- Korba, Chhattisgarh(Plaintiffs)
3. State Of Chhattisgarh, Through: District Collector, Korba, District Korba, Chhattisgarh(Defendant No.4)

---- Respondents

For Appellants:	Ms. N. K. Kashyap, Advocate.
For Respondents No. 1 & 2:	Shri Ashutosh Shukla, Advocate.
For Respondent No. 3/State:	Smt. Shobha Kashyap, Dy. G. A.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****20.11.2017**

1. Heard on admission.
2. This Appeal is preferred by the defendants under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 17.12.2015 passed by the ^{2nd} Additional District Judge, Korba in Civil Appeal No. 33-A/2014 by which, the lower appellate Court, while reversing

the judgment and decree dated 30.07.2013 passed by the Civil Judge, Class-II, Korba in Civil Suit No. 9-A/2012, has decreed the plaintiffs' claim.

3. The undisputed facts of the case are that the Plaintiffs instituted a suit through their power of attorney holder—Balveer Singh claiming declaration of title and permanent injunction by submitting *inter alia* that the plaintiffs have purchased the suit property bearing Khasra Nos. 154 and 157 admeasuring 0.32 acres and 0.15 acres situated at Village Naktikhar, Tehsil and District Korba from one Ganesh Ram by virtue of registered deed of sale. It is pleaded further that the defendants had illegally encroached their land and used the same for running the weekly market. It is pleaded further that despite the complaint being made the same was not removed, therefore, the plaintiffs have been constrained to file the suit in the instant nature.

4. The defendants have contested the aforesaid claim and denied that the plaintiffs are the owner of the suit property and pleaded further that the suit land is the Nistari land of the villagers where the weekly market is being run prior to 20 years from filing of the suit. It is pleaded further that the suit as framed is barred by time and, therefore, liable to be dismissed.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the plaintiffs are the owners of the suit property. However, observed further that the suit is barred by time and plaintiffs have failed to establish the fact that defendants have encroached their land. As a consequence, the trial Court has dismissed the suit.

6. Being aggrieved, the plaintiffs have preferred an appeal as per the provision prescribed under Section 96 of the Code of Civil Procedure. The lower appellate Court, in turn, has held that plaintiffs are the owners of the

property in question purchased by virtue of the registered deed of sale executed in the year 1980 and held further that the defendants are in unauthorized possession over it by running a weekly market. In consequence, the lower appellate Court has decreed the plaintiff's claim.

7. Being aggrieved, the defendants have preferred this appeal. Ms. N. K. Kashyap, Counsel for the Appellants submits that the judgment and decree as passed by the Courts below while reversing the finding of the trial Court is apparently contrary to law. She submits further that the lower appellate Court has erred in holding that the defendants have encroached the alleged suit land. She, therefore, submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court deserves to be set asides.

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

9. The plaintiffs' suit was essentially based upon the fact that they have purchased the suit property bearing Khasra Nos. 154 and 157 under the registered deed of sale in the year 1980. The further contention of the plaintiffs was that despite the complaint being raised the defendants have not removed the encroachment over the same and illegally running the weekly market over there. In order to establish their claim, the plaintiffs have submitted the registered deed of sale and the order passed by the Tehsildar passed under Section 250 of the Chhattisgarh Land Revenue Code, 1959.

10. From the perusal of the documentary evidence produced by the parties as well as the admission of defendant No. 1 in his evidence would show that the defendants are utilizing the plaintiff's alleged land for running

the weekly market. The contention of the defendants that the suit property is, in fact, a Nistari land, but has failed to prove the said fact, though the burden was upon the defendants to show that the suit land is the Nistari land. Besides, I do not find any document on record by which, it could be presumed that the alleged land is a Nistari land. The finding of the lower appellate Court that defendants have failed to prove that it is a Nistari land has thus based upon due and proper appreciation of the evidence of the parties. In view of this fact, it is clear that the plaintiffs' suit land have been unauthorizedly encroached by the defendants by utilizing the same as a weekly market. Accordingly, the findings so recorded by the lower appellate Court deserves to be and are hereby affirmed.

11. 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