

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.506 of 2016**

Jailal Mahar S/o Late Dukhu Singh Mahar, Aged About 73 Years R/o Village- Rivagahan, Post Office And Police Station- Dhamtari, Tehsil And District- Dhamtari Chhattisgarh..... (Plaintiff)

---- Appellant**Versus**

1. State Of Chhattisgarh Through- Collector, Dhamtari, District- Dhamtari Chhattisgarh.
2. Gram Panchayat, Rivagahan, Through- Its Sarpanch, Tehsil And District- Dhamtari Chhattisgarh.
3. Rekhrum, S/o Vishram Kavar, R/o Ex-Sarpanch, Village- Rivagahan, R/o Village- Rivagahan, Tehsil And District- Dhamtari Chhattisgarh..... (Defendant)

---- Respondents

For Appellant:	Shri Kshitiz Sharma, Advocate.
For Respondent No.1/State:	Smt Shobha Kashyap, Dy. G.A.

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

27.09.2017

1. This is the Plaintiff's Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 05.03.2016 passed by the Additional District Judge Dhamtari in Civil Appeal No.91-A/2014, by which the lower appellate Court, while affirming the judgment and decree dated 26.02.2013 passed by 1st Civil Judge, Class-I, Dhamtari in Civil Suit No.14-A/2010, has dismissed the Plaintiff's claim.

2. Briefly stated, the undisputed facts of the case are that Plaintiff Jaillal Mahar instituted a suit claiming declaration of title and injunction by submitting *inter alia* that the suit property described in Plaint Paragraph-4

admeasuring 0.12 acres was purchased by him in auction held by Defendant No.2-Gram Panchayat Rivagahan on 08.04.1997. It is pleaded further that in the said auction, his bid was accepted at Rs.39,100/- and out of the said amount, he has paid a sum of Rs.10,000/-. He pleaded further that though the said amount was paid, but no receipt was given by Defendant No.2. It is pleaded further in the Plaint that despite repeated demands of receipt regarding payment of Rs.10,000/-, it was refused, therefore, the Plaintiff has been constrained to file the suit in the instant nature.

3. Defendant No.1 was proceeded *ex parte* while Defendant No.2 -Gram Panchayat, Rivagahan has submitted its written statement and denied very specifically with regard to the alleged auction and pleaded further that no auction, as such, has ever taken place as pleaded by the Plaintiff.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the Plaintiff has failed to prove that he has purchased the suit property in auction. As a consequence, the trial Court has dismissed the suit.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by Appellant under Section 96 of the CPC.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Kshitiz Sharma, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He invited the attention of the Court to Ex.P-9, which shows that the auction has in fact taken place, however, without considering the said document in

its proper manner, the Courts below have erred in holding that no auction, as such, has taken place. He therefore submits that the judgment and decree passed by Courts below may be set aside.

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

8. The Plaintiff's suit was essentially based on the ground that he has purchased the suit property described in Plaint paragraph-4 admeasuring 0.12 acres in auction which was conducted by Defendant No.2-Gram Panchayat, Rivagahan on 08.04.1997. Under such circumstances, the burden was heavily upon the Plaintiff to establish the said fact. However, from perusal of oral as well as the documentary evidence, I do not find any document to hold that any auction, as pleaded by the Plaintiff was held. The Plaintiff has even failed to produce the document with regard to the payment of Rs.10,000/-. Under such circumstances, I am of the view that the Courts below have rightly come to the conclusion that the Plaintiff has failed to prove that he has purchased the suit property in auction as alleged by him on 08.04.1997. Consequently, the said finding which is a pure finding of fact based upon due and proper appreciation of the facts, deserves to be and is 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