

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 583 of 2016**

1. Duwasa Bai D/o Santosh, Aged About 60 Years Caste- Satnami, R/o Village Bodri, Tahsil Bilha, District Bilaspur, Chhattisgarh
2. Smt. Kalawati D/o Budhari, Aged About 60 Years Caste- Suryavanshi, R/o Village Bodri, Tahsil Bilha, District Bilaspur, Chhattisgarh
3. Bharatlal S/o Chandraram, Aged About 36 Years R/o Achanakpur (Bodri), Tahsil- Bilha, Distt. Bilaspur, Chhattisgarh(Plaintiffs)

---- Petitioner**Versus**

1. Chief Municipal Officer Nagar Panchayat Bodari, Tahsil- Bilha, District Bilaspur, Chhattisgarh
2. President, Nagar Panchayat Bodri, Tahsil- Bilha, District Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through- Collector Bilaspur, Chhattisgarh (Defendants)

---- Respondents

For Appellants	:	Shri Ravindra Sharma, Advocate
For Respondent No.1 & 2	:	Shri Vikram Dixit, Advocate
For Respondent No.3	:	Smt. Shobha Kashyap, Deputy G.A.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****12/07/2017**

1. Heard on admission.
2. This is plaintiffs' appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code of 1908' in short) by questioning the judgment and decree dated 23rd September, 2016 passed by the District Judge, Bilaspur, in Civil Appeal No. 36-A/2015, by which, the lower

appellate Court while affirming the judgment and decree dated 30.01.2015 passed in Civil Suit No.42-A/2013 by the Civil Judge, Class-I, Bilha, has dismissed the appeal.

3. The undisputed facts of the case are that the plaintiffs have instituted a suit for declaration of title and injunction by submitting, inter alia, that the part of Government land bearing Kh.No.71/3 was provided to them under Exhibits P.1, P.20 and P.21 for residential use. It is pleaded further that the defendants No. 1 & 2, without any authority, have demolished their construction after passing the resolution for constructing the shops over there. Based on these facts, the plaintiffs have instituted the suit in the instant nature.

4. The defendants No.1 & 2 have contested the aforesaid claim by saying that no lease deed or patta was ever granted to the plaintiffs. It is pleaded further that no boundaries have been mentioned in all these documents (Ex.P.1, Ex.P.20 & Ex.P.21) and stated further that the application (Ex.P.19), as submitted by the plaintiffs themselves on 19.07.2013, would clearly reveal that they themselves have admitted this fact that the alleged shops are being constructed in front of their houses. The defendants have, therefore, prayed for dismissal of the claim, as made by the plaintiffs.

5. In support, the plaintiffs have examined as many as 4 witnesses while the defendants have examined only one witness.

6. The trial Court, after considering the evidence of the parties, has come to the conclusion that the plaintiffs have been provided the part of Government land bearing Kh.No.71/3 under Ex.P.1, Ex.P.20 and Ex.P.21, and therefore, they are the owners of the said portion of the Government land. It held further that since the plaintiffs have failed to establish the fact that the defendants have constructed the shops or demolished their residential houses, therefore, under such circumstances, they cannot be restrained by injunction. As a consequence, the

trial Court has dismissed the plaintiffs' claim.

7. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the present appellants.

8. Being aggrieved, the plaintiffs/appellants have preferred this appeal. Shri Ravindra Sharma, learned counsel for the appellants submits that the evidence led by the parties has not been scanned in its proper manner, therefore, the findings recorded by the Courts below are required to be set aside. He submits further that the evidence of the parties would show very specifically that the alleged portion of the Government land, as allotted to them, was interfered by the defendants No. 1 & 2 by demolishing their residential premises, therefore, the findings are perverse and deserve to be set aside.

9. I have heard learned counsel for the appellants and have perused the entire record carefully.

10. The main contention of the appellants in the suit is that the part of the Government land bearing Kh.No.71/3 was provided to them under Ex.P.1, Ex.P.20 and Ex.P.21 for residential use and the same has been disturbed by the defendants No. 1 & 2 even without any authority by constructing shops over there. The burden was heavily upon the plaintiffs in order to establish the fact that these portions, which were allotted to them, have been interfered or disturbed by the defendants by constructing shops over there. However, from perusal of their statements would show that none of the witnesses have stated anywhere specifically that these portions have been interfered by the defendants. If I examine Ex.P.1 and the certificates (Ex.P.20 & Ex.P.21), then it would be clear that no specific portion or boundaries are mentioned therein, by which, it could be presumed that which of the portion of said Kh.No.71/3 was in fact provided to them. The total area of Kh.No.71/3 is 21.90 acres, therefore, under such circumstances and in absence of any cogent evidence, it is difficult to hold that

the defendants have interfered by demolishing their portions. Pertinently to be noted here further that Ex.P.19, the application, which was filed by the plaintiffs themselves on 19.07.2013 and paragraph 2 thereof, addressed to the Chief Municipal Officer, Nagar Panchayat, Bodri, would show that the alleged shops are being constructed in front of their houses. By taking into consideration the oral as well as the documentary evidence, the findings recorded by the Courts below cannot be held to be perverse as the same were recorded upon due and proper consideration of these statements led by the parties. The said findings are pure findings of facts, therefore, deserve to be and are hereby affirmed.

11. In view of the aforesaid discussions, I do not find any substance in the appeal as no question of law, much less, the substantial questions of law arise for determination in this appeal. Accordingly, the appeal, being devoid of merit, is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge