

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 603 of 2016**

- Anand Ram S/o Shri Dhaneshwar, Aged About 44 Years Caste- Kanwar, Occupation- Ex-Panch, Gram Panchayat Saraitikara, Thana- Darima, Tahsil- Ambikapur, Civil & Revenue District- Surguja, Chhattisgarh(Defendant No.3)

---- Appellant**Versus**

1. Nanka S/o Daula Ram, Aged About 62 Years Occupation- Agriculturist, R/o Village- Saraitikara, Thana- Darima, Tahsil- Ambikapur, Civil & Revenue District Surguja, Chhattisgarh(Plaintiff)
2. Smt. Savitri W/o Kishun Ram, Aged About 36 Years Caste- Kanwar, Occupation- Ex-Sarpanch, Gram Panchayat Saraitikara, Thana Darima, Tahsil Ambikapur, Civil & Revenue District Surguja, Chhattisgarh(Defendant No.1)
3. Amarnath S/o Ramdev, Aged About 36 Years Caste- Kanwar, Occupation- Ex-Up Sarpanch, Gram Panchayat Saraitikara, Thana Darima, Tahsil Ambikapur, Civil & Revenue District Surguja, Chhattisgarh (Defendant No.2)
4. State Of Chhattisgarh, Through Collector Ambikapur District Surguja, Chhattisgarh(Defendant No.4)
5. Gram Panchayat Saraitikara, Through Sarpanch Gram Panchayat Saraitikara, Thana- Darim, Tahsil- Ambikapur, Civil & Revenue District Surguja, Chhattisgarh(Defendant No.5)

---- Respondents

For Appellant	:	Shri Sunil Sahu, Advocate
For Respondent 4/State	:	Shri V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****06/07/2017**

1. Heard on admission.
2. This is defendant No.3's second appeal preferred under Section 100 of the

Code of Civil Procedure, 1908 (henceforth 'the Code of 1908') against the judgment and decree dated 22.10.2016 passed by the 4th Additional District Judge (Ambikapur) Surguja in Civil Appeal No. A-53/2015, by which, the lower appellate Court while reversing the judgment and decree dated 27.10.2015 passed by the 4th Civil Judge, Class-2, in Civil Suit No.126-A/2012, has allowed the appeal.

3. The undisputed facts of the case are that the Plaintiff Nanka instituted a suit for declaration of title, possession and for injunction by submitting, inter alia, that the property in question bearing Kh.No. 642/2 area 0.809 hectares situated at village Saraitikra, Tahsil Ambikapur was allotted to him by the State Government on lease on 13.03.1975 and has thus acquired the Bhoomiswami right over it and has got his name mutated in revenue papers. After obtaining the property in question as such, he was continuously cultivating the same, however, the defendants, without any authority, have forcefully encroached the suit land by constructing a road on midst of it. Owing to the illegal action of the defendants, the plaintiff had to suffer damages to the tune of Rs.1,000/- per annum. It is pleaded further that the alleged road in his land has been constructed even in absence of its acquisition. Therefore, the plaintiff has been constrained in filing the suit in the instant nature.

4. The defendants though appeared but have not submitted their written statement.

5. In support, the plaintiff has examined as many as two witnesses, while the defendants have failed to produce any evidence while contesting the plaintiff's claim.

6. The trial Court, after considering the evidence led by the plaintiff, has come to the conclusion that the alleged lease was granted to him only for a period of 5 years, and therefore, after completion of 5 years, the plaintiff cannot

be held to be the owner of the property in question. As a consequence, the trial Court has dismissed the suit.

7. Being aggrieved with the aforesaid finding of the trial Court, the plaintiff has preferred an appeal as per the provisions prescribed under Section 96 of the Code of 1908. The appellate Court, in turn, examined all the documentary evidence, particularly, Ex.P.20 and came to the conclusion that by virtue of the said document, the State Government has allotted the property in question on lease to the plaintiff as a Bhoomiswami right and observed further that the alleged lease was never cancelled by the State Government. Thus, by relying upon the said document (Ex.P.20), the lower appellate Court, while reversing the finding of the trial Court, came to the conclusion that the plaintiff has acquired the Bhoomiswami right on the basis of the lease granted by the State Government. In consequence, the lower appellate Court has directed the plaintiff to obtain the vacant possession of the suit land illegally encroached by the defendants.

8. Being aggrieved, the defendant No.3 alone has preferred this appeal. Shri Sunil Sahu, learned counsel for the appellant submits that the finding as recorded by the trial Court was based on due interpretation of the document, therefore, the same ought not to have been disturbed by the lower appellate Court while exercising its appellate jurisdiction. He submits further that the plaintiff was granted the property in question on lease only for a period of 5 years as observed by the trial Court, therefore, the plaintiff cannot be held to be the owner of the property in question after the expiry of 5 years. He, therefore, prayed that the judgment and decree as passed by the lower appellate Court be set aside and instead the judgment and decree passed by the trial Court be restored.

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

10. The main contention of the appellant that the property in question bearing

Kh.No. 642/2 area 0.809 hectares situated at village Saraitikra, Tahsil Ambikapur was not granted to the plaintiff as a Bhoomiswami right for over more than the period of 5 years as observed by the trial Court is noted to be rejected in view of the lease as granted by the State Government. At this juncture, the document produced by the plaintiff marked as Ex.P.20 is required to be examined. Perusal of the said document (Ex.P.20) would show very specifically that the property in question was granted to the plaintiff as a Bhoomiswami right. The lower appellate Court has, therefore, rightly come to the conclusion by relying upon this document that Bhoomiswami right was provided to the plaintiff with regard to the said property. The finding so recorded by the lower appellate Court while reversing the said finding of the trial Court is based on due and proper appreciation of the said document and I do not find any illegality and infirmity in the same.

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 merit, is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge