

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 548 of 2013**

Kalaram S/o Najar Sahu Aged About 57 Years R/o Village Leelapur,
Tah. Lormi, Revenue Distt. Mungeli, Civil Distt. Bilaspur (C.G.)

---- Appellant**Versus**

1. Shriti Kirti Bai Wd/o Late Shatrughan Aged About 73 Years, Caste Brahmin, Presently R/o Mahamaee Ward Gopiband Para, Pandariya, Tah. Pandariya, Distt. Kabirdham, Distt. Kabirdham, Agriculturist, Permanent Address: Village Leelapur, Tah. Lormi, Revenue Distt. Mungeli, Civil Distt. Bilaspur (C.G.).
2. State Of Chhattisgarh Through The Collector, Revenue Distt. Mungeli, Civil Distt. Bilaspur (C.G.).

---- Respondents

For Appellant:	Shri R. N. Pusty, Advocate.
For State/Respondent No. 2:	Shri Neeraj Sharma, Dy. G. A.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****05.04.2018**

1. This Appeal has been preferred by defendant No.1 – Kalaram against the judgment and decree dated 23.09.2013 passed by the Additional District Judge, Mungeli (C.G.) in Civil Appeal No.63-A/2011 by which, the lower appellate Court, while affirming the judgment and decree dated 31.01.2011 passed by the Civil Judge, Class-II, Lormi, District-Bilaspur in Civil Suit No.79-A/09, has dismissed the Appeal.

2. The undisputed facts of the case are that the Plaintiff-Shruti Kirtibai instituted a suit claiming possession and damages to the tune of Rs. 10,080/- by submitting *inter alia*, that the suit property described in plaint Schedule-A was held by her husband Shatrughan Prasad, who expired in 1986. It is pleaded that after the death of her husband, the suit property

was recorded in revenue papers in the name of her and her daughters. It is pleaded further that on account of interference of her peaceful possession by defendant No. 1, she moved an application as per the provisions prescribed under Sections 145 & 146 of the Code of Criminal Procedure, 1973 before Sub Division Magistrate, Lormi where the case was registered as Criminal Case No. 01/95. It is pleaded further that the said authority has passed the order on 03.09.1996 holding the possession of defendant No. 1-Kalaram and on the strength of said order he dispossessed her forcefully, therefore, she has been constrained in filing the suit in the instant nature.

3. The defendant No. 1 has contested the aforesaid claim by saying that plaintiff's husband Shatrughan Prasad has sold the suit property by executing an agreement to sale/receipt dated 23.04.1983(Ex. D.9) and, based upon the said agreement he was put in possession over the property in question. It is contested further on the ground that on different dates he had paid the sale consideration to plaintiff's husband and in possession for over more than fifteen years, therefore, has prescribed his right, title and interest by way of adverse possession.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the property was admittedly the ancestral property held by her husband Shatrughan Prasad. It held further that though defendant No. 1 Kalaram has in possession over the suit property but his possession cannot be held to be lawful based upon the receipts (Ex.D.1 to Ex.D.9) executed in his favour by plaintiff's husband and merely on the basis of these documents it cannot be held that defendant No. 1-kalarama has acquired any interest over the property in question.

Accordingly, 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 the defendant No. 1.

6. Being aggrieved, the defendant No. 1 has preferred this Appeal. Shri R.N. Pusty, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits further that he was put in possession over the property in question on the basis of agreement to sale/receipt duly executed by plaintiff's husband Shatrughan Prasad on 23.04.1983. Therefore, it cannot be held that his possession is unlawful. It is submitted further that since he was in lawful possession, therefore, the suit as framed by the plaintiff, claiming possession, is liable to be dismissed.

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

8. The plaintiff's suit, as reflected from her pleadings, is based upon the ground that the suit property is the ancestral property in the hands of her husband Shatrughan Prasad and after his death, she inherited the same along with her daughters and revenue papers were also mutated in their names accordingly. However, the defendant No. 1 on the strength of the order dated 03.09.1996 passed by the Sub Divisional Magistrate, Lormi has dispossessed her forcefully, therefore, she has filed the suit claiming possession. The defendant No. 1 on the other hand claiming his ownership on the basis of alleged receipts (Ex.D.1 to Ex.D.9), purported to have been executed by plaintiff's husband, in his favour. True, it is that alleged receipts were executed as such, but merely on the basis of it, he cannot claim or retain his possession. In order to ascertain his right, title or

interest, the defendant No. 1 ought to have instituted a suit based upon those alleged receipts for specific performance of contract, but no suit till date has been filed by him for the reasons best known to him. In such an eventuality, he can not retain his possession and, the plaintiff is certainly entitled to obtain the possession of it. The courts below have, therefore, not committed any illegality in decreeing her claim. The findings so recorded are, therefore, liable to be and are hereby affirmed.

9. In view of the forgoing 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

Nikita