

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 88 of 2018**

1. Duleshwar S/o Late Subaran Aged About 57 Years R/o Village Murma, Tahsil Baikuthpur, District Koriya, Chhattisgarh.
2. Shivnath S/o Late Subaran Aged About 54 Years R/o Village Murma, Tahsil Baikuthpur, District Koriya, Chhattisgarh.
3. Rameshar S/o Late Subaran Aged About 50 Years R/o Village Murma, Tahsil Baikuthpur, District Koriya, Chhattisgarh.
4. Shivmangal S/o Late Subaran Aged About 47 Years R/o Village Murma, Tahsil Baikuthpur, District Koriya, Chhattisgarh.

---- Appellants**Versus**

1. Rajkumari D/o Late Devsai Aged About 44 Years W/o Jagdev, R/o Village Murma, Tahsil Baikunthpur, District Koriya, Chhattisgarh.
2. State Of Chhattisgarh Through The Collector, Koriya (Baikuthpur) District Koriya, Chhattisgarh.

---- Respondents

For Appellants:	Shri D. N. Prajapati, Advocate.
For Respondent No.1:	Shri Ravindra Sharma, Advocate.
For Respondent No. 2/ State:	Shri Aditya Sharma, PL.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****28.06.2018**

1. Heard on admission.
2. This appeal has been preferred against the judgment and decree dated 10.01.2018 passed by the Additional District Judge (FTC), Koriya (Baikunthpur) in Civil Appeal No.10-A/2016, by which, the lower appellate Court, while affirming the judgment and decree dated 05.03.2013 passed by the Civil Judge, Class-II, Baikunthpur in Civil Suit No.50-A/2010, has dismissed the Appeal.

3. Briefly stated, the facts of the case are that the Plaintiffs' instituted a suit claiming declaration of title, confirmation of possession and also for injunction by submitting *inter-alia* that the property in question bearing Khasra No. 302/43 admeasuring 5.042 hectares was earlier granted to their father, namely, Subaran, on lease (Patta) in the year 1971-72. It is pleaded further that the said property was renumbered as Khasra No.1312 admeasuring 5.17 hectares, and thereafter, it was divided into two parts as 1312/01 and 1312/02. It is pleaded further that father of defendant No. 1, by virtue of a deed of partition, has got his name recorded in revenue papers along with Subaran in relation to Khasra No. 1312/02, the suit land and based upon which, she is trying to interfere their peaceful possession. The plaintiffs have, therefore, been constrained to file the suit in the instant nature.

4. Defendant No. 1 has contested the aforesaid claim and stated that the property in question was not granted to said Subaran on lease, as pleaded by the plaintiffs, in the year 1971-72. It is contested further on the ground that her grandfather, namely, Jhamman was in possession and after his death, it was acquired by his two sons, namely, Deosai and Subaran as a Bhumiswami rights and revenue papers were mutated accordingly in their joint names. It is contested further that the revenue papers in relation to Khasra No. 1312/01 was recorded in revenue papers in the name of plaintiffs while Khasra No. 1312/02 in her name based upon partition. The claim as made by the plaintiffs' deserves to be dismissed.

5. The trial Court, after considering the evidence led by the parties, has dismissed the plaintiffs' claim by holding that said Subaran alone was not the owner of the property in question and observed that land bearing

Khasra No. 302/43 admeasuring 5.042 hectares was acquired by one Jhamman, the predecessor in interest of the parties and, upon his death, it was inherited by his two sons, namely, Subaran and Deosai, who were respectively the father of plaintiffs and defendant No. 1, and, held further that suit property bearing Kharsa No. 1312/01 came in share of father of defendant No. 1. As a consequence, the suit was dismissed.

6. The aforesaid finding was questioned by the plaintiffs in appeal under Section 96 of CPC. The appellate Court, after considering the evidence, adduced by the parties has arrived at a conclusion that no document as such pertaining to alleged deed of lease, as pleaded by the plaintiffs, was placed on record by the plaintiffs. In absence of such a document, the lower appellate Court has dismissed the appeal by holding that the plaintiffs have failed to establish their ownership over the suit property.

7. Being aggrieved, the Plaintiffs have preferred this Appeal. Shri D. N. Prajapati, learned Counsel for the Appellants submits that the judgment and decree as passed by the Courts below is apparently contrary to law. He submits further while referring to Krin-pustika (Ex.P.1) and other revenue papers that the suit property was acquired by the plaintiffs' father Subaran on lease (Patta) and without considering all these documentary evidence in its proper manner, the Courts below have committed an illegality in dismissing the claim.

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

9. The Plaintiffs' suit for declaration of title, confirmation of possession and injunction was instituted mainly on the ground that their father

Subaran acquired the property in question by virtue of the lease deed (Patta) which was executed in his favour in the year 1971-72. In order to establish the said fact, the plaintiffs' were required to produce the said document on record. However, no document pertaining to issuance of alleged lease deed (Patta) was placed on record. In absence of such a document, no right, title or interest whatsoever would confer upon the plaintiffs merely on the basis of revenue papers. The appellate Court has, thus, rightly come to the conclusion that predecessors in interest of the plaintiffs' have acquired no right, title or interest over the property in question. The findings, so recorded in this regard, are based upon due and proper appreciation of the evidence led by the parties and therefore, I do not find any infirmity in the same.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arises 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