

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 254 of 2005**

Paras, S/o Ganesh Sao, Aged about 34 years, Occupation Agriculturist, R/o Village Amdiha, Tahsil Wadrafnagar, Distt. Sarguja (C.G.) Defendant

----Appellant**Versus**

1. Anti Kumari, W/o Bindeshwar, By caste Teli, Aged about 40 years, R/o Ambikapur Mohalla Bhathupara, (Near Mandir) P.S. & Tahsil Ambikapur, Distt. Sarguja (C.G.) Plaintiff

2. Pradeep, S/o Gorakh Sao, aged about 30 years, R/o Village Amdiha, Tahsil Wadrafnagar, Distt. Sarguja (C.G.)

3. State of M.P. (Now Chhattisgarh) through Collector Sarguja (C.G.)

---- Respondents

For Appellant : Shri D. N. Prajapati, Advocate.
 For Respondent No. 1 : Shri Vivek Bhakta, Advocate.
 For Respondent No. 3 : Smt. Astha Shukla, PL.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****14/11/2018**

(1) The substantial question of law involved, formulated and to be answered in this defendant's second appeal states as under:

“Whether the courts below were not justified in holding that the house built upon the disputed land was constructed by the plaintiff out of her own earnings, ignoring the valuable oral evidence of the defendants' witnesses 1 & 2 and the finding is perverse ?”

(2) The imperative facts required to be noticed for adjudication of this appeal are

as under:

[For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The plaintiff and defendant are real sister and brother. The plaintiff/respondent No.1 filed a suit for declaration of title and possession stating inter alia that on demand of defendant No. 1, his sister (plaintiff) has given the suit land with a condition that whenever the plaintiff will request for vacating the suit house, he will vacate the suit house but he has not vacated the suit house leading to filing of the civil suit for the aforesaid reliefs.

(2.2) By filing written statement, the defendant No.1/appellant herein has admitted the fact that the plaintiff has given the suit land to him, in which electricity connection has been given to defendant with the consent of the plaintiff and thereafter the defendant is running shop and floor mill in the suit land and also residing therein.

(3) The trial Court by its judgment and decree held that plaintiff is owner of the suit land and she has given the suit land to defendant on licence, which he has not vacated, therefore, the plaintiff is entitled for decree of declaration of title and possession and decreed the suit.

(4) The defendant preferred first appeal there-against. The first appellate court, on re-appreciation of evidence dismissed the appeal.

(5) Questioning the judgment and decree passed by the trial Court as well as first appellate court, this second appeal has been preferred by the appellant/defendant in which the substantial question of law has been formulated, which has been set out in

opening paragraph of the judgment.

(6) Shri D.N. Prajapati, learned counsel appearing for the defendant/appellant would submit both the courts below have concurrently erred in decreeing the suit in favour of the plaintiff, therefore, the judgment and decree passed by the trial Court as affirmed by the first appellate Court is liable to be dismissed.

(7) I have heard learned counsel appearing for the appellant and perused the record of both the courts below with utmost circumspection.

(8) It is not in dispute the defendant has admitted in his written statement that the plaintiff is title holder of the suit land and both the courts below have concurrently recorded a finding on appreciation of evidence available on record that plaintiff is title holder of the suit land; and said suit land was given to defendant No.1 on license and no title has been passed in favour of defendant by giving the land in dispute on licence to defendant No.1, as such, finding recorded by both the courts below that plaintiff is the title holder of the suit land and defendant No.1 is the licensee is a finding of fact based on material available on record and I do not find it either perverse or contrary to record.

(9) As a fallout and consequence of the aforesaid discussion, the second appeal, being devoid of merit, is liable to be dismissed. The substantial question of law is answered accordingly. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

