

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 528 of 2018

- Dropati Kesarwani Wd/o Late Vijendra Kesarwani, Aged About 46 Years R/o Sheorinarayan, PS Sheorinarayan, Tahsil Navagarh, District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. Krishna Bai Wd/o Late Jagannath Prasad Kesarwani Aged About 72 Years
2. Laxman Prasad Kesarwani S/o Late Jagannath Prasad Kesarwani Aged About 46 Years

Respondent Nos.1 & 2 are R/o Sheorinarayan, PS Sheorinarayan, Tahsil Navagarh, District Janjgir Champa Chhattisgarh

3. State Of Chhattisgarh Through The Collector, District Janjgir Champa Chhattisgarh
4. Jailaxmi Kesarwani D/o Late Vijendra Kesarwani, Aged About 23 Years
5. Rajlaxmi Kesarwani, D/o Late Vijendra Kesarwani, Aged About 21 Years
6. Upendra Kesarwani S/o Late Vijendra Kesarwani, Aged About 19 Years

Respondent Nos.4 to 6 are R/o Sheorinarayan, PS Sheorinarayan, Tahsil Navagarh, District Janjgir Champa Chhattisgarh

---- Respondents

For Appellant
For Respondent-State

Shri Kalyan Kalamkar, Advocate
Shri Anand Dadariya, Dy. GA

Hon'ble Justice Mr. Prashant Kumar Mishra

Hon'ble Justice Mrs. Vimla Singh Kapoor

Order On Board**26/10/2018**

1. Plaintiff's suit for declaration of title over Khasra No.259/24, area 0.08 Acre, situated at mauja Shivrinarayan, Patwari Halka No.19, RI Circle Shivrinarayan, Tehsil Navagarh, District Janjgir-Champa has been dismissed by the trial Court on the ground that although the plaintiff has filed the suit in respect of Khasra No.259/24, but the WILL (Ex-P-1) which is the basis of acquisition of tile by the plaintiff refers to Khasra No.259/11, therefore, despite the WILL having been proved by examining the attesting witnesses, the suit cannot be allowed, as there is no document in respect of Khasra No.259/24.
2. Learned counsel for the appellant would submit that Khasra No.259/24 already belongs to the appellant, therefore, there was no need for seeking declaration of title on the said piece of land. The plaintiff had infact filed the suit for Khasra No.259/11, but there was mistake in description of suit land as well as in the relief clause. He would also submit that the plaintiff may be allowed liberty to file a fresh suit.
3. Admittedly, the WILL on the basis of which the plaintiff was seeking declaration of title was in respect of Khasra No.259/11 and not 259/24, therefore, the plaintiff's suit has rightly been dismissed by the trial Court.
4. In so far as prayer for liberty to file fresh suit is concerned, it is to be noticed that the Supreme Court in the matter of **Shiv Kumar Sharma vs Santosh Kumari**, reported in (2007) 8 SCC 600, has

held that the Civil Court does not grant leave to file another suit. If the subsequent suit propose to be filed by the plaintiff is maintainable in law, no liberty is needed for filing the suit.

5. The appeal deserves to be and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Vimla Singh Kapoor
Judge

Nirala