

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 03 of 2005**

Mukundlal Agrawal, S/o Gharatlal Agrawal, Aged about 55 years, R/o. Gombti Industries, Samta Nagar, Raipur, Tahsil & Distt. Raipur (C.G.)

---- Appellant/plaintiff

Versus

Smt. Lata Vishvakarma, W/o. Shankarlal Vishvakarma, R/o. Prince Colony, Laxmi Nagar, Gabrapara @ Tikrapara, Raipur, Tahsil & Distt. Raipur (C.G.)

---- Respondent/defendant.

For Appellant/plaintiff	:	Mr. Anurag Singh, Advocate
For Respondent/defendant	:	None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/07/2019

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

“Whether both the Courts below were justified in recording a finding on the basis of material available on record that the defendant is in possession of the suit property by virtue of the sale deed dated 29.03.1990 executed by plaintiff in favour of defendant on the admitted premises when the defendant does not adduce any documentary evidence regarding execution of sale deed in her favour ?

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

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

(2.1) Plaintiff filed a suit for possession stating inter alia that he is owner and title holder of the suit land bearing Khasra No. 204/2 situated at Tikrapara @ Gabhrapara, District Raipur and the defendant in March, 1990 has encroached upon 2800 sq.ft. of the suit land and constructed the house on it, which he is not entitled and, therefore, the plaintiff is entitled for possession over the suit land after demolishing the construction.

(2.2) The defendant/respondent, by filing written statement, denied the plaint averment stating the she is owner and title holder of the suit land.

(3) The trial Court, after appreciating the oral and documentary evidence available on record, held that plaintiff has failed to prove his title over the suit land and the plaintiff has also failed to prove the fact that the defendant has encroached upon his land and declined to grant decree for possession in plaintiff's favour. The plaintiff preferred first appeal thereagainst. The first appellate court after appreciating the oral and documentary evidence available on record, affirmed the judgment decree of the trial Court. Against which, this second appeal has been preferred by the appellant/plaintiff, in which substantial question of law has been formulated for consideration and which has been incorporated in the opening paragraph of this judgment.

(4) Learned Counsel appearing for the appellant, would submit that the concurrent finding recorded by both the courts below are perverse and contrary to the record and the same is liable to be set aside.

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

(6) Both the courts below have concurrently recorded a finding that the plaintiff has failed to prove his title over the suit land; though the sale deed (Ex.P-1) dated 1-6-1981 has been filed by the plaintiff that he has purchased the suit land by registered sale deed

dated 1-6-1981 and came into possession of suit land but except plaintiff, none of the witnesses to the sale deed have been examined to prove the sale deed (Ex.P-1) and thereby failed to establish his title and even the extent of encroachment by the defendant over the suit land has not been proved by submitting demarcation report, if any. Though the defendant has set up a plea that suit property was purchased by sale deed dated 29.03.1990, but he has not adduced documentary evidence by producing sale deed dated 29.03.1990 but that will not strengthen the case of the plaintiff as the plaintiff has to stand on his own legs and cannot take advantage of weakness of other side.

(7) Thus, the concurrent finding recorded by both the courts below being based on material available on record I do not find it either perverse or contrary to record and the substantial question of law framed is answered accordingly in favour of defendant and against the plaintiff.

(8) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed. No costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

