

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 07-1-2019

Judgment delivered on 31-01-2019

FA No. 64 of 2005

1. Mahendra Kumar, aged about 47 years, son of late Shri Daulat Ram Bramhan, agriculturist.
2. Umesh Kumar, aged about 38 years, s/o. Late Shri Daulat Ram Brahman, agriculturist.

Both are residents of village Mahuda, Tahsil Janjgir, District Janjgir-Champa (CG).

---- Appellants.

Versus

- Jagdish aged about 66 years, son of late Govinda Sonar, resident of Sonarpara – Champa, Tahsil Champa, District Janjgir-Champa (CG).

---- Respondent

For appellant : Mr. M.D. Sharma, Advocate.
For respondent : Mr. Somnath Verma, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellants have preferred this appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 16-3-2005 passed by the Additional District Judge, Janjgir, in Civil Suit No. 21-A/98 wherein the said court dismissed the suit filed by the appellants regarding the house situated in Survey No. 108 area 216 square meters at Champa.

2. As per case of the appellants, owner of the said property was one Lakshmin Bai who filed the suit against the respondent for his eviction from the said premise who was monthly tenant @ Rs.40/-. Though respondent claimed his title on the basis of unregistered sale deed executed in his favour by Lakshmin Bai, but the Revenue Authorities rejected his claim. As per claim of the appellants, originally one Dev Prasad was the owner of the said house/land and he executed a will in favour of Lakshmin Bai and after her death, the appellants being distant relatives of Lakshmin Bai owned property as Lakshmin Bai had no successor.
3. Per contra, version of the respondent is that the appellants are not successors of Lakshmin Bai and as he is in possession of the land on the basis of agreement executed in his favour by Lakshmin Bai and as per part performance of contract, therefore, appellants are not entitled to challenge his right.
4. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
5. The case of the appellants is based on a will executed by one Dev Prasad in favour of Lakshmin Bai. No record was produced to establish that Dev Prasad was the owner of the property in question. The alleged will has also not been

proved by evidence of attesting witnesses. As the will is not produced before the trial court and the same is not proved by attesting witnesses as per law of the land, the trial court opined that execution of the will is not established in favour of Lakshmin Bai. Though one family tree was pleaded by the appellants, but from the evidence it is not established that the appellants are distant relatives of Lakshmin Bai. It is admitted position that the appellants are not successors of Lakshmin Bai. They have entered into the litigation on the basis of being distant relation of Lakshmin Bai.

6. After going through the entire evidence, it is established that the appellants are not legal heirs of said Lakshmin Bai on the basis of distant relation. From the evidence adduced before the trial Court, it is established that the respondent is in possession of the property in question on the basis of part performance of contract and as per said agreement the property is valued to Rs.10,000/- and Rs.7,000/- is paid by the respondent to Lakshmin Bai who handed over the property to him. After evaluating the entire evidence, the trial Court opined that the appellants failed to prove that they legal heirs of Lakshmin Bai and they have no locus-standi to claim the property in question.

7. After re-assessing the oral and documentary evidence, this court has no reason to substitute contrary finding because finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material.
8. Accordingly, decree is passed against the appellants and in favour of respondent as under:
- (I) The appeal is dismissed with cost.
 - (ii) Appellants to bear the cost of respondent throughout.
 - (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
 - (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju