

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.280 of 2003**

Krishna Bai, aged about 46 years Wd/o. Bhaur Singh Rajput, R/o. Jamatpara, Ward No.2, Dongargarh, Distt.Rajnandgaon (CG)

---- Appellant/Plaintiff**Versus**

1. Hafizunnisha Begum (deleted)
2. Shekh Shabir, aged 44 years, S/o Late Sekh Alim
3. Shekh Noor, aged about 35 years D/o. Late Shekh Alim
4. Asiya Banoo, aged about 38 years, D/o Late Shekh Alim
5. Sofiya Banoo, aged 40 years, D/o Late Shekh Alim
6. Shekh Amin, aged about 26 years S/o Late Shekh Alim
7. Naziya Banoo, Aged 26 years D/o Late Shekh Alim

All R/o Kumharpara, Dongargarh, Tahsil Dongargarh, District Rajnandgaon (CG)

8. State of Chhattisgarh Through the Collector Rajnandgaon

---- Respondents

For Appellant/Plaintiff	: Mr.Aditya Tiwari, Advocate
For Respondents No.2 to 7	: None present though served
For Respondent No.8	: Mr.Aditya Bhardwaj, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****18.03.2019**

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by the plaintiff is as under:-

“Whether the appellate Court has failed to exercise its jurisdiction vested in it while reversing the finding of

the trial Court by holding that the Plaintiff is not the owner of the suit property, even without meeting the reasonings of the trial Court ?”

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

2. The suit land/house bearing khasra No.506/3 area 0.02 decimal i.e. 999 sq.ft. was originally held by Gulab Singh; Gulab Singh had son namely Bahur Singh, he died leaving original plaintiff No.1 his daughter and plaintiff No.2 his widow. They filed a suit for possession of the suit land/house stating inter-alia that they are title-holders of the suit land, they have given the suit land to one Jagdish Puri and Ramkunwar Bai on rent and they had gone to Chhuriya for earning livelihood, but when they returned and demanded the suit land/house, it was not returned to them leading to filing of the suit for possession.
3. Defendants No.1, 2, 3, 6 and 7 set up a plea that Bahur Singh sold the suit land on 13.10.75 to one Ramkunwar Bai, wife of Jagdish Puri on cash consideration of ₹100/- and delivered the possession to said Ramkumar Bai and from said Ramkumar Bai, the defendants purchased the suit land/house by sale deed dated 22.11.75 and obtained possession and since then, they are in possession of the suit land/house, as such, the plaintiffs are not entitled for decree for possession. The trial Court after appreciating oral and documentary evidence available on, by its

judgment and decree dated 28.2.2001, decreed the suit holding that plaintiff No.2-Krishna Bai being widow of Bahur Singh is titleholder of the suit land/house and the defendants have illegally encroached the suit land/house and entitled for possession, which was reversed by the first appellate Court, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

4. Mr.Aditya Tiwari, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in reversing the well merited finding of the trial Court, which is liable to be set aside.
5. None present for respondents No.2 to 7 though served.
6. I have heard learned counsel for the appellant/plaintiff and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
7. Admittedly, the suit land/house was owned by Gulab Singh and after his death it was inherited by his son Bahur Singh and the plaintiffs are his son and widow. In the suit filed by the plaintiffs, the defendants set up a plea that firstly Bahur Singh sold the suit land/house to Ramkunwar Bai on 13.10.75 and from Ramkunwar the present defendants purchased the suit land on 22.11.75. The trial Court has held that the defendants failed to establish that they have purchased the suit land/house as sale deeds were neither

brought on record nor proved in accordance with law and granted the decree in favour of the plaintiffs, which the first appellate Court reversed holding that the plaintiff has admitted the suit property to be owned by one Danteshwari Jamat Mandir. It is neither the case of the plaintiffs nor it is the case of the defendants that the suit land/house was owned by Danteshwawri Jamat Mandir. It is admitted case of the parties that the suit land/house was held by Bahur Singh and after his death, the plaintiffs have been dispossessed from the suit land/house by the defendants, whereas it is the case of the defendants as already set up that original holder Bahur Singh sold the suit land/house to Ramkunwar Bai and said Ramkunwar Bai sold the suit land/house to Hafijunnisha on 22.11.75, but since sale deeds were not brought on record and proved in accordance with law, the trial Court granted the decree in favour of the plaintiffs.

- 8.** Since plaintiff No.2 is widow of original holder Bahur Singh, successor-in-interest and the defendants failed to establish any alienation/transfer in their favour accordance with law by Bahur Singh, predecessor-in-title of the plaintiffs, the first appellate Court is unjustified in setting aside the well merited judgment and decree of the trial Court holding that the plaintiffs have no title as the defendants have not brought on record any documents or sale deeds evidencing transfer by Bahur Singh in favour of the defendants. The finding recorded by the first appellate Court is contrary to the material available on record and it is perverse. The

first appellate Court is absolutely unjustified in holding that the plaintiffs are not entitled for decree.

9. For the foregoing reasons, the judgment and decree passed by the first appellate Court is set aside and that of the trial Court is hereby restored. The substantial question of law is answered in favour of the plaintiff and against the defendants.

10. The second appeal appeal is allowed to the extent indicated hereinabove No cost(s).

11. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-