

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 82 of 2005**

- i. Swyambar S/o Dhansai, Aged 74 years.
- ii. Lalsai S/o Swyambar, Aged 26 years.

Both belongs to same caste Kumhar and resident of Village Satpata, Chowki
– Vishrampur, Tah – Surajpur, Distt. Surguja (C.G.)

---- Appellants**Versus**

- i. Ram Vilas S/o Balram, Aged 47 years.
- ii. Shiv Prasad S/o Balram, Aged 41 years.
- iii. Ajay Kumar S/o Balram, Aged 18 years.

All the above named respondents belongs to same caste Rajwar and
Residents of Village Satpata, Chowki – Vishrampur, Tah. - Surajpur, Distt.
Surguja (C.G.)

- iv. Govt. of Chhattisgarh, through Collector, Surguja, Ambikapur, Distt.
Surguja (C.G.)

---- Respondents

For Appellants	:Shri Ravindra Kumar Sharma, Advocate
For Respondent-iv/State	:Shri Vimlesh Bajpai, Government Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****11.04.2019**

1. This appeal has been preferred by the defendants under Section 100 of the Civil Procedure Code, 1908 (hereinafter referred to as the 'CPC') questioning the propriety of the judgment and decree dated 30.09.2004 passed by the 3rd Additional District Judge (F.T.C.), Surajpur, Dist. Surguja, in Civil Appeal No.2-A/2003, by which, the lower appellate Court, while affirming the judgment and decree dated 19.12.2002 passed by the 3rd Additional Civil Judge, Class-2, Surajpur in Civil Suit No. 207-A/2002, has dismissed the appeal while decreeing the plaintiffs' claim.

2. Briefly stated the facts of the case are that the plaintiffs instituted a suit claiming injunction by submitting, inter alia, that they are in possession over the property in question bearing Kh.No.798 admeasuring 0.52 acres, which was provided to them by the Allotment Officer/Tahsildar by lease deed dated 19.06.1984 (Ex.P.5). It is pleaded in the plaint that the defendants, without any authority, are trying to interfere their peaceful possession and dispossessed them during the pendency of the suit on 17.12.1998, therefore, by way of amendment, a claim for possession has also been made by the plaintiffs. It is pleaded further that the lease deed as granted in their favour was questioned by the defendants in appeal, however, it was rejected by the S.D.O. vide order dated 27.08.2002 (Ex.D.9) while affirming the said lease.

3. The aforesaid claim has been contested by the defendants by submitting that they are in possession for over more than 50-55 years and have, thus, prescribed their right, title and interest by way of adverse possession. It is pleaded further that no lease deed as such was ever granted to the plaintiffs, and therefore, the plaintiffs are not entitled to seek any relief, as claimed by them.

4. After considering the evidence led by the parties, the trial Court, by relying upon the lease deed dated 19.06.1984 (Ex.P.5), arrived at a conclusion that the property in question was provided to the plaintiffs on lease and held further that the defendants have obtained the possession of the suit land and in consequence, decreed the plaintiffs' claim while declining the defendants' plea of adverse possession.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendants.

6. Being aggrieved, the defendants have preferred this appeal. Shri Ravindra Kumar Sharma, learned counsel for the appellants submits that the

judgment and decree as passed by the Courts below are apparently contrary to law. He submits further that no lease deed as such was ever granted to the plaintiffs. According to him, the defendants are in possession for over more than 50-55 years uninterruptedly, therefore, they have prescribed their right, title and interest by way of adverse possession. Without considering the said facts in its proper manner, the Courts below have erred in decreeing the plaintiffs' claim.

7. I have heard learned counsel for the appellants and perused the entire record carefully.

8. A suit for injunction was initially instituted by the plaintiffs on the premises that the property in question bearing Kh.No. 679 area 0.413 hectares (Renumbered as 798 area 0.52 hectares at the time of settlement, as reflected from Panchnama (ExD.2) and not disputed in written statement) was provided to them by lease deed dated 19.06.1984 (Ex.P.5) and since they have been dispossessed by the defendants during pendency of the suit, therefore, a further relief of possession was also claimed by way of amendment. In order to establish the said fact, the plaintiffs have submitted the said lease deed, which was executed on 19.06.1984 (Ex.P.5) in their favour. Perusal of the record would show further that the alleged lease deed was question by the defendants in an appeal, which was rejected by the S.D.O. on 27.08.2002 (Ex.D.9) while affirming the alleged lease deed as granted in plaintiffs' favour in Revenue Case No. 468/A-19/83-84. Perusal of the record would show further that after obtaining the lease deed as such, the revenue papers were mutated in the name of the plaintiffs, as evidenced by Khasra Panchshalas (Ex.P.10 and Ex.P.11). It appears further from the evidence adduced by the parties that the plaintiffs were in possession over the suit land by virtue of the alleged lease deed (Ex.P.5), however, they have been dispossessed illegally by the defendants. The findings as recorded by the Courts below, therefore, deserve to be and are hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less, substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge