

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 235 of 2008**

1. Laxminidhi, son of Shri Tejnath Gajendra, aged about 71 years.
2. Ku. Bhumika Rani, D/o Shri Laxminidhi Gajendra, aged about 25 years.

Both are residents of Gariyabandh, Tehsil Gariyabandh, District Raipur (C.G.)

----Appellants/plaintiffs

Versus

Salikram, son of Beniram Sinha, aged about 68 years, resident of Village Chhura, Tehsil Gariyaband, Distt. Raipur (C.G.)

----Respondent/defendant.

For Appellants : Mr. B.P. Sharma & Ms. Priti Jha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/09/2019

(1) Heard on the question of admission and formulation of substantial question of law on this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908.

(2) Learned counsel appearing for the appellants/plaintiffs would submit that both the courts below are concurrently erred in dismissing the suit filed by the plaintiffs for possession and damages by recording a finding, which is perverse to the record and that give rise to substantial question of law for determination and this appeal deserves to be admitted for hearing.

(3) Two plaintiffs filed a suit for possession and damages stating inter alia that they

have purchased the suit land from Seetaram on 28.12.1979 vide Ex.P-4 and from Madhoram vide Ex.P-7 dated 13.3.1981 and came in possession thereof and they have constructed the house on the suit land. It was further averred that the defendant has encroached illegally on some vacant portion of the suit land in the year 1998-99, which they entitled for recovery of possession.

(4) Defendant, by filing written statement, opposes the plaint averments stating *inter alia* that he has purchased the suit land from one Dongar Singh Kumhar.

(5) The trial Court, after appreciating the oral and documentary evidence available on record, dismissed the suit holding that the suit land is the *abadi* land and it is never owned by Seetaram and Madhoram, therefore, they have no right or title to sell the suit land in favour of the plaintiffs. Plaintiffs preferred first appeal thereagainst. The first appellate court, on re-appreciating the entire evidence, affirmed the findings recorded by the trial court and dismissed the appeal.

(6) Concurrent findings recorded by both the courts below that suit land to be the *abadi* land, therefore, the plaintiffs had no right or title over the suit land and they are not entitled for possession is a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(7) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

