

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 14.05.2019****Judgment delivered on 21.6.2019****First Appeal No.183 of 2006**

Smt. Sandhya Chauhan, W/o. Bhedan Singh Chauhan,
aged about 36 years, R/o. Station Road, Mata Devalaya
Road, Bhatapara, Tahsil Bhatapara District Raipur (CG)

---- Appellant**Versus**

1. Ramkishan Bahikar, S/o. Sonu Bahikar, dead through Lrs.
 - 1(a) Smt. Manthari Bai, W/o. Late Ramkishan Bahikar, aged about 65 years,
 - 1(b) Kamalrao @ Raju S/o. Ramkishan Bahikar, aged about 40 years,
 - 1(c) Rishamrao @ Kaju S/o. Ramkishan Bahikar, aged about 38 years,
 - 1(d) Smt. Rajnibai @ Luxmibai, W/o. Ranjit Muneshwar, aged about 35 years, D/o. Ramkishan Bahikar,
- All are R/o. Near Sajanmal Tambaku Wala's Residence,
Bajranj Ward, Bhatapara, Tahsil Bhatapara, District Raipur
(CG)

---Respondents

For the appellant	: Shri Vivek Tripathi, Advocate
For the respondents	: Shri HB Agrawal, Sr. Advocate with Smt. Prabha Sharma, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against judgment and decree dated 22.7.2006 passed by Additional District Judge Bhattapara, Distt. Raipur (CG) in a Civil Suit No.15A/2005 wherein the said Court dismissed the suit filed by the appellant/plaintiff for possession of

construction/hutment situated at Nazool Nheet No.13C plot, No.9 and for granting mense profits.

2. As per the appellant/plaintiff, she purchased land from M. Satyaraju and M. Leelawati through registered sale deed on 30.01.1989 for consideration of Rs.24,500/- and she purchased plot No.9, 11, 12 & 13 of the Nazul Sheet No.13C but due to typographical mistake sheet number was mentioned as 13D in place of 13C in the sale deed. Name of the plaintiff was registered in the land records in Nazul Sheet No.13C. The appellant raised construction over all the plots except plot No.9. Plot No.10 of the same sheet number was the government land which was encroached by respondent/defendant illegally. The respondents thereafter included plot No.9 owned by the appellant in plot No.10 and took forcible possession thereof. On 27.9.2001 when the measurement was done and the respondent did not leave plot No.9, suit was filed before the trial Court.

3. Learned counsel for the appellant submits as under:

(i) Disputed land is survey No.9 area 100 sq.ft. situated at Bhattapara which is purchased by the appellant vide sale deed dated 30.01.1989 and it was mutated in the name of the appellant vide Ex-P/2.

(ii) The respondents have encroached Plot No.9 which is the property of the appellant, therefore, finding arrived at by the trial Court is not sustainable.

(iii) The respondents have not shown any document regarding their title over the property and it is not proved that hutment erected in the suit land was prior construction.

4. On the other hand, learned counsel for the respondents submits as under:

(i) Krishna Kumar Baghel sold the land to M. Sayta Raju and M. Leelawati on 12.6.1987 vide Ex-P/5 and in the said sale deed area is mentioned in sheet No.13D and plot No.9, 11, 12 & 13. The same land is mentioned in the sale deed of the appellant which is sheet No.13D. The appellant is claiming ownership of sheet No.13C and sheet No.13C is not mentioned in any of the sale deed.

(ii) As per the plaint averments (para 9) it is mentioned that encroachment is done in plot No.10. In the sale deed (Ex-P/1), there is no mention about the hutment constructed over the land, therefore, encroachment through hutment is not established looking to the sale deed executed in favour of the appellant.

(iii) There is no mention about the hutment in any of the sale deed and in the report made by the Revenue Inspector as per Ex-P/17 and record of rights Ex-P/18, therefore, it is not established that the respondents have encroached land of the appellant.

5. Now the first question for consideration before this Court is whether the respondents have encroached any portion of the land owned by the appellant. Revenue Inspector Dhannu Ram (DW-2) deposed before the trial Court that one hutment was constructed

in plot No.9 and it is recorded in the year 1964-65. As per the version of this witness, the hutment was possessed by original respondent Ram Kishan. In the present case sale deed in favour of the appellant is Ex-P/1. In the said sale deed there is no mention that there is hutment constructed over the land sold to the appellant. As per the sale deed, total area is 3000 sq. ft., but no one deposed before the trial Court that the hutment is within the area of 3000 sq. ft. which is the subject matter of the suit. If that hutment is constructed before 1964-65 as mentioned by the Revenue Inspector (DW-2), then the possession of the respondents/their ancestors is long possession in the property and the suit can be filed for recovery of possession on the basis of title within 12 years as per Article 65 of the Limitation Act. But in the present case the suit is filed on 12.5.2003 which is clearly time barred.

6. Now the other aspect of the matter is that the sale deed was executed for area which is mentioned in the Sheet No.13D plot No.9, 11, 12 & 13 in which sheet number is not mentioned as 13C. Admittedly, plot No.10 is not sold by sale deed and it is alleged in the plaint that the original respondent was already in possession of land in plot No.10. Therefore, the appellant was under obligation to establish that area which is encroached is within the territory of 3000 sq. ft. of land. The trial Court has elaborately discussed the entire evidence and recorded finding that encroachment of the respondents is not established in the land of the appellant. Finding of the trial Court is based on oral

and documentary evidence adduced by both sides and after reassessing the entire evidence, this Court has no reason to record a contrary finding. Therefore, arguments on behalf of the appellant is not sustainable. Accordingly, the appeal is liable to be dismissed.

7. The decree is passed against the appellant and in favour the respondents as under:

- (1) The appeal is dismissed with cost.
- (2) The appellant to bear cost of the respondents through out.
- (3) Pleader's fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)

JUDGE