

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 17 of 2012

Reserved on : 04.07.2019

Delivered on : 24.07.2019

1. Sharda Prasad Dubey, S/o Late Jhabbulal Dubey, aged about 40 years, R/o Village- Tikridih, Block- Tilda, P.S.- Kharora, Tahsil & District- Raipur (C.G.) & Brahman Para, Behind Kankali Hospital, Raipur, District- Raipur (C.G.)
2. Ku. Kalyani Dubey, aged about 45 years, R/o Brahman Para, Behind Kankali Hospital, Raipur, District- Raipur (C.G.)
3. Smt. Bhama Bai Dubey, W/o Late Jhabbulal Dubey, aged about 70 years, R/o Brahman Para, Behind Kankali Hospital, Raipur, District- Raipur (C.G.)

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Versus

1. Dr. Maujprakash Agrawal, S/o late Ramnarayan Agrawal, aged about 45 years, R/o In front of Naya Mandir, Purani Basti, Raipur, Tahsil & District- Raipur (C.G.)
2. Ramkumar Dubey (Dead) through legal representatives:
 - 2(a) Dharmesh Dubey, S/o Late Ramkumar Dubey, aged about 40 years, R/o 9087 Star Pass Drive, Jaction Villa, Florida (U.S.A.)
 - 2(b) Anil Dubey, S/o Late Ramkumar Dubey, aged about 38 years.
 - 2(c) Trilok Dubey, S/o Late Ramkumar Dubey, aged about 35 years.Both 2(b) & 2(c) are R/o Hill Talkies Kota Hall, Kotagiri, Nilgiri Tamilnadu Pin Code 643217.

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For Appellants	:	Mr. Ravindra Sharma, Advocate.
For respondent No. 1	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 28.11.2011 passed

by Fourth Additional District Judge, Raipur (C.G.) in Civil Suit No. 65-A/2011, wherein the said court decreed the suit filed by respondent No. 1/ plaintiff for possession of house bearing No. 25/40 area admeasuring 1032 sq.ft. situated at Ward No. 58 of Municipal Corporation, Raipur which is mentioned in Map attached with the plaint and made part of the decree and for injunction.

2. Respondent No. 1/ plaintiff filed a suit before the trial court for restoration of possession and permanent injunction regarding suit house as mentioned above on the ground that the original respondent No. 2/ defendant No. 4 namely Ramkumar Dubey sold the house to him through registered sale-deed dated 21.07.2003 and handed over possession of the suit house. Name of respondent No. 1 was recorded in the record of Municipal Corporation, Raipur and he was paying bills of water and electricity. It is alleged that he was staying at State of Orissa due to medical practice and the appellants took possession of the house and despite service of legal notice issued by respondent No. 1, did not vacate and handed over the house to respondent No. 1. The appellants are also claiming right over the property by saying that they purchased the property from Late Ramkumar Dubey through registered sale-deed dated 06.04.2000.
3. Learned counsel for the appellants submits as under:-
 - (i) In absence of prayer for declaration of right, mere suit for possession is not maintainable as per the law laid down in the matter of **Anathula Sudhakar Vs. P. Buchi Reddi (Dead) by Lrs. & others**

(Dead) by legal representatives, reported in 2008 SAR (Civil) 878 Supreme Court.

(ii) Respondent No. 1 has not filed suit for declaration and claimed possession after expiry of six months, therefore, the suit is not maintainable as per Section 6 (2) of the Specific Relief Act, 1963 and the decree passed by the trial court is liable to be set aside.

4. On the other hand, learned counsel for respondent No. 1 submits as under:-

(i) The appellants are claiming right over the property on the basis of registered sale-deed for house No. 25/40(1) area admeasuring 500 sq.ft., but the property in question is 1032 sq.ft. which is sold to respondent No. 1 by Ramkumar Dubey through registered sale-deed, therefore, no right is passed to the appellants for the property in question.

(ii) In the sale-deed executed in favour of the appellants it is mentioned that some property of seller is left, but in the sale-deed executed in favour of respondent No. 1, it is not mentioned which shows that both are different transactions.

(iii) As per registered relinquish deed executed by Jhabbulal Dubey, Ramsharan Dubey, Shatruhan Dubey and Ramsanehi Dubey, three house No. 25/40(1), 25/40 and 31/643 (total area 2400 sq.ft.) was relinquished in favour of Ramkumar Dubey. Ramkumar Dubey executed sale-deed in favour of respondent No. 1 as per Ex. P/2 and the same is for house No. 25/40(1) area admeasuring 1032 sq.ft.

while the sale-deed executed in favour of appellant No. 1- Sharda Prasad Dubey is for house area admeasuring 500 sq.ft. Even after execution of two sale-deeds, rest of the land was owned by Ramkumar Dubey. The area which is sold to Sharda Prasad Dubey is 500 sq.ft., therefore, he cannot claim over the house consists of area 1032 sq.ft.

(iv) Appellants No. 1 to 3 are claiming right over the property which may be passed to them from Jhabbulal Dubey, but as per Ex. P/8 Jhabbulal Dubey relinquished the property in favour of Ramkumar Dubey, therefore, the appellants cannot claim any right as successor of Jhabbulal Dubey.

(v) The finding arrived at by the trial court is based on factual matrix and legal aspect of the matter and the same does not warrant any interference of this court while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. First question for consideration before this Court is whether the appellants have any right over the property in question which is house area admeasuring 1032 sq.ft. From record, it is clear that respondent No. 1 has purchased the house consists of area 1032 sq.ft., while the appellants have purchased area 500 sq.ft., both have purchased the property from Late Ramkumar Dubey, therefore, they cannot allow to say that Ramkumar Dubey had no right to alienate the property. As both have purchased the property through different sale-deed and

Ramkumar Dubey acquired title by registered relinquish deed (Ex.P/8) for total area of 2400 sq.ft., both the properties are different and the appellants cannot claim over the property of 1032 sq.ft.

7. Ex.P/8 which is registered relinquish deed shows that appellant No. 1- Sharda Prasad Dubey had signed in the deed and his signature is marked as B to B, therefore, law of estoppel will apply against appellant No. 1- Sharda Prasad Dubey and he cannot be allowed to say that the property was not relinquished by Jhabbulal Dubey, Ramsharan Dubey, Shatrughan Dubey and Ramsanehi Dubey. As Jhabbulal Dubey has already relinquished the property in favour of Ramkumar Dubey as per Ex. P/8, the successors of Jhabbulal Dubey who are the appellants, have no right to go beyond the said deed. No title is passed to the appellants as successors of Jhabbulal Dubey in the property in question. Ramkumar Dubey was owner of the entire property area admeasuring 2400 sq.ft. and he sold 1032 sq.ft. to respondent No. 1 and 500 sq.ft. to the appellants.
8. Respondent No. 1 purchased the property on 21.07.2003 and he filed the suit for possession on 20.10.2005. The suit for possession on the basis of title can be filed within 12 years as per Schedule 65 of the Limitation Act, 1963, therefore, the argument advanced on behalf of the appellants that the suit cannot be filed after 6 months is not sustainable. As the title of Ramkumar Dubey was never challenged by the appellants because appellant No. 1- Sharda Prasad Dubey has purchased the property from Ramkumar Dubey, therefore, it is not a case where title of Ramkumar Dubey who sold both the property is

under question, therefore, the appellants cannot challenge title of respondent No. 1 and suit for possession is maintainable. Argument advanced on behalf of the appellants is not sustainable.

9. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellants and in favour of respondent No. 1 on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) The appellants to bear cost of respondent No. 1 throughout.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge