

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.427 of 2008**

1. Basant Shrivastava, S/o. Shri Sooraj Prasad Shrivastava, aged about 50 years, R/o. Behind Naveen Primary School, Mathpara (Gabharapara alias Tikarapara), Raipur Chhattisgarh
2. Smt. Sadhana Shrivastava, wife of Shri Ishwar Dayal Shrivastava, aged 45 years, Occupation – Not known, Behind Naveen Primary School Mathpara (Gabharapara alias Tikarapara), Raipur Chhattisgarh

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1. Poshan Dewangan, S/o. Shri Narottam Dewangan, aged 43 years, Occupation Service R/o. Near Sarvajanik Hanuman Mandir, Tikrarapara, Raipur, Tahsil & Distt. Raipur Chhattisgarh
2. State of Chhattisgarh, Through Collector, Raipur Chhattisgarh

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For the appellants	: Shri Sourabh Sharma, Advocate
For respondent No.1	: Shri VK Sharma, Advocate
For respondent No.2/State	: Shri Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board

03.10.2019

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed against judgment and decree dated 30.9.2008 passed by 10th Additional District Judge, Raipur (CG) in Civil Appeal No.8A/2008 wherein the said Court decreed the suit filed by respondent No.1 for declaration of title over the suit land bearing Survey No.49/26 area 0.009 hectare/1000 sq.ft. situated at Tikarapara Patwari Halka No.114 which is shown in the

plaint and for vacant possession of land in question with compensation.

2. Case of respondent No.1/plaintiff is based on oral and documentary evidence adduced before the trial Court. Poshan Dewangan (PW-1) and Shyamji (PW-2) deposed before the trial Court and produced documents Ex-P/1 to P/17. As per Ex-P/1, the land in question was purchased by respondent No.1 as per sale deed dated 26.6.1992 which is a registered sale deed in which four corners of the land is mentioned clearly that in the north side of the said plot, there is plot of one Chaman, in the south side of the plot, there is land of seller Ashok Kumar S/o. Nanu Ram, in the east side there is street of 15 feet and in the west side again there is land of seller Ashok Kumar. As per these documents, permission was obtained to execute the sale deed and thereafter sale deed was executed. After execution of the sale deed the land is recorded in the name of respondent No.1 as per Ex-P/2 to P/10. Again as per Ex-P/1 which is a record of rights, name of respondent No.1 is mutated as owner of the property.

3. As per the case of respondent No.1, he possessed the property and made fencing in the said land. It is further case of respondent No.1 that the appellants illegally possessed their land that is why notice was issued to them on 05.7.1999. Even then they did not vacate the land that is why the suit was filed. The trial Court and the First Appellate Court, both have assessed the entire

evidence and recorded finding that respondent No.1/plaintiff is the owner of the property in question.

4. In rebuttal the appellants pleaded before the trial court (para 9) that they took possession of the land after an agreement with one Krishna Prakash Pujari after giving him earnest money of Rs.500/- on 14.6.1981. To substantiate this pleading, the appellants side adduced evidence of Basant Kumar Shrivastava (DW-1) and in his statement (para 14) he admitted that he is not able to read certain number mentioned in the said agreement with Krishna Kumar as per Ex-D/3. He is also not able to state as to how much area of the land was the subject matter of that agreement. No such record of right was filed before the trial Court that Krishna Kumr was the owner of the land in question at any point of time. Therefore, ground raised by the appellants was without substance, that is why the trial Court and the First Appellate court rejected the claim of the appellants on the basis of this agreement.

5. The other ground which is taken by the appellants is that the land in question is allotted to them by Municipal Corporation, Raipur and to substantiate their version, they produced document Ex-D/1 to D/16. From these documents, it is clear that these are the documents relating to property situated at Ameenapara, Raipur while the property in question is situated at Tikarapara Raipur. Ex-D/15 & D/16 which are alleged to be the authority letter is also related to the property situated at Ameenapara which is not the area of the property in question. The appellants

side had never pleaded in their written statement that the property in question is situated at Ameenapara. Therefore, both the Courts below have recorded finding that these documents will not help the appellants in substantiating their rights over the property in question which is situated at Tikarapara. Appellant Basant Shrivastava (DW-1) has been asked specific question that document Ex-D/15 & Ex-D/16 are related to Ameenpara which is not related to the land at Tikarapara. But he has not given any specific reply which substantiate the version of respondent No.1 that the property at Tikarapara is possessed by the appellants. When neither the appellants acquired the title of property in question through Ex-D/3 or any documents which are filed as Ex-D/1 to D/16, the First Appellate Court is perfect in holding that the appellants have possessed the property of respondent No.1 and accordingly ordered for dispossession of the appellants.

6. Looking to the entire record, no substantial question of law is involved in the present case. Accordingly, the appeal is liable to be and is hereby dismissed at the motion stage itself.

Sd/-
(Ram Prasanna Sharma)
JUDGE