

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 47 of 2012**

- Bhagwati Verma, S/o Shri Thanwar Verma, Cultivator And Resident Of Village Kadar, Tahsil Bhatapara, Dist.Baluda Bazar-Bhatapara, Civil Dist. Raipur C.G.

---- Appellant/Defendant No.1**Versus**

1. Rameshwar Prasad Shukla, S/o Late Shri Ramcharan @ Phakkad Shukla, aged about 73 years,
2. Smt. Meera Bai, widow of Narayan Prasad Shukla, aged about 63 years,
3. Durgesh Kumar Shukla, S/o Narayan Prasad Shukla, aged about 39 years,
4. Vijay Kumar Shukla, S/o Narayan Prasad Shukla, aged about 37 years,
5. Sanjay Kumar Shukla, S/o Narayan Prasad Shukla, aged about 35 years,
6. Vinay Kumar Shukla, S/o Narayan Prasad Shukla, aged about 33 years,
7. Ajay Kumar Shukla, S/o Narayan Prasad Shukla, aged about 31 years,

All cultivators, Village Kadar, R/o Bajrang Ward, Bhatapara, Tahsil Bhatapara, District Balouda Bazar-Bhatapara, Civil District Raipur (C.G.) (Plaintiffs)

8. State of Chhattisgarh through Collector Raipur now District Balouda Bazar-Bhatapara, Civil District Raipur (C.G.) (Defendant No.2)

---- Respondents

For Appellants	:	Shri G.M.Hasan, Advocate
For Respondents No.1 to 7	:	Shri Rajendra Tripathi, Advocate
For Respondent No.8/State	:	Ms. Neha Shukla, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Judgment/Order on Board****14.02.2019**

1. This First Appeal has been preferred by defendant No.1 under Section 96 of the Code of Civil Procedure, 1908 (henceforth, the CPC') by questioning the

judgment and decree dated 27.01.2012 passed by the Additional District Judge, Bhatapara, Distt. Raipur in Civil Suit No. 04-A/2010, by which, the plaintiffs' suit has been decreed.

2. Briefly stated the facts of the case are that the plaintiffs Rameshwar Prasad Shukla and his brother Narayan Prasad Shukla (since deceased now represented by his legal representatives) instituted a suit claiming possession, damages and also for mesne profits by submitting, inter alia, that prior to filing of the suit, a suit bearing Civil Suit No. 600-A/1995 was instituted by them against Ramgopal Awasthi and his brother Gowri Shankar Awasthi along with other defendants, who were impleaded as defendants No. 3 to 14 in the said suit. The said suit was instituted for declaration of title and in the alternative for possession. It is pleaded further that the said suit was decreed by the trial Court by its judgment and decree dated 16.07.1999 (Ex.P.1) by holding the plaintiffs Rameshwar Prasad Shukla and his brother along with defendants No. 3 to 14 of the said suit, were owners of the property in question described in plaint schedule. The judgment and decree, as passed by the trial Court, was affirmed further by the appellate Court in Civil Appeal No.7-A/2000 on 10.08.2001. It is pleaded further that in pursuance of the execution of the decree passed in an earlier suit, the possession was delivered to them on 16.08.2002. It is pleaded further that defendant No.1 Bhagwati Verma, without any right, title and interest, started interfering in their peaceful possession and obtained the possession forcibly, and therefore, the plaintiffs have been constrained to file the suit in the instant nature.
3. Defendant No.1 Bhagwati Verma, while contesting the aforesaid claim of the plaintiffs, stated that he is not bound by the judgment and decree passed in an earlier instituted suit as he was not the party in the said suit. He pleaded further that an agreement to sell was executed by one Ramgopal Awasthi in

his favour on 15.11.1995 by putting him in possession over the property in question, and therefore, the plaintiffs are not entitled to get the relief, as claimed by them.

4. In support, the plaintiff has examined as many as three witnesses, while defendant has also examined as many as three witnesses in order to dispute the plaintiffs' claim.
5. After considering the evidence led by the parties, the trial Court, by its impugned judgment and decree, has decreed the suit in part by holding that the plaintiffs and defendants No. 3 to 14 of the earlier instituted suit, were owner of the property in question and held further that defendant No.1 Bhagwati Verma cannot claim any right whatsoever over the property in question based upon an unregistered deed of agreement dated 15.11.1995. In consequence, the trial Court, while disbelieving the claim of damages and mesne profits, has decreed the plaintiffs' claim in part entitling them to obtain the possession of the suit land from defendant No.1.
6. Being aggrieved, defendant No.1 (Bhagwati Verma) has preferred this appeal. Shri G.M. Hasan, learned counsel for the appellant submits that the judgment and decree, as passed by the trial Court, is apparently contrary to law. He submits further that since defendant No.1/appellant was not the party in an earlier instituted suit, therefore, he is not at all bound by the said decree. He submits further that he is in possession since 1995 when the alleged agreement to sell was executed by Ramgopal Awasthi in his favour, therefore, no decree as such could be passed entitling them to obtain the possession of the suit property from him.
7. On the other hand, Shri Rajendra Tripathi, learned counsel for respondents No. 1 to 7, while supporting the impugned judgment and decree, submits that

in an earlier instituted suit, as evidenced by the decrees (Ex.P.1 and Ex.P.2), the plaintiffs and defendants No.3 to 14 of the said earlier suit were declared to be the owner of the property in question and as such they are entitled to obtain the possession from defendant No.1, who is enjoying the property in question on the basis of an unregistered document known as deed of *ikramnama* dated 15.11.1995, purported to have been executed by one Ramgopal Awasthi in his favour, whose interest was not found in the said suit.

8. I have heard learned counsel for the parties and perused the entire record carefully.
9. A suit for possession, damages and also for mesne profits was instituted by the plaintiffs on the ground that they were declared the owner of the property in question by a judgment and decree dated 16.07.1999 (Ex.P.1) passed in an earlier instituted Civil Suit No. 600-A/1995 and perusal of the said judgment and decree would reveal that the plaintiffs Rameshwar Prasad Shukla and his brother Narayan Prasad Shukla, along with defendants No. 3 to 14 of that suit, were declared the owner of the property in question. The said decree was affirmed further by the appellate Court in an appeal preferred by Ramgopal Awasthi and his brother Gowrishankar Awasthi on 10.08.2001 (Ex.P.2). Based upon these decrees (Ex.P.1 and Ex.P.2), it is evident that the plaintiffs and defendants No. 3 to 14 of that earlier instituted suit were declared to be the owner of the property in question. Undisputedly, defendant No.1 Bhagwati Verma has claimed his interest over the property in question by virtue of a document known as *ikramnama* dated 15.11.1995, said to have been executed by one Ramgopal Awasthi in his favour. Though defendant No.1 is claiming his interest as such but a bare perusal of the decrees passed in an earlier instituted suit, it is clear that Ramgopal Awasthi, who had executed the alleged agreement to sell in his favour was not found to be the owner of the property

in question. Therefore, no right or interest could derive from him by defendant No.1 Bhagwati Verma.

10. That apart, the alleged agreement to sell dated 15.11.1995 was admittedly an unregistered document, and therefore, by virtue of the provisions prescribed under Section 54 of the Transfer of Property Act, 1882, no right, title or interest as such could confer upon by defendant No.1 Bhagwati Verma. Pertinently to be noted here that no suit for specific performance of contract was made till date by defendant No.1 on the basis of the alleged agreement to sell. Thus, from stretch of any imagination, it cannot be held that defendant No.1 has acquired any right whatsoever over the property in question so as to retain the possession of the property in question.

11. In view of the foregoing discussions, I do not find any substance in this appeal.

The appeal is, accordingly, dismissed. No order as to costs.

12. A decree be drawn accordingly.

Sd/-

(Sanjay Agrawal)
Judge