

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.528 of 2007**

Balaram Kesharwani, aged about 65 years, S/o Shri Tiharu Ram Kesharwani, Retired Shivrinarayan, District Janjgir-Champa (CG) (Defendant)

---- Appellant**Versus**

1. Bhagwan Shri Shivrinarayan, Math Mandir Pulic Trust, Shivrinarayan Tahsil Janjgir, District Janjgir Champa (CG) through Rajeshri Mahant Ram Sunder Das, R/o Shivrinarayan Tahsil Janjgir, District Janjgir-Champa (CG) (Plaintiff)
2. State Of Chhattisgarh, Through Collector, Janjgir-Champa, District Janjgir -Champa, Chhattisgarh(Defendent)

-----Respondents

For Appellant:	Shri Vivek Kumar Tripathi, Advocate.
For Respondent No.1:	None, though served.
For Respondent No.2/State:	Ms. Neha Shukla, Panel Lawyer.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Judgment On Board

27.03.2019

1. This is the Defendant"s Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'CPC') questioning the propriety of judgment and decree dated 15.11.2007 passed by the 2nd Additional District Judge, (FTC) Janjgir -Champa in Civil Appeal No. 2-A/2007 by which, the lower appellate Court, while affirming the judgment and decree dated 22.01.2007 passed by the 1st Civil Judge, Class-I, Janjgir -Champa in Civil Suit No.189-A/2003, has dismissed the Appeal.

2. Briefly stated, the facts of the case are that a suit for vacant possession and also for damages has been made by the Plaintiff, a Public Trust, through its *Sarvarakar* in relation to the property in question admeasuring 1,820 Sq. ft as described in Plaint paragraph-2. According to

the Plaintiff, the suit property has been encroached by the Defendant and that despite issuing notice dated 19.09.1995, he failed to handover the vacant possession of it. The Plaintiff has therefore, been constrained to file the suit in the instant nature.

3. While contesting the claim of the Plaintiff, it is pleaded by the Defendant that the property in question has been purchased by him through *Sarvarakar* and has not encroached the property in question as alleged by the Plaintiff. It is contested further on the ground that the suit as framed is barred by time and therefore, deserves to be dismissed.

4. The trial Court, after considering the evidence led by the parties, has decreed the suit by holding *inter alia* that the suit as framed is within time and the *Sarvarakar* of the Plaintiff was competent to institute the suit and held further while entertaining issue No.4 that Defendant has encroached the alleged suit property. It held further while entertaining additional issue No.2 that Defendant has not acquired any interest over the property in question as alleged by him for want of production of any deed of title in this regard.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court by its impugned judgment and decree in an Appeal preferred by the Defendant.

6. Shri Vivek Kumar Tripathi, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below are contrary to law. He submits further that the suit is apparently barred by time and the *Sarvarakar* of the Plaintiff was not entitled to institute the suit.

7. I have heard learned Counsel for the Appellant and perused the entire record carefully.

8. A suit for vacant possession of suit property was made by the Plaintiff, a Public Trust, through its *Sarvarakar* by alleging in the Plaint that the Defendant has encroached the property in question admeasuring 1,820 sq.ft and when it was not removed despite issuance of legal notice dated 19.09.1995, the suit in the instant nature was filed. After considering the evidence of the parties, it has been found by the Courts below that the Defendant has encroached upon the suit land. The said finding is based upon due and proper appreciation of the evidence of the parties, therefore, it deserves to be and is hereby affirmed.

9. Perusal of the record would show further that Defendant who is claiming his interest by virtue of the deed of sale has, however, failed to produce the same in order to establish his ownership. In such circumstances, the Courts below have rightly, come to the conclusion that the Defendant is an encroacher and has not acquired any interest over the property in question as contended by him.

10. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law, which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE