

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.410 of 2006**

Mangal Ram Kunjam, aged about 45 years, S/o Shri Arjun Kunjam, R/o Khursipar, Sangam Chowk, New Khursipar, Bhilai, Tahsil & District Durg (CG)----Plaintiff No.1

---- Appellant

Versus

1. Rajendra Kumar Soni, S/o Shri Mishri Lal Soni, aged about 35 years--- Defendant
2. Smt Geeta Devi, W/o Shri Rajendra Kumar Soni, aged about 30 years---- Defendant

Both R/o near Telecom Company Hathkhoj, P.O Jamul, Tahsil and District Durg (CG)

3. Raju Mandavi, S/o Shri Sitaram Mandavi, aged about 35 years, R/o Village Uslapur, Tahsil and District Bilaspur (CG) ---Plaintiff
4. Kartik Ram Gond, S/o Late Sukhru Gond, aged about 58 years, R/o in front of Telecom Company Hathkhoj, Tahsil and District Durg (CG)--Plaintiff

-----Respondents

For Appellant:

Shri Sourabh Sharma Advocate.

For Respondents:

None.

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

23.07.2019

1. This Appeal has been preferred by Plaintiff No.1-Mangal Ram Kunjam under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the judgment and decree dated 10.04.2006 passed by the Second Additional District Judge, Durg, in Civil Appeal No.39-A/2003 by which, the lower appellate Court, while affirming the judgment and decree dated 09.07.2003 passed by the 1st Civil Judge, Class-II, Durg in Civil Suit No.2-A/2002, has dismissed the

Appeal.

2. Shri Sourabh Sharma, learned Counsel for the Appellant submits that the judgment and decree as passed by the Courts below dismissing the suit by holding that Plaintiff No.3-Kartik Ram Gond was not the owner of the property in question is apparently contrary to law. He submits further that the deed of sale executed on 27.11.2000 is admittedly an unregistered document and no right, title or interest would confer upon Defendant No.2-Geeta Devi, however, without considering the said document in its proper manner, the Courts below erred in dismissing the Plaintiffs' claim.

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

4. A suit for injunction in a mandatory form was instituted by Plaintiff No.1-Mangal Ram Kunjam and others seeking direction against the Defendants/Respondents to provide them the possession of the property in question as described in Plaint paragraph-2 on the basis of the compromise effected between the parties on 30.03.2001. According to the plaint averments, the property in question was held by Plaintiff No.3-Kartik Ram Gond, who in turn, has provided the suit land to his sons-in-law i.e. Plaintiff No.1 Mangal Ram Kunjam and Plaintiff No.2-Raju Mandavi. According to the further averments, a nominal sale was executed on 27.11.2000 in favour of Defendant No.2-Smt Geeta Devi for security of loan amount and pleaded further that despite a compromise being made between the parties, the Defendants have failed to handover the vacant possession of the suit property, therefore, the Plaintiffs have been constrained to file the suit in the instant nature.

5. The aforesaid claim was contested by the Defendants and that by considering the evidence led by the parties, the trial Court, by its judgment and decree dated 09.07.2003, while entertaining issue No.1, arrived at a conclusion that Plaintiff No.3-Kartik Ram Gond was not the owner of the property in question as no document as such was produced by the Plaintiffs showing his ownership. As a consequence, the trial Court has dismissed the Plaintiffs' claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an Appeal preferred by the Plaintiffs. It appears from a bare perusal of the averments made in the plaint that the entire case of the Plaintiffs is based upon the premises that said Kartik Ram Gond was the owner of the property in question, who has provided the suit land to his sons-in-law i.e. Plaintiff No.1 Mangal Ram Kunjam and Plaintiff No.2-Raju Mandavi. The burden is, therefore, heavily upon the Plaintiffs to establish the fact that said Kartik Ram Gond was the owner of the suit land. However, from perusal of the entire documentary evidence, I do not find any deed of title showing his ownership. In such circumstances and particularly for want of any documentary evidence in this regard, the Courts below have not committed any illegality in holding that Kartik Ram Gond was not the owner of the property in question and as such, Plaintiffs No.1 & 2 would not derive any title whatsoever, from their father-in-law i.e. Kartik Ram Gond. The findings so recorded based upon due and proper appreciation of the evidence adduced by the parties, deserve to be and are hereby affirmed.

7. Consequently, I do not find any question of law, much less the substantial questions of law, which arise for determination in this Appeal.

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

Priya