

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 269 of 2008**

Mehtaru Ram ('Mehtar Ram' name of the appellant wrongly mentioned in cause title) Aged about 60 years, S/o Late Shri Banau Ram @ Dhanau Sahu, Caste Sahu, Occupation Labour, R/o Village Lakholi Ward No. 29, Tahsil and District Rajnandgaon, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Dallu S/o Anjori Nishad (died) through LRs. :-

(a) Daulat Kewat S/o Dallu R/o Santoshi Nagar, Ward No. 34, Tahsil and District Rajnandgaon, Chhattisgarh.

--- Respondent/Defendant

For Appellant	:- Mr. Anand Shukla, Mr. Aditya Tiwari and Mr. Avinash Mishra, Advocates
---------------	--

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

09/03/2020

1. This second appeal was admitted for hearing on the following substantial question of law :-

"Whether the Courts below were not justified in holding that the present is not entitled for possession of the suit house which was leased out to deceased Baisakhin Bai, mother of the appellant ?"

(For the sake of convenience, parties will hereinafter be referred as per their status before the trial Court.)

2. The suit house was granted to plaintiff's mother namely Baisakhin Bai on *asthayi patta* (Ex. D/2) for a period of one year under Rajiv Gandhi Ashray Yojana on 25/07/1998, thereafter, she died on 20/08/2002. Plaintiff brought the suit that on 17/05/2003, defendant broke the locks and entered into the suit house owned by her mother Baisakhin Bai and has been in unauthorized possession of the suit house ever since, therefore, decree for possession of the suit house be passed in his favour in which defendant filed his written statement and opposed the plaint averments claiming that he was serving Baisakhin Bai during her lifetime, therefore, he is entitled for possession of the suit house owned by Baisakhin Bai and as such, plaintiff's suit deserves to be dismissed.

3. Learned trial Court, after appreciation of oral and documentary evidence on record, vide its judgment and decree dated 11/05/2006, dismissed the suit holding that the suit house was granted to Baisakhin Bai on *asthayi patta* (Ex. D/2) only

for a period of one year, therefore, decree for possession of the suit house cannot be granted in favour of the plaintiff. On appeal being preferred by the plaintiff, learned first appellate Court, vide its judgment and decree dated 08/05/2006, affirmed the finding of the trial Court and dismissed the appeal against which this second appeal has been preferred by the appellant/plaintiff under Section 100 of the CPC in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

4. Mr. Aditya Tiwari, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in holding that plaintiff is not entitled for decree for possession of the suit house, as such, the appeal deserves to be allowed.

5. None appeared on behalf of the respondent, though served.

6. I have heard learned counsel for the appellant/plaintiff, considered his submissions and went through the records with utmost circumspection.

7. The suit house was admittedly granted on *asthayi patta* to plaintiff's mother Baisakhin Bai for a period of one year and on the date on which the suit was filed i.e. 30/06/2003, the period of one year had already expired and nowhere it has been shown that after the expiry of that one year, *patta* has been renewed in favour of the plaintiff, being the son of Baisakhin Bai, therefore, at present plaintiff does not have any right or title over the suit house in the shape of the renewal of the *patta*. As such, both the Courts below were absolutely justified in not granting decree for possession in favour of the plaintiff. I do not find any perversity or illegality in the judgment and decree passed by both the Courts below.

8. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed. No cost(s).

9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge