

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.236 of 2009**

1. Smt. Shashikala W/o. Anand Kishore Dewangan, R/o. Balconagar, Korba, Distt. Korba (CG)
2. EVR Naidu, S/o. Late Shri ET Naidu, R/o. Balconagar, Korba, Distt. Korba (CG)

---- Appellants/Plaintiffs**Versus**

Smt. Rajshri Dixit, W/o. PK Dixit, R/o. Quarter No.NE 102,
Chhattisgarh Vikas Mandal Colony, Korba Distt. Korba (CG)

---Respondent/Defendant

For Appellants	:Shri Vivek Tripathi, Advocate
For Respondent	: Not noticed.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****25.8.2020.**

1. Proceedings of this matter have been taken up for admission through Video Conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court by which the trial Court has dismissed the suit of the plaintiffs.
3. Learned counsel for the appellants/plaintiffs submits that both the courts below have concurrently erred in dismissing the suit of the

plaintiffs holding that the plaintiffs have failed to prove his title over the suit property and therefore not entitled for decree of permanent injunction. He would further submits that there is dispute regarding demarcation of the land, but suit has been dismissed by recording a finding perverse to the record, therefore, the appeal involves substantial question of law for determination and the appeal be admitted for hearing and thereafter the matter be remanded for demarcation.

4. I have heard learned counsel for the appellant and perused the records of the Courts below.

5. As per the averments of the plaintiffs, they have purchased the suit land from one Sahdeo bearing Khasra No.249/3 area 0.13 acre by sale deed dated 14.10.1987 and the same was duly mutated in their names on 25.3.1989 in which the defendant started construction unauthorisedly. Thereafter the plaintiffs filed suit for permanent injunction against the defendant for restraining her to interfere in the possession of the suit land of the plaintiffs. The defendant filed written statement that she has purchased the suit land in the year 1985 vide Ex-D/1 and the same was duly corrected vide Ex-D/2 on 26.4.1991, therefore, the plaintiffs have not right over the suit property.

6. The trial Court on appreciation of oral and documentary evidence on record dismissed the suit of the plaintiffs on the ground that the plaintiffs have failed to prove their sale deed by filing original sale deed

and they did not take any steps for demarcation of suit land though alleged that the defendant has encroached upon their land. The first appellate Court affirmed the said finding of the trial Court.

7. The two Courts below concurrently held that the plaintiffs have failed to prove that they have purchased the suit land by sale deed dated 14.10.1987 and that original sale deed was never produced and proved before the trial court or before the first appellate Court. It was also held that the plaintiffs failed to take any steps for demarcation of the part of the land by the defendant which they have purchased. The said findings of the Courts below that non production of original sale deed and non-demarcation of the land by the plaintiffs and further findings that the defendant is the owner of sale deed vide Ex-D/1 & Ex-D/2 are the finding of facts based on evidence available on record which is neither perverse nor contrary to the record and the appeal does not involve any substantial question of law for determination.

8. The second appeal deserves to be and is accordingly dismissed in limine without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE