

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.229 of 2011**

1. Shri Narayan Pandey, S/o Bachhan Pandey, Aged About 55 Years, Occupation Teacher
2. Nikhil Pandey, S/o Narayan Pandey, Aged About 34 Years, Occupation - Business
3. Navneet Pandey, S/o Narayan Pandey, Aged About 34 Years, Occupation - Business

All R/o Village Bazarpara, Lakhanpur, Tehsil Ambikapur, District Surguja Chhattisgarh

---- Appellants**Versus**

1. Kailaso Bai (Dead) Through LRs.

1.A Smt Anuradha Nagesiya, D/o Late Bharat Pandey, W/o Ram Nagesiya, Aged About 30 Years, Occupation - Housewife, R/o Near Bus Stand, Village Lakhanpur, Tahsil Ambikapur, District Surguja, Chhattisgarh

1.B (Deleted) Deepak Pandey (Dead) As Per Honble Court Order Dt. 01-03-2021.

1.C (Deleted) Vivek Pandey (Dead) As Per Honble Court Order Dt. 01-03-2021.

---- Respondents

For Appellants
For Respondent

Mr. Shakti Raj Sinha, Adv
Ms. Priyanka Mehta, Adv

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

23/06/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/defendants.
2. By the impugned judgment and decree, the First Appellate Court has partly allowed the appeal preferred by the appellants/defendants vide judgment and decree dated 06.04.2011 passed by the learned Second Additional District Judge, Ambikapur, District Sarguja (C.G.) in Civil Appeal No.03A/2007, arising out of the judgment and decree of the Trial Court dated 08.03.2007 passed by the learned Fifth Civil Judge Class-II, Ambikapur, District Sarguja (C.G.) in Civil Suit No.60A/2006, whereby the learned Trial Court allowed the suit preferred by the respondent/plaintiff.
3. Mr. Shakti Raj Sinha, learned counsel for the appellants/defendants, would submit that the First Appellate Court went wrong in holding that partition deed dated 26.01.1987 (Ex-D/1) is not the reliable document and the suit property is owned by Late Bharat Pandey and now is inherited by the LRs of Bharat

Pandey/respondent by recording a finding perverse to the record. It ought to have held that though the property was initially granted in settlement in favour of Bharat Pandey but in family arrangement vide Ex-D/1 dated 26.01.1987, it fell in the share of defendant No.1 Narayan Pandey, father of defendant Nos.2 & 3, as such by recording perverse finding, the first appeal has been allowed, therefore, this appeal involves substantial question of law for determination.

4. I have heard learned counsel for the appellant, considered his submissions made herein-above and also went through the records with utmost circumspection.
5. Admittedly and indisputably, the suit property bearing Khasra No.48/2, area 0.012 decimal situated at Village Juna Lakhanpur, Tahsil Ambikapur, District Sarguja was granted to Mr. Bharat Pandey vide patta dated 03.02.1977 (Ex-P/2) by the Tahsildar, Ambikapur and he was declared as bhumi swami of the suit land. He died in the year 1993. He was in possession of the suit land/house. In front side of the suit

house, there were four rooms and in back side, Bharat Pandey and his family was living. In one room, he was carrying on business of hotel and the rest three rooms were given on rent. But on account of his deteriorating health condition, it was suggested by the defendant No.1 that the suit shop along with the articles used for hotel business be given to him on monthly rent of Rs.1,000/-, which was accepted by Bharat Pandey and his wife, the plaintiff, and the suit shop was given to his brother defendant No.1. When the request was made for vacating the suit shop, it was denied by the defendant No.1. The defendant No.1 got executed the forged partition deed (Ex-D/1). Thereafter the plaintiff sent a legal notice dated 18.12.1997 (Ex-P/4) to the defendant No.1 for vacating the suit shop. It is the case of the plaintiff that the defendant No.1 is the tenant and tenancy has been terminated, as the suit shop is not vacated and the possession of the articles relating to the hotel business has also not been delivered for which she filed civil suit seeking declaration of title, peaceful possession of the suit

shop, in which the defendant No.1 filed written statement and controverted the plaintiff allegations stating inter-alia that on account of family arrangement vide Ex-D/1 dated 26.01.1987, the suit shop fell in his share and as such the plaintiff is not entitled for decree.

6. The Trial Court upon appreciation of oral and documentary evidence available on record held that the plaintiff and her sons and daughters are the exclusive title holder of the land bearing Khasra No.48/2, area 0.12 decimal and the defendants being tenants, the plaintiff is entitled for decree for possession along with the articles used for the hotel business. The defendants preferred first appeal before the First Appellate Court. The First Appellate Court slightly modified the decree holding that the relationship between the plaintiff and defendants as landlord and tenant is not established but the plaintiffs are the title holder of the suit land and on the basis of title, the plaintiffs are entitled for decree for possession but they are not entitled for

decree for recovery of articles used for hotel business, against which the defendants have now again preferred this second appeal.

7. The Trial Court has clearly recorded a finding that the suit land was granted in favour of Bharat Pandey, the predecessor-in-title of the plaintiffs, vide patta (Ex-P/2) and he is in possession over the suit shop and it cannot be said that on account of restriction mentioned in the patta, he could not have transferred it to his brother Narayan Pandey, the defendant No.1. It was further held that the partition deed (Ex-D/1) and electricity bill (Ex-D/2) are not the documents worth reliable for number of reasons and granted decree in favour of the plaintiff. The First Appellate partly modified the decree by holding that the relationship between the plaintiff and defendants as landlord and tenant is not established but the plaintiffs are the title holder of the suit land and on the basis of title, the plaintiffs are entitled for decree for possession but they are not entitled for decree for recovery of articles used for hotel

business. As such, the finding recorded by the two Courts below holding that the plaintiff being the title holder are entitled for possession of suit premises are based on material available on record and it has rightly been held that no title has been conferred vide Ex-D/1 in favour of defendant No.1 and it cannot be said that on account of restrictions in the patta vide Ex-P/2, it could not have been transferred in favour of defendant No.1 by Bharat Pandey, predecessor-in-title of the plaintiff. As such the findings recorded by the two Courts below are findings of fact based on the material available on record, which are neither perverse nor contrary to law.

8. I do not find any substantial question of law for determination in this second appeal preferred by the appellants/defendants. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-

Sanjay K. Agrawal
Judge