

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.537 of 2004**

Bhurua Satnami (Dead) Through Lrs., As Per
Honble Court Order Dt. 08-06-2021

1.1 - Ramlal Satnami, S/o Bhurwa Satnami, Aged
About 45 Years (S/o Deceased Appellant Bhurwa)

1.2 - Samaru Satnami, S/o Bhurwa Satnami, Aged
About 50 Years (S/o Deceased Appellant Bhurwa)

1.3 - Surendra Satnami, S/o Bhurwa Satnami
Aged About 26 Years (Grand son of Deceased
Appellant Bhurwa)

All R/o Pandri (Satnamipara), Raipur, Tahsil
and District Raipur, Chhattisgarh

----- Appellants

Versus

1. Smt. Surobala Barman (Died) Through her
Legal Heirs As Per the Hon'ble Court Order
Dated 24-06-2021.

1 (i) Mangal Chand Barman, S/o Late
Shrikant Barman

1 (ii) Amarchand Barman S/o Late Shrikant
Barman

Both R/o Taz Nagar, Near Mayur Club, Pandri
Tarai, Raipur, District Raipur (C.G.)

2. Vimal Kumar Barman (Died) Through His
Legal Heirs As Per The Hon'ble Court Order
Dated 24-06-2021

2 (i) Smt. Parvati Barman, W/o Late Vimal
Kumar Barman

2 (ii) Shridhar Barman, S/o Late Vimal Kumar
Barman

2 (iii) Girdhar Barman, S/o Late Vimal Kumar

Barman

2 (iv) Parul Das, S/o Late Vimal Kumar Barman

All are resident of Taz Nagar Near Mayur Club, Pandri Tarai, Raipur, District Raipur Chhattisgarh

----- Respondents

For Appellants

Mr. S. K. Sahu, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

02/07/2021

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff.
2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellant/plaintiff vide judgment and decree dated 28.08.2004 passed by the learned First Additional Session Judge, Raipur (C.G.) in Civil Appeal No.17A/2002 affirming the judgment and decree of the Trial Court dated 30.01.2001 passed by the learned First Civil Judge Class-II, Raipur (C.G.) in Civil Suit No.84-A/1999,

whereby the learned Trial Court dismissed the suit of the appellant/plaintiff.

3. Mr. Sahu, learned counsel for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in dismissing the suit and appeal filed by the appellant/plaintiff by recording a finding perverse and contrary to the record. As such, the appeal involves substantial question of law for determination and deserves to be admitted for hearing.
4. I have heard learned counsel for the appellant/plaintiff, considered his submissions made herein-above and also went through the records with utmost circumspection.
5. The suit land bearing Khasra No.485/1, area 600 sq. ft. was earlier held by the plaintiff Bhurua Satnami. The case of the plaintiff is that he is the title holder of the land bearing Khasra No.485/1, area 0.122 hectare, Patwari Halka No.109, situated at Pandri Tarai, Raipur. In some part of the land, mud

built houses (Kachhe Makan) have been constructed and in other parts, brick built houses (pakke makan) and some part of the land is vacant and this vacant land is the suit land. In December, 1990, the defendants started foundation for construction of their house in the vacant land, which led to the Police report by the plaintiff against the defendants at Police Station Pandri, thereafter the construction was stopped by the Police. In the mean time, when the plaintiff enquired about the suit land in the Sub Registrar Office, Raipur, then he came to know about the sale deed dated 11.01.1988 (Ex-D/1), which was executed by Bhulau in favour of the defendant No.1 and Khasra No.485/4, area 1529 sq. ft. was sold to the defendant No.1 and ultimately the foundation has been filled up by bricks and stones by the defendants. According to the plaintiff, the said sale deed is false and bogus, which resulted into filing of suit by the plaintiff for vacant possession and eviction and decree was claimed. The defendants filed the written

statement stating inter-alia that they have purchased the suit land bearing Khasra No.485/4, area 1529 sq. ft. from Bhulau Mansukha on 11.01.1988 (Ex-D/1), as such the plaintiff is not entitled for decree.

6. In the first round of litigation, the suit was dismissed by the Trial Court vide judgment and decree dated 23.02.1993 in Civil Suit No.161/1992 and when the appeal was preferred before the First Appellate Court, the First Appellate Court vide its judgment and decree dated 30.04.1996 allowed the appeal preferred by the appellant/plaintiff and the matter was remitted back to the Trial Court for proceeding in accordance with law after allowing the amendment application under Order 6 Rule 17 of CPC and after framing issues and providing opportunity to adduce additional evidence.

7. In the second round of litigation, the Trial Court appointed the Commissioner to find out the exact location of the suit land. The Commissioner submitted his report on 01.04.2000 annexed as Article-A, prepared on

02.03.2000. Thereafter, the Trial Court vide its judgment and decree held that though the plaintiff has claimed the suit property by way of Will dated 19.09.1986 (Ex-P/1) executed by Sukariya Bai in favour of Pooran and Will dated 27.05.1988 (Ex-P/2) executed by Pooran in favour of the plaintiff, but it has not established the title of the plaintiff and dismissed the suit, against which the appeal was preferred by the appellant/plaintiff. The First Appellate Court vide its judgment and decree held that the plaintiff's suit land was allegedly given by Sukariya Bai to Pooran by way of Will (Ex-P/1) dated 19.09.1986 and thereafter Puran has executed the Will in favour of the plaintiff vide Ex-P/2 dated 27.05.1988, but it has not been proved that the suit land was actually given by Sukariya to Pooran vide Ex-P/1 and thereafter by Pooran vide Ex-P/2 in favour of the plaintiff and the plaintiff has not acquired any title over the suit land, as in both the Wills (Ex-P/1 & Ex-P/2), the suit land has not been mentioned and the title has not been acquired by the plaintiff, therefore, mainly on the basis of

Wills (Ex-P/1 & Ex-P/2), no decree for possession can be granted in favour of the plaintiff, particularly when the plaintiff has failed to prove that the suit land is part of Khasra No.485/1, area 0.059 hectare held by him and the appeal was dismissed affirming the judgment and decree of the Trial Court.

8. The concurrent finding recorded by the two Courts below holding that the plaintiff has failed to prove title of the suit land bearing khasra 485/1, area 600 sq. ft. to be part of the land owned by him bearing Khasra No.485/1, area 0.122 hectare is finding of fact based on the material available on record, which is neither perverse nor contrary to the record.
9. I do not find any substantial question of law for determination in this second appeal. 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