

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.343 of 2014**

Nageshwar Prasad Tiwari S/o Ayodhya Aged About 70 years R/o
Chandipara, Tah. Pamgarh, Distt. Janjgir-Champa C.G.

---- Appellant

Versus

1. Ramadhar S/o Khuluram (Died Through Lrs)
1(A) Meena Bai W/o Late Ramadhar Aged About 55 Years
1(B) Santosh S/o Late Ramadhar Aged About 12 Years Minor,
1(C) Manoj S/o Late Ramadhar Aged About 10 Years Minor,
1B & 1C are minor through mother Respondent No.1A Meena Bai W/o
Late Ramadhar, aged about 55 years.
All are R/o Village Chandipara Tahsil Pamgarh, District Janjgir Champa
(CG)
2. State Of Chhattisgarh Thru- Collector, Janjgir, Distt. Janjgir-
Champa C.G.

For Appellant : Shri Sanjay Patel, Advocate.

Respondent R1 is not noticed.

For Respondent 2/State : Ms. Shobha Kashyap, Dy. GA

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**JUDGMENT****31/07/2015**

1. Heard on admission.
2. The instant Second Appeal under Section 100 of the Code of Civil Procedure is directed against the judgment and decree dated 3.7.2014 passed by the Additional District Judge, Janjgir,

District Janjgir Champa (CG) in Civil Appeal No. 41A/13, whereby and whereunder the appeal of the plaintiff/appellant has been dismissed affirming the judgment and decree dated 28.1.2012 passed by Civil Judge Class-II, Pamgarh, District Janjgir Champa in Civil Suit No. 30A/2007.

3. Facts of the case in brief are that the appellant/plaintiff filed a suit before the trial Court for declaring him owner of the Mahadev Mandir and for declaration that he is entitled for Pooja in the said Mahadev Mandir. The trial Court on a close scrutiny of the evidence and submissions made, dismissed the suit vide judgment and decree dated 28.1.2012 holding that the plaintiff/appellant has failed to prove that he is the owner of entire land bearing Khasra No. 799 area 3.07 acres in which the disputed Mandir is situated and he has no right to perform Pooja on the disputed Mandir.

4. Against the said judgment and decree passed by the trial Court plaintiff preferred a First Appeal before the First Appellate Court. The First Appellate Court after appreciating the entire evidence available on record dismissed the appeal affirming the findings recorded by the trial Court. The plaintiff/appellant preferred this Second Appeal against the judgment and decree passed by the First Appellate Court inter alia on the ground that both the Courts below have failed to appreciate the document Ex. P/3, Jamabandi wherein name of father of the plaintiff/appellant is mentioned as owner in the year 1940-1941. The appellant has

further taken a ground that the First Appellate Court has not appreciated issue No.1. The First Appellate Court was required to re-appreciate issue No.1 decided by the trial Court as per provisions of Order 41 Rule 31 of the C.P.C.; and the trial Court was not correct in dismissing the suit holding the revenue document in favour of the plaintiff and erred in holding that since the plaintiff has stated that he is not having any document as mentioned in paragraph 7 of the plaint, disposition of the suit is bad in law. The plaintiff was the title holder. There is no denial on the part of the contesting defendant. He further agitated that the trial Court erred in holding that the plaintiff is not entitled to be appointed as a Sarvarakar. The trial Court and appellate court have failed to appreciate the evidence led in this behalf. By filing the instant appeal, the appellant has prayed that the judgment and decree passed by the First Appellate Court and trial court be set aside and suit of the plaintiff be allowed.

5. I have heard Learned Counsel for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 C.P.C. and perused the judgment and decree including the records of the Courts below.

6. Learned Counsel appearing for the appellant submits that substantial questions of law needs to be formulated for admission of the appeal. He would further submit that the substantial questions of law be formulated and the appeal be admitted for

hearing and disposed accordingly as provided in Order XLI Rule 31 C.P.C. Order XLI Rule 31 reads as follows:

Contents, date and signature of judgment.— The judgment of the Appellate Court shall be in writing and shall state-

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

7. By not appreciating the issue regarding title, the appellate court has failed to comply the provisions of Order 41 Rule 31 C.P.C. on face of it, therefore, the judgment and decree of the First Appellate Court requires interference by remanding the case for re-appreciation on the point of issue No.1. He placed reliance on 2013 STPL (LE) 47415 SC, United Engineers & Contractors Vs. Secretary to Govt. A.P. Wherein the Hon'ble Supreme Court vide para 9 considered the scope of Order 41 Rule 31 CPC as follows:

“9. This Court has considered the scope of Order XLI Rule [31](#) CPC in H. Siddiqui (dead) by L.Rs. v. A. Ramalingam, AIR 2011 SC 1492 and held as under:

18. The said provisions provide guidelines for the appellate court as to how the court has to proceed and decide the case. The provisions should be read in such a way as to

require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from the judgment of the appellate court that the court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate court are well founded and quite convincing. It is mandatory for the appellate court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions. (Vide: *Thakur Sukhpal Singh v. Thakur Kalyan Singh and Anr.*, AIR 1963 SC 146; *Girijanandini Devi and Ors. v. Bijendra Narain Choudhary*; AIR 1967 SC 1124; *G. Amalorpavam and Ors. v. R.C. Diocese of Madurai and Ors.*; (2006) 3 SCC 224; *Shiv Kumar Sharma v. Santosh Kumari*; AIR 2008 SC 171; and *Gannmani Anasuya and Ors. v. Parvatini Amarendra Chowdhary and Ors.*; AIR 2007 SC 2380)."

8. Learned Counsel for the appellant submits that Ex.P/3, Jamabandi is the sole and core document on the basis of which declaration for title is sought. The said document proves title of the appellant, hence formulation of substantial of question of law

is necessary. So far as issue No.1 regarding title over the suit land in which the disputed Mandir is situated is concerned, as settle law to prove the title one has to prove it by admissible revenue document.

9. In the instant case, the basis for declaration of title is based on Jamabandi 1940-1941. In Kaifiyat column it is mentioned that “जब तक अयोध्या प्रसाद के खानदान में गांव रहे व श्री महादेव जी की पूजा होते तक लगान माफ़”. The trial Court in appreciation of document Ex. P/4 Adhikar Abhilekh Panji held that the Adhikar Abhilekh Panji is authenticated document regarding rights as mentioned in the relevant provisions of Land Revenue Code. There is no mention of name of father of the plaintiff in the Adhikar Abhilekh Panji as the owner or possession holder whereas in Ex.P/3 Jamabandi, name of father of the plaintiff/appellant is mentioned.

10. After perusal of the impugned judgment passed by the First Appellate Court in para 10 it appears that the appellate court has appreciated the evidence and agreed that there is no admissible document regarding title over the entire suit land including the Mandir and thus, it cannot be said that the appellate court failed to appreciate issue No.1. The case law cited by learned counsel for the appellant is not applicable in the present case as the first appellate court too appreciated the evidence for title over the suit land. Even otherwise Ex. P/3 cannot be held as a document to appreciate regarding the title in presence of Ex.P/4 and the Courts

below have rightly held that the plaintiff/appellant failed to prove the title in his favour.

11. Considering the facts and circumstances of the case, this Court is of the view that there is no failure of Order 41 Rule 31 C.P.C. and there is no illegality or impropriety committed by both the Courts below. I do not find that any substantial question of law requires to be formulated for hearing of this appeal. This Court cannot proceed to hear the Second Appeal without there being any substantial question of law involve in the appeal. Existence of substantial question of law is a sine quo non for the exercise of jurisdiction under Section 100 C.P.C. Learned counsel for the appellant failed to point out any substantial question of law which may arise for determination in the case. Accordingly, the appeal is dismissed at the motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 C.P.C.

12. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE