

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.208 of 2015**

1. Shyamlal Shikari, aged about 65 years, son of Ratnu,
2. Ramayan Shikari, aged about 35 years, son of Shyamlal Shikari,

Both are resident of Village Chorhadevri, Tahsil and District – Bilaspur (CG)

---- Appellants

Versus

Ramkhilawan Shikari, aged about 50 years, son of Shri Koduram Shikari, R/o. Village Chorhadevri, Post Office Khaira Daganiya, Police Station Ratanpur, Tahsil and District Bilaspur (CG)

---- Respondent

For Appellant : Shri Shashi Kumar Kushwaha, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Judgment****30/06/2015**

This instant appeal has been preferred by the defendants. The respondent/plaintiff filed a Civil Suit No.80A/11 before Third Civil Judge Class-I, Bilaspur. The the learned trial Court vide its Judgment and decree dated 01.8.2014 dismissed the suit filed for permanent injunction and restraining the appellants for any obstruction in Khasra No.338/2 area 0.80 acre held that it is not proved that the appellants forcibly attempted to encroach and to cut the crop in the suit land. Against such judgment and decree, the respondent preferred First Appeal No.152A/14 before Second Additional District Judge, Bilaspur. The First Appellate Court vide its judgment and decree dated 08.01.2015 allowed the appeal and permanently restrained the appellants for making any obstruction in the suit land. Against the judgment and decree passed by the First Appellate Court, the

appellants have preferred this second appeal and has taken the ground that the impugned judgment and decree passed by the First Appellate Court is bad in law and the Appellate Court failed to appreciate that the plaintiff/respondent failed to prove that the appellants interfered with the possession of the plaintiff over the land in dispute. The First Appellate Court also failed to appreciate that the appellants are in possession of land adjacent to the suit land i.e. land bearing Khasra No.338/1 area 0.50 acre. The First Appellate Court also failed to appreciate that the plaintiff also filed an application under Sections 145 & 146 of the Cr.P.C. before the Sub Divisional Officer against the defendants but he did not appear/prosecute the case and the case was dismissed. The First Appellate Court also failed to appreciate the documents and evidence produced before the trial Court. By filing this appeal, the appellants/defendants pray that judgment and decree passed by the First Appellate Court, Bilaspur may be set aside.

2. Heard learned counsel for the appellants.

3. Learned counsel for the appellants vehemently argued that the appellants are not having any interest or title over the suit land bearing Khasra No.338/2. He prayed that on the basis of following points substantial question of law may be formulated. As submitted there was no demarcation/numbering for the land bearing Khasra No.338/1 and 338/2. The respondent/plaintiff previously filed a report before the Police Station where he was advised to go to the Court as the matter was non cognizable. The respondent/plaintiff also filed a litigation under Sections 145 and 146 of the Cr.P.C. before the Sub Divisional Officer and thereafter he has not taken any interest and the same was dismissed. The plaintiff/respondent also filed a petition before the Court

of Naib Tahsildar/Revenue authorities against Kotwar for having illegal possession, the same was also dismissed by the Revenue Court. The appellants never threatened the respondent for dispossession from the suit land bearing Khasra No.338/2. The respondent heard from villagers and on the basis of hearsay information, he lodged FIR and also filed the suit. He had not discussed the matter with the appellants before filing the suit. The Police under the proceedings gave the crop under Supurdnama to Kotwar. The appellants and the respondent were not given supurdnama for the crop which goes to show that possession is in dispute. The plaintiff is a person who is habituated to file the suit. He filed the suit twice and on both counts he was unsuccessful, the trial Court delivered the judgment in favour the appellants. Learned counsel for the appellants submits that on the basis of the above mentioned substantial question of law, the appeal be admitted and heard accordingly.

4. For the purpose of appreciating formulation of substantial question of law, I have perused the record, evidence adduced by the parties and pleadings.

5. On close scrutiny on merits, it appears that respondent is the owner of the Khasra No.338/2. It is not objected by the appellants before the trial Court and not any issue was framed for the effect. Undisputedly the respondent is the owner and title holder of the suit land. As per the pleadings, the appellants have encroached in some part of the government land bearing Khasra No.338/1 area 0.50 acre adjacent to the suit land. The trial Court allowed the prayer made in this behalf and held that as it is not proved that the appellants forcibly attempted for possession and to cut the crop, not entitled for permanent

injunction. The appellate Court held that the respondent/appellant in the first appeal is the owner and title holder of the suit land. He is entitled to enjoy his ownership and thereby in defence he is entitled for permanent injunction thereby while dismissing the judgment and decree passed by the trial Court, directed that the defendant/appellant are restrained permanently for making any obstruction/activity in the suit land.

6. The appellants are not the owner or title holder for the suit land i.e. khasra No.338/2 areas 0.80 acres, the suit land recorded in the name of the plaintiff also as per revenue papers he is in possession, no any interest regarding title and ownership ever claimed by the appellants before the trial Court. Consequently, as the plaintiff is the title holder and in possession of the suit land by not protecting through any order of permanent injunction, the trial Court committed error which was rectified by the first appellate Court. In my considered view, I do not see any formulation for substantial question of law. On the other hand, learned counsel for the appellants what ever argued is in no way part of the substantial question of law which can be formulated in this appeal. They are on facts and the facts are well discussed and scope of the Court below was very limited. The trial Court or the First Appellate Court heard the matter of possession of the dispute on the basis of evidence adduced pleadings and the facts.

7. On the findings recorded by the First Appellate Court, this Court do not find any reason to take a different view for the substantial question of law. For other points on mixed question of facts and law there is no other ambiguity as the respondent is not the absolute owner and title and possession.

8. After perusal of the judgment and decree passed by the First Appellate Court, I do not find any illegality in the above factual finding.

9. On due consideration, no substantial question of law may be formulated for the hearing of this second appeal.

10. It is settled law that under Section 100 of the CPC, it is not permissible for this Court re-appreciate the evidence of the parties without coming to the conclusion that a substantial question of law is involved in the appeal. It should be kept in mind that the substantial question of law is different from the substantial question of fact, and the law does not permit this Court to decide substantial question of facts in the garb of substantial question of law. Also there is no substantial question of facts after due appreciation of the judgment passed by the first appellate Court.

11. For the reasons mentioned herein above, the appeal is dismissed at motion stage itself under the provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC. No order as to cost.

(Chandr Bhushan Bajpai)
JUDGE