

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 313 of 2015

1. Uday Kumar Jaiswal S/o Late Shri Rupnarayan Jaiswal, aged about 52 years, R/o Raja Talab, District-Raipur C.G., through General Power of Attorney-Kishore Kumar Jaiswal, aged about 57 years, S/o Late Shri Rupnarayan Jaiswal, R/o Raja Talab, Raipur, District- Raipur, Chhattisgarh

---- Appellant

Versus

1. State of Chhattisgarh through the Collector, Raipur, Chhattisgarh
2. The Tahsildar, Tahsil Office, Abhanpur, District-Raipur, Chhattisgarh
3. The Chief Executive Officer, New Rajdhani Project Officer (KADA), New Rajendra Nagar, Raipur, District- Raipur, Chhattisgarh

---- Respondents

For Appellant – Mr. D.N.Prajapati, Advocate.

For Respondents – Ms. Shobha Kashyap, Deputy Govt. Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

07/09/2015

1. Heard on admission.
2. The instant second appeal under Section 100 of the CPC is directed against the judgment dated 08-05-2015 passed by the 9th Additional District Judge, Raipur, C.G. in Civil Appeal No.9A/2015 whereby and whereunder the plaintiff's/appellant's appeal has been dismissed affirming the judgment and decree dated 19-01-2015 passed by the IVXth Civil Judge Class II, Raipur, C.G., in Civil Suit No.13A/2012.
3. Facts in brief necessary for disposal of this appeal are that the appellant/plaintiff filed a suit before the trial Court for declaration of title and also for permanent injunction. The trial Court on close scrutiny of the evidence led, submissions made and material placed on record held that the plaintiff not proved that he is owner of the suit land and further held that the suit is barred by time; also held that the plaintiff is not entitled for perpetual injunction

regarding non-interference by the defendants.

4. Against the said judgment and decree passed by the trial Court, the plaintiff/appellant preferred the first appeal. The first appellate Court after re-appreciating the entire evidence available on record, dismissed the appeal and affirmed the judgment and decree passed by the trial Court.

5. Against the said judgment and decree passed by the first appellate Court, the appellant/plaintiff has preferred the instant second appeal inter alia on the ground that both the Courts below failed to appreciate that the appellant is owner of the suit land as he purchased the suit land through registered sale deed (Ex. -P/2) and as per Ex.-P/3, the sale lease given to Farid Ali from whom the plaintiff/appellant purchased the suit land and he has right over the suit land as owner. The case of the plaintiff was also based on Sanshodhan Panji (Ex.-P/4) and Khasra Panchsala (Ex.-P/5), B-1 for the year 1988-89 and Rin Pustika (Ex.-P/7). As the plaintiff was never informed by the revenue authorities for the order dated 11-07-2000 (Ex.-P/8); both the Courts below erred in holding that suit is barred by time, in the year 2011 when the plaintiff got the information regarding impugned order dated 11-07-2000 he filed the suit before the trial Court in the year 2012. Hence, the suit was well within limitation and he acquired the title over the suit land as he purchased the suit land through a registered sale deed. Both the Courts below erred in holding that the plaintiff failed to prove title over the suit land. The instant Second appeal also requires formulation of substantial question of law whether Sections 181 and 182 of the C.G. Land Revenue Code are applicable or not? On behalf of the plaintiff/appellant the ground has been taken that for all the three points formulation of substantial question of law is required, hence, the appeal may be admitted after formulation of substantial question of law as submitted above and disposed of accordingly on those substantial questions of law. The appellant has further taken ground that there is no any evidence adduced on behalf of the respondents that the plaintiff was given information regarding order dated 11-

07-2000 (Ex.-P/8). It is further prayed that the appeal may be admitted and also allowed and the judgment and decree passed by both the Courts below may be set aside.

6. Learned counsel for the appellant placed reliance on the matter of **State of M.P. Vs. Mangilal**¹ in which the Hon'ble High Court of M.P. held after appreciation of Section 38 of Specific Relief Act, 1963 and Section 106 of the Evidence Act, 1872 for no interference in the possession of the plaintiff over the suit land as the respondent was in possession of suit land for last 50 to 51 years; prior to the date of filing of the suit the land was recorded as Bhumiswami and thereafter the said Bhumiswami placed the respondent in possession of land under an agreement of sale, thereafter the plaintiff claimed that he is in continue possession of the land he acquired Bhumiswami rights by adverse possession and prayed for a decree of permanent injunction. The first appellate Court reversed the decree passed by the trial Court and held that the respondent is in the possession of the land with permission of Bhumiswami. The first appellate Court reversed the judgment and decreed the suit in favour of respondent. Before the second appellate Court State preferred a second appeal. The learned second appellate Court after appreciation dismissed the second appeal filed by the State and affirmed the judgment and decree passed by the first appellate Court.

Learned counsel for the appellant submitted that he is placing reliance on the above case law as the cited case law is applicable for the facts of the present case.

7. I have heard the counsel appearing for the appellant on admission under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC and perused the judgment and decree including records of both the courts below.

8. Learned counsel appearing for the appellant supported the grounds taken in the second appeal and submitted that substantial question of law

¹ 2012(2) M.P.H.T. 138

needs to be formulated along with admission of the instant second appeal. He would further submit that as the substantial question of law as mentioned in the memo of appeal are involved, the appeal may be admitted for hearing and be disposed of accordingly.

9. After perusal of the entire facts, it goes to show that Farid Ali was granted lease subject to the terms and conditions mentioned in Ex.-P/3 thereby Farid Ali was not absolute owner of the suit land. As per settled law, the buyer can step in the shoes of seller. In the instant case, as per terms and conditions provided in Section 158(3) of the proviso that lease shall not be transferred within 10 years. In the instant case, seller Farid Ali within 3 years of the lease sold the land to the plaintiff against the terms and conditions. During the trial, it is held that no any land revenue and tax of irrigation was deposited by the plaintiff. It is further held that the plaintiff himself admitted that in the year 2002 he was aware of the fact that the land in question was transferred to defendant No.3 and he was also aware of regarding the cancellation of *patta* vide order dated 11-07-2000 (Ex.-P/8). With this, as per clear facts, the suit filed by the plaintiff was beyond limitation and it is not proved that in the year 2011 only he got the information regarding the land recorded as grass land looking to his admission and knowledge of the fact for the year 2002. The order was passed by the revenue authority vide Ex.-P/8 after compliance of the provisions of law. No any document filed on behalf of the plaintiff to show possession, only Ex.-P/5 and Ex.-P/6, Khasra Panchsala and B-1, go to show that he was possession during the years 1983 to 1986 and 1988 to 1989, it also goes to show that there was no continuous possession of the plaintiff. Both the Courts below on due appreciation of the facts and law held that the plaintiff failed to prove title, also failed to prove that the suit is within limitation and the plaintiff is entitled for perpetual injunction. So far as compliance under Sections 181 and 182 of the C.G. Land Revenue Code, 1959 is concerned, it goes to show that there is no any error of law committed by both the Courts below as the alleged Farid Ali

was granted suit land on lease and under the provisions of Section 181 and 182 of the C.G. Land Revenue Code, 1959, the plaintiff never acquired title over the suit land. Both the Courts below after detailed appreciation dismissed the prayer made by the plaintiff.

10. So far as referred and cited case law, **State of M.P. Vs. Mangila** (supra), is concerned regarding applicability in the instant case, the same is not applicable as the suit land was held as Bhumiswami and there was an agreement of sale, thereafter possession was handed over and the plaintiff was in possession for more than 50 years that was proved and it was held that under the doctrine of adverse possession, plaintiff acquired the title, but, in the instant case, land was given on lease, lessee acted beyond his jurisdiction, he was not entitled to sell the land but he sold the land, the subsequent purchaser can get only the right what the seller was having, the seller was not having any absolute title and the order (Ex.-P/8) was passed by the revenue authorities after due consideration within their authority and the plaintiff was aware of the facts regarding passing of the order in the year 20002. With all these facts, as the facts of the present case is different from the facts mentioned in the case law cited, it is held that the case law cited is of no help to the appellant.

11. After due consideration, in the considered view of this Court, no any substantial question of law requires to be formulated for hearing of this second appeal as prayed by the appellant in the memo of appeal and by submitting the proposed substantial question of law.

12. As no any substantial question of law requires to be formulated since there is no error of law committed by both the Courts below, this Court cannot proceed to hear a second appeal without there being any substantial question of law involved in the appeal. Existence of substantial question of law is the *sine-qua-non* for the exercise of the jurisdiction under the amended Section 100 of the Civil Procedure Code. Learned counsel appearing for the appellant failed to point out any substantial question of law which may arise for determination in

the case. In the absence of any substantial question of law arises for determination of this Court, this Court has no option but to dismiss this appeal.

13. In view of above, since no substantial question of law arises for determination in the instant case, this is not a fit case for admission. Consequently, 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.

14. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE