

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO. 40 OF 2014
(Adhir s/o. Satish Bala .vs. Radhakant Ashwinikumar Vaidhya and
Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr.A.S.Bhendarkar, Adv. for the appellant.
Mr.V.N.Morande, Adv. for respondents 1 & 3.

CORAM : A.P.BHANGALE, J.

DATED : 22nd JUNE, 2015.

Heard.

The appellant/plaintiff has sought to raise the following substantial questions of law which are mentioned on page no.9A of the instant Second Appeal:

1.Whether the Courts below were justified in deciding the suit without determining vital issue ? Whether field S.No.270/274 was allotted to deceased Satish Bala ?

2.Whether the Courts below wrongly placed onus on the appellant ?

3.Whether the Courts below were justified in ignoring the orders of the Sub-Divisional Officer, Gadchiroli and the Tahsildar, Mulchera

shown at Annexures 6 & 7 inspite of the fact admitted on record ?

4.Whether the conclusion drawn by the Courts below that S.Nos.253 and 266 were allotted to Ashwinikumar is based on imagination when in reality it is not so ?

Learned Counsel for the appellants submitted that, in the trial Court the plaintiff Radhakant Ashwinikumar Vaidhya and others had preferred Regular Civil Suit No.47 of 2009 in the Court of learned Civil Judge (Jr.Dn.), Chamorshi. The plaintiff had approached for permanent injunction against the defendants (appellants herein) to restrain them from creating any disturbance in settled and peaceful possession of the plaintiff over the suit lands. The relief for permanent injunction prayed for in the suit was on the basis of possessory rights of the plaintiff in respect of the lands bearing Survey nos.253 and 266 situated at village Vivekanandpur, Tq. Mulchera, District Gadchiroli. The issue before the trial Court was regarding plaintiff's right to possess or claim title in respect of the suit lands and whether the defendants were obstructing possession of the plaintiff. In that suit, it is stated that counter claim was preferred on behalf of the defendants pleading that the defendants are owners of the suit land and are entitled to possession of the suit land. The counter claim was dismissed as the case of the defendants was that the

suit land was allotted to Satish Bala and defendants' claimed as legal heirs of said Satish Bala pleading their ownership in respect of the suit land. In the Judgment of the trial Court, in para 14, the trial Court recorded thus :

“It is undisputed fact that the plaintiffs are in possession of the suit land and the prime condition for grant of permanent injunction is the possession of the suit land.”

The plaintiffs have, thus, sued the defendants claiming actual physical occupation of the suit land and consequent injunction against the defendants. The learned trial Judge considered the principle that nobody can take possession of the immovable property except in accordance with law and on the basis of well settled principle, the learned Judge appears to have decreed the suit for permanent injunction, as prayed for by the plaintiff restraining the defendants from perpetually restraining peaceful and settled possession of the plaintiff over the suit land.

Although it is the grievance of the learned Counsel for the appellants that the counter claim was rejected on the basis of ownership of the suit land, I think the defendants (present appellants) unnecessarily raised the counter claim seeking to prove their title in a suit based merely upon possession of suit lands and the suit in which consequent injunction was

sought. It is not in dispute that the proceedings in respect of allotment of Government lands are pending with the Revenue Authorities, Nagpur Division, Nagpur. Under these circumstances, when final decision in respect of the fact as to who is lawful allottee of the Government land is pending with the Revenue Authorities and/or the State Government, defendant could not have raised a counter claim as to their alleged lawful title or ownership over the suit land. Their counter claim was pre-mature when final decision was still pending.

In the First Appeal, the learned 1st Ad-hoc District Judge, Gadchiroli considered the factum of lawful possession of the plaintiff in respect of the suit lands and thus, concluded that the appeal challenging the Judgment passed by the trial Court needs no interference by the Appellate Court. According to the first Appellate Court, the trial Court had rightly appreciated the facts, the evidence and the legal aspects of the matter while decree for perpetual injunction was passed. Having perused the Judgments by the trial Court well as the first Appellate Court, it does appear that the suit claim was purely on the basis of peaceful and settled possession of the plaintiff over the suit land, on the basis of which relief of perpetual injunction was sought. The crux of the suit claim is whether to protect actual physical possession of the plaintiff over the suit lands by granting perpetual injunction was thus considered. The counter claim as

to title over the suit land in such a suit was pre-mature due to admitted fact that the proceedings are still pending before the Revenue Commissioner. In my opinion, in the suit simplicitor to protect actual occupation based on principle of settled possession with consequent prayer for an order of injunction, the counter claim as to title over the suit lands could not have been judicially examined when the proceedings in relation to allotment from the State Government themselves were still pending in respect of the suit lands. The remedy to seek injunction on the basis of actual physical possession based on principle as to settled possession is provisional remedy to ensure so that no one shall take law into his own hands. It is, of course, open for any aggrieved person to file an independent suit on the basis of valid, legal title and ownership over the suit lands. If such suit claim is allowed, it is needless to say that possession would follow the title which may be otherwise proved according to law.

For these reasons, therefore, considering the nature of suit which was decided by both the Courts below and the relief granted, no substantial questions of law as sought to be raised above would arise. It would be open for the appellants to file independent Civil Suit on the basis of their title. When and if final order to declare them as owner by the Authority concerned is passed, after conclusion of proceedings by or on behalf of the State Government in

respect of the lands belonging to the State Government, the appellants herein may lodge suit claim on the basis of their title as to ownership of the suit lands provided that such question of title is decided in their favour by competent Authority on behalf of the State Government. For all these reasons, I do not find any merit in this Second Appeal. The Second Appeal is dismissed with costs in lieu of concurrent Judgments recorded by the Courts below.

JUDGE

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