

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 688 /2015

1. Pardeshi Ram, S/o. Dheluram Gond, Aged About 87 Years, R/o. Village- Sehradabari, Revenue & Civil District- Dhamtari, Chhattisgarh(Defendant No.1)
2. Ramesh, S/o. Pardeshi Ram Gond, Aged About 40 Years, R/o. Village- Soram, Tahsil District, Revenue & Civil District- Dhamtari, Chhattisgarh(Defendant No.2)
3. Suresh, S/o. Pardeshi Ram Gond, Aged About 42 Years, R/o. Village- Soram, Tahsil District, Revenue & Civil District- Dhamtari, Chhattisgarh(Defendant No.3)

---- Appellants

Versus

Sawantram, S/o. Jangali Gond, R/o. Village- Nawagaon, Tahsil & District- Dhamtari, Revenue & Civil District- Dhamtari, Chhattisgarh(Plaintiff)

---- Respondent

For Appellants : Mr. Sandeep Dubey, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17/02/2016

1. This appeal is against the judgment & decree dated 03.11.2015 passed in Civil Appeal No.21-A/2014 by the Additional District Judge, Dhamtari, whereby the judgment & decree dated 13.01.2014 passed in Civil Suit No.62-A/2013 was affirmed. The appeal is by the Defendants against the concurrent finding of fact.
2. The suit was filed by one Sawantram alleging that at village Soram, Tahsil & District Dhamtari, the plot bearing No.1234/21 admeasuring 3500 sq.ft. is comprised with the land and building, it was granted to the Plaintiff Sawantram on a lease in the year 2000-01 by the State Government. The said land is surrounded at

north by the plot of one Dhirpal Yadav, towards south plot of Pardeshi Gond and in the west Dhirpal and towards east, Badi of Jagat. It was stated that in the said land a Well as also a House situates. It was pleaded that the Plaintiff Sawantram used to reside at village Nawagaon, therefore, the house is turned into dilapidated condition and since the Well also situates in the house, it was being used by the Defendants by force. The Plaintiff further contended that in order to protect the house and the Well, the Plaintiff tried to fence the area, however, that was being demolished by the Defendants and when they were asked not to use the Well, the Defendants in enraged condition tried to assault the Plaintiff and they had also opened the door towards the plot of the Plaintiff, therefore, in suit, permanent injunction was prayed for.

3. The Defendants, Appellants herein, contended that they are in possession of the said disputed land and the Well was being used by them continuously for last 40 years and neither the area has been fenced and nor any dispute ever arose in between the Plaintiff and Defendants. It was further stated that the Plaintiff was not in possession of the said suit land and further stated that in the suit land over an area of 225 sq.ft., Syamlal is in possession, therefore, he is a necessary party. The counter claim was also filed by the Defendants that they have purchased the said land from the mother of the Plaintiff Puniya Bai in the year 1987-88 and thereafter they were placed in possession and after purchased of the said land, the Defendants have prepared a Well over the said land and were using the said land. In the counter claim, the Defendants also exerted their right over the said land on the ground that they had purchased the land, however, the allegation of the counter claim was denied by the Plaintiff.

4. Learned both the Courts below, after evaluating the entire facts and evidence, came to a finding of fact that the Plaintiff Sawantram is in possession of the suit land and Defendants have failed to prove the fact that they are in possession by purchase. Consequently, the suit was decreed in favour of the Plaintiff and counter claim of the Defendants was dismissed by deciding the issues concurrently.
5. The learned trial Court decided the issue No.1, 2, 5, 6 & 7 concurrently which were arising out of the claim and counter claim by the Plaintiff and the Defendants and held in favour of the Plaintiff that he is in possession of the land bearing Khasra No.1234/21 admeasuring 3500 sq. ft., which was granted to him by the Tahsildar. On such finding, the Defendants were restrained to use the land and permanently enjoined. The said findings were also affirmed by the appellate Court, therefore, this second appeal.
6. Learned counsel for the Appellants would submit that the Appellants/ Defendants have proved their case that they are in possession of the land and the counter claim which was made by the Defendants/ Appellants has not been decided, therefore, the order suffers from illegality. He would submit that both the Courts below failed to consider the statement of the witnesses of Plaintiff who has admitted the fact that the Defendants are in possession and consequently it should have been held the suit not being for possession is not properly valued. It is further contended that the possession of the Defendants should have been recorded by the Court below and submits that the case be admitted for hearing.
7. Perused the judgment, evidence and the pleadings. Perusal of the judgment would show that the trial Court while deciding the issue No.1,2,5,6 & 7 conjointly decided the same in favour of the Plaintiff. Issue No.7 was made on the basis of counter claim of the

Defendants/ Appellants whereas the issue No.1 pertains to the ownership and possession of the Plaintiff over the land bearing Khasra No.1234/21 admeasuring 3500 sq.ft.

8. The evidence would show that by Ex.P-1, P-2 & P-3, which are the record of right shows that the land bearing Khasra No.1234/21 admeasuring 3500 sq.ft. was given to the Plaintiff Sawantram Gond on lease. Form 'C' of Ex.P-1 shows that the land was given to the Plaintiff on lease according to the existing policy of the Government. The Plaintiff has asserted that he was granted lease and he is in possession of the land to the exclusion of others and it was fenced also, but the Defendants used to break the fencing and use to disturb the possession and have also put a door towards the plot of the Plaintiff. These evidence has not been diluted in cross examination also. The Defendants on the contrary tried to project that they have purchased the land from the mother of the Plaintiff Puniya Bai and were placed in possession. No registered document has been placed on record to show the devolution of the title by the registered deed. The witness of the Defendants have also admitted the fact that in order to look after the land, Sawantram use to visit the village in a year. Pardeshi Ram, DW-1, further had admitted the fact that according to the policy of the State, the persons who are in possession of the land were granted lease by the Government, which goes to draw presumption that the Plaintiff was in possession of the land; consequently, he was granted lease. This fact also admitted by the Defendants despite the lease was granted to the Plaintiff, no action was taken by the Defendants though they asserted themselves to be in possession of disputed land.
9. The trial Court while evaluating all the evidence came to a finding that opening of the door do not goes to prove that the disturbance has been caused. This part is also not under any challenge. This

fact has been established that the Plaintiff who was in possession, the Defendants used to enter the land and disturb the possession and therefore they were restrained to do so. On evaluating all the evidence, I am of the opinion that the concurrent finding of fact by both the Courts below cannot be stated to be perverse. Consequently, I am not inclined to interfere, as no substantial questions of law arises for consideration in this second appeal.

10. Accordingly, the appeal is dismissed at the motion stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge