

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 46 of 2003**

1. Kripa Sindhu, son of Bachho, aged about 45 years, Occupation Agriculturist
Village Tapkara, P.S. Tapkara, Tahsil Kunkuri, District Jashpurnagar (C.G.)
2. Raghunath, Son of Bachho, aged about 41 years, Caste Kaser, resident of
Tapkara, Tahsil Kunkuri, District Jashpur (Chhattisgarh)

---- Appellants/Defendants No. 2 & 4**Versus**

1. Parmanand, Son of Late Hemaram, aged about 32 years,
2. Chaitan, Son of Late Hemram, aged about 29 years,
3. Punia Wati Bai, Daughter of Late Hemaram, aged about 25 years,
4. Guleshwar, Son of Masturam, aged about 50 years, ... Plaintiffs

All by Caste Yadav, resident of Dhaura Sand, Tahsil Kunkuri, District
Jashpur (Chhattisgarh)

5. Kamal Lochan Son of Jagarnath, aged about 40 years, resident of
Mendarbahar, P.S. Farshabahr, Tahsil Kunkuri, District Jashpur
(Chhattisgarh (Defendant No.1)
6. State of Chhattisgarh, Through Collector, Jashpur (Defendant No.3)

---- Respondents

For Appellants	:	Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate
For Respondents No.1 to 4:	:	Shri Vivek Tripathi, Advocate.
For Respondent No.6	:	Shri V.B.Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****27/02/2017**

1. This is an appeal filed by the defendants No. 2 & 4 while exercising powers
enumerated under Section 100 of the Code of Civil Procedure, 1908, against the
judgment and decree dated 22.11.2002 passed by the Additional District Judge,
Jashpur (C.G.) in Civil Appeal No. 05-A/2001, by which, the lower appellate Court

while reversing the findings of the trial Court recorded in judgment dated 10.11.2000 has decreed the plaintiffs' claim for injunction by declaring the order dated 24.11.1992 passed in Criminal Revision No.93/90 by the Additional Sessions Judge as null and void.

2. The undisputed facts of the case are that the plaintiffs have instituted a suit for declaration and injunction on the strength of the registered deed of sale, purported to have been executed in their favour on 06.11.1962 by one Ratan Patra with regard to the property bearing Kh.No.24/1 area 10.52 acres and Kh.No.65/2 area 1.00 acre, total admeasuring area 11.52 acres. The suit land is part of it, admeasuring 1.52 acres of Kh.No.24/4. It is pleaded in the plaint that based upon the said sale deed, their names were also mutated in the revenue papers, however, on the basis of the order dated 24.11.1992 passed by the Additional Sessions Judge in Criminal Revision No. 93/90, the defendants No. 1, 2 & 4 are trying to interfere with their peaceful possession, which gave rise to file instant suit for declaration that the alleged order dated 24.11.1992 is not binding upon them and also for injunction.

3. The defendants have contested the aforesaid claim of the plaintiffs by submitting, inter alia, that they have purchased the property from defendant No.1 – Kamal Lochan on 14.12.1987 and the revenue papers were also mutated in their favour, and they are in actual possession over the property in question. It is contested further on the ground that the Additional Sessions Judge, while appreciating the evidence led in the proceedings, initiated under Section 145 of the Code of Criminal Procedure, 1973, has also come to the conclusion that they are in possession over the property in question, i.e., Kh.No. 24/4 area 1.52 acres.

4. The trial Court, after considering the evidence of both the parties, has dismissed the plaintiffs' claim by its judgment and decree dated 10.11.2000 by holding that the plaintiffs are not in possession over the property in question, therefore, they are not entitled to claim the relief of injunction as made by them

and held further that the order as passed by the Additional Sessions Judge on 24.11.1992 is binding upon them, as a consequence, the plaintiffs' claim was dismissed.

5. Being aggrieved by the aforesaid findings of the trial Court, the plaintiffs have preferred an appeal, as per the provisions prescribed under Section 96 of the Code of Civil Procedure, 1908. In appeal, the lower appellate Court has considered the entire evidence produced before it. While considering the oral as well as documentary evidence, the appellate Court has come to the conclusion that the plaintiffs are in possession over the property in question by relying upon the revenue papers filed as Exs.P.5 and Ex.P.6. and observed further while referring to defendants' suit being Civil Suit No.47-A/1999 in which they themselves have claimed for possession, that the defendants are not in possession and, in fact, the plaintiffs are in actual and peaceful possession over the suit property. In consequence, while decreeing the plaintiffs' claim, has restrained the defendants from interfering in peaceful possession of the plaintiffs over the suit property by way of permanent injunction.

6. Aggrieved by the aforesaid judgment and decree of the lower appellate Court, the defendants have preferred this appeal on the ground that by virtue of the sale deed executed on 14.11.1987 they are in possession over the property in question, i.e., Kh.No. 24/4 area 1.52 acres.

7. Shri H.B.Agrawal, learned Senior Advocate appearing on behalf of the appellants, has argued that the plaintiffs have failed to establish the fact that they are in possession, as evidenced by their statements, and therefore, submitted that the findings as recorded by the lower appellate Court while reversing the findings of the trial Court are perverse and deserve to be set aside.

8. I have considered the arguments of the learned Senior Advocate for the appellants and perused the entire record carefully.

9. The plaintiffs have instituted a suit by claiming their right, title and interest on the basis of the registered deed of sale purported to have been executed on 06.11.1962 by one Ratan Patra in their favour with regard to property bearing Kh.No.24/1 area 10.52 acres and Kh.No.65/2 area 1.00 acre, total admeasuring area 11.52 acres. Out of the said property, the suit property is 1.52 of Kh.No.24/4. After purchasing the property aforesaid, the revenue papers were mutated in favour of the plaintiffs, as evidenced by the revenue papers like Ex.P.5 and Ex.P.6 which could not be rebutted by the defendants. Pertinently to be mentioned here that the defendants No. 2 & 4/appellants herein have instituted a suit on 23.03.1993 for declaration of title and also for possession immediately after filing of the plaintiffs' suit. The said suit was registered as C.S.No.47-A/1999. The relief as claimed by the defendants in the said suit itself would demonstrate the facts that they are not in possession and that was the reason they themselves have instituted the suit for possession.

11. After considering the aforesaid material piece of evidence coupled with the evidence led by the parties, the lower appellate Court has rightly come to the conclusion that the defendants are not in possession and in fact, the plaintiffs have established their possession over the suit property on the basis of the sale deed, which was executed in their favour on 06.11.1962 (Ex.P.1).

12. In view of the foregoing discussions, I find no question of law, much less the substantial questions of law. Therefore, the appeal, being devoid of merit, is hereby dismissed at the admission stage itself.

13. It is, however, made it clear that whatever observations made by this Court herein above would not come in a way in a suit instituted by the defendants, i.e., C.S.No.47-A/1999. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge