

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.37 of 2000

Nanhku, S/o Rambaran, age 50 years, Caste Koir, Occupation Agriculture, R/o Village Bakalo, PS./Teh. Ambikapur, Distt. Sarguja (M.P.) (now C.G.)

(Dfd. No.1)/
---- Appellant

Versus

1. Ramcharan, S/o Manchar, Age 45 years,
2. Mohan (Died and deleted)
3. Shri Mati Mangli (Died and deleted)

(Plaintiffs)

4. Krishna Prasad, S/o Gopal, Age 30 years,

(Dfd. No.2)

Respondents No.1 and 4 residents of Village Bakalo, PS./Teh. Ambikapur, Distt. Sarguja (M.P.) (now C.G.)

5. The State of M.P. (now the State of C.G.), Through Collector, Sarguja, Ambikapur.

(Dfd. No.3)/
---- Respondents

For Appellant:	Mr. A.K. Prasad, Advocate.
For Respondent No.1:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Itu Rani Mukherjee, Advocate.
For Respondent No.5 / State: -	Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

17/09/2018

1. The substantial question of law involved, formulated and to be answered in the defendant's second appeal is as under: -

“Whether the finding of the First Appellate Court regarding applicability of Section 117 of the Transfer of Property Act, 1882 is perverse?”

(For sake of convenience, parties would be referred hereinafter

as per their status shown in the trial Court.)

2. The respondents/plaintiffs filed a civil suit for declaration of title and possession stating inter alia that the property stated in Schedule-1 of the plaint is self-acquired property of the father of plaintiffs No.1 and 2 and husband of plaintiff No.3 – Late Manchar, S/o Aitwa Uraon, granted in ryoti right by Surguja Settlement, which was given on license to the father of defendant No.1 for agriculture work to maintain his family. Thereafter, father of defendant No.1 died and defendant No.1 also requested for continuance of license which was permitted and the said land would be returned as and when it is required, but thereafter, defendant No.1 got his name entered in the revenue records leading to filing of instant suit in which the defendants were proceeded ex parte. The plaintiffs examined three witnesses namely, Bhangli (PW-1), Phulbasiya (PW-2) and Ramcharan (PW-3) in support of their case. Defendant No.1 denied the plaint allegation and setup the plea of adverse possession in his favour.
3. The trial Court after appreciating oral and documentary evidence on record though came to the conclusion that it is self-acquired property of Late Manchar, S/o Aitwa Uraon, and succeeded by the plaintiffs, but further held the plaintiffs have failed to prove grant of license in favour of the father of defendant No.1, and dismissed the suit. In appeal preferred by the plaintiffs, the first appellate Court affirmed the title of the plaintiffs over the suit land, but held that the license can be oral and applying Section 117 of the Transfer of Property Act, 1882 (for short, 'the TP Act') held that in agricultural license, the provisions of Section 117 are not applicable. Questioning the judgment & decree of

the first appellate Court, second appeal has been preferred by defendant No.1 in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

4. Mr. A.K. Prasad, learned counsel appearing for the appellant herein/ defendant No.1, would submit that the first appellate Court is absolutely unjustified in applying Section 117 of the TP Act, as it is the case of the plaintiffs that license was granted by the father of plaintiffs No.1 and 2 in favour of the father of defendant No.1, so the question of applicability of the TP Act does not arise as such, the judgment & decree of the first appellate Court is liable to be set aside.
5. Mr. H.B. Agrawal, learned Senior Advocate appearing for respondent No.1 herein/plaintiff No.1, would submit that though both the Courts below have held the title of the plaintiffs over the suit land, but the first appellate Court has clearly held that it is the case of oral license permissible under Section 52 of the Indian Easements Act, 1882, as such, the second appeal deserves to be dismissed.
6. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.
7. Both the Courts below have concurrently and emphatically held that the suit property is held by the father of plaintiffs No.1 and 2 – Late Manchar, S/o Aitwa Uraon, and he was title holder of the suit property, even that finding was not assailed by the defendants by filing appeal or cross-objection before the first appellate Court and that has become final. The trial Court held that the plaintiffs have failed to

prove the plea of license in favour of the defendants and further, the said finding has been reversed by the first appellate Court holding that license can be oral.

8. Section 52 of the Indian Easements Act, 1882 provides as under: -

“52. “License” defined.—Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.”

9. Under Section 52 of the Indian Easements Act, 1882, license can be oral and it need not be followed by any written document granting license. The defendants remained ex parte before the trial Court and did not led any evidence. Three witnesses examined by the plaintiffs namely, Bhangli (PW-1), Phulbasiya (PW-2) and Ramcharan (PW-3), have categorically and clearly stated that the license was granted by the father of plaintiffs No.1 and 2 to the father of defendant No.1. They have not been controverted on the plea of license stated by the plaintiffs and his witnesses. So in that count, the judgment of the first appellate Court is based on the evidence of the plaintiffs available on record. Therefore, the first appellate Court is justified in granting decree in favour of the plaintiffs. The first appellate Court has though erroneously held that in agricultural license, the provisions of Section 117 of the TP Act are not applicable, as present is a case of license, but the fact remains that the judgment of the trial Court was not supportable in law.
10. In view of the aforesaid legal analysis, I do not find any merit in this second appeal and the substantial question of law is answered

against the defendants and in favour of the plaintiffs.

11. As a fallout and consequence of the aforesaid discussion, the second appeal is dismissed. No order as to cost(s).
12. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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