

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 4 of 2001**

Sukho Devi, D/o Prabhuram Gond, aged about 35 years, Caste-Gond, R/o Village- Nawa-nagar, P.S. and Tah. Ambikapur, District Sarguja (C.G.)

----Appellants/plaintiff

Versus

1. Badkha Bargah, son of Bandhan Bargarh, aged about 32 years, resident of village – Nawanagar, Tah. Ambikapur, Distt: Sarguja (M.P.)
2. Smt. Bai – D/o Dinu Bargah, w/o Chidera Bargah, R/o vilage – Bargawan, Tah. Ambikapur, Distt: Sarguja (C.G.)
3. Kendi Bai, D/o Dinu Bargah, wife of Lodhu @ Luthru Bargah, R/o village- Adachi Tah. Ambikapur, Distt: Sarguja (C.G.)
4. The State of M.P. (now State of Chhattisgarh), Through the Collector, Sarguja (Chh.)

---- Respondents

For Appellant	: Shri A.K. Prasad, Advocate.
For Respondent 1	: Shri D.N. Prajapati, Advocate.
For Respondents No. 2 & 3	: None
For Respondent No. 4	: Shri Ashish Surana, PL

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

19/11/2018

(1) The substantial questions of law involved, formulated and to be answered in this plaintiff's second appeal state as under:

“1. Whether the two courts below have committed an error of law in not decreeing the suit in favour of the plaintiffs when both the courts below have specifically reached to the finding that the plaintiffs, in their favour, have duly executed the sale deed pertaining to the suit property and at the same time, the

defendants did not have any proof to establish their title over the suit property ?

2. Whether the finding of the two courts below in respect of the possession of the defendants over the suit property is also perverse or not ?”

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

[For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2.1 Sole plaintiff –Sukho Bai instituted an action for declaration of title and permanent injunction stating inter alia that she had purchased the suit land by a registered sale–deed dated 4.1.1986 (Ex.P-1) from its erstwhile owner for consideration of Rs.4,500/- and got possession thereof from the date of sale. It was further pleaded that in the year 1990, defendants No.1 & 2 namely Badkha and Dinu (since deceased) started interference with her peaceful possession over the suit land leading to filing of suit for declaration of title and permanent injunction against defendants No. 1 & 2.

2.2 In the said suit, the defendants appeared in the trial Court and filed their written statement and pleaded that they are in possession of the suit land since a fairly long time and the sale deed executed by sellers namely Vishwanath and Kanshi in favour of that plaintiff was not true and that was a forged document, therefore, suit is liable to be dismissed.

(3) The trial Court framed as many as 9 issues in this case and after taking evidence of the parties decided the issues No. 1 to 3 in favour of the plaintiff holding that plaintiff had purchased the suit land from its the then owner and the plaintiff was title and possession holder of the suit land by virtue of registered sale deed dated 04.01.1986 (Ex.P-1) and defendants No. 1 & 2 have interfered with her peaceful possession over the suit land, but while deciding issue No. 5 held that defendants are in possession of the suit land since a fairly long time and dismissed the suit filed by the plaintiff.

(4) The petitioner preferred first appeal there-against. The first appellate court, re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court.

(5) Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/plaintiff in which the substantial questions of law have been formulated for consideration, which have been set out in the opening paragraph of the judgment.

(6) Learned counsel for the appellant/plaintiff would submit that the trial Court has decided issues No. 1 to 3 in favour of the plaintiff holding her to be the title and possession holder of the suit land but while deciding issue No. 5 held that defendants are in possession of the suit land, which the plaintiff challenged in appeal but the first appellate court ventured in issues No. 1 to 3, which was not open for the said Court to re-assess and ultimately dismissed the appeal, as such, it is liable to be set aside.

(7) Shri D.N. Prajapati, learned counsel for respondent No.1/defendant would submit that both the courts below have rightly dismissed the suit filed by the plaintiff holding that she is not the possession and title holder of the suit land, as such, the second appeal deserves to be dismissed.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.

Answer to first substantial question of law

(9) The trial Court, while deciding issues No. 1 to 3, has clearly reached to the finding that plaintiff is title holder of the suit land by virtue of registered sale deed dated 4.1.1986 (Ex.P-1) and she is title and possession holder of the suit land and also recorded a finding that defendants are interfering with her peaceful possession over the suit land, but while deciding issue No. 5 has held that as the plaintiff's application under Section 145 of the Code of Criminal Procedure was dismissed by the SDO vide Ex.D-1 and application filed by the plaintiff for mutation of the suit land was also dismissed by the said authority vide Ex.D-2 and, therefore, the defendants are in possession of the suit land.

(10) The plaintiff preferred first appeal and only questioned the finding recorded by the trial Court on issue No. 5 holding the same to be contradictory in view of the findings recorded on issues No. 1 to 3, but the first appellate Court ventured into issues No. 1 to 3, which was not challenged by the defendants by filing cross appeal or cross-objection and held that title of the plaintiff over the suit land was not proved. Once, the finding has been recorded in favour of the plaintiff, it was not open for the

(11) The next question is with regard to possession of the defendants over the suit property.

(12) The trial Court while deciding issues No. 1 to 3 held that plaintiff is title and possession holder of the suit land but while deciding issue No. 5 held that defendants are in possession of the suit land relying upon documents Ex.D-1 & D-2. Document Ex.D-1 is the copy of order passed by the Sub Divisional Officer, Ambikapur by which the plaintiff's application under Section 145 of the Cr.P.C. has been rejected holding that it has not been proved that plaintiff has been dispossessed except in accordance with law and document (Ex.D-2), was an application for mutation of the suit land filed by the plaintiff.

(13) Section 145 (4) of the Cr.P.C. provides as under:-

**"145. Procedure where dispute concerning land or water is likely
to cause breach of peace. (1) XXX XXX
XXX**

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible,

decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute;

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)."

(14) A careful perusal of the aforesaid provision would show that if the Magistrate finds that one of the parties was in possession of the suit land, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law.

(15) In fact, order rejecting application under Section 145 of Cr.P.C. does not lead to the conclusion that plaintiff is not in possession of the suit land. The trial Court while deciding issue No. 3 relying upon the statement of Badkha (DW-4) had clearly recorded his admission that the suit land is in possession of the plaintiff from the date of its purchase and the dispute is continuing, and there is no material on record to hold that defendants are in possession of the suit land except document D-1 i.e. order rejecting application under Section 145 of the Cr.P.C. and document Ex.D-4 i.e. order rejecting application for mutation filed by the plaintiff for mutation of the suit land.

(16) In view of above-stated discussion, the first appellate Court is absolutely unjustified in holding that plaintiff is not in possession of the suit land and the defendants are in possession of suit is perverse and contrary to record and such finding is liable to be set aside.

(17) In view of foregoing, the judgment and decreed passed by the trial Court as upheld by the first appellate Court is set aside. Suit filed by the plaintiff is decreed that plaintiff is entitled for declaration of title on the land bearing Khasra No.945/58, area 1.505 hectare situated at village Nawanagar, Tahsil Ambikapur, District Surguja and defendant No. 1 and legal representatives of defendant No. 2 are restrained from interfering with the peaceful possession of the suit land.

(18) The second appeal is allowed to the extent indicated hereinabove. No order as to costs.

(19) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

