

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 159 of 2006

Smt. Rukhmani Thakur, Aged About 45 Years, W/o. Shri Prahlad Singh Thakur, R/o. Village Tilasari, Tahsil Bilha, District Bilaspur (C.G.).

---- Appellant

Versus

1. State of Chhattisgarh, Through the Collector, Bilaspur (C.G.).
2. The Additional Collector, District Bilaspur (C.G.).
3. Shri Lakhan Puri, Aged About 55 Years, S/o. Shri Kanhaiya Puri Goswami, R/o. Vinoba Nagar, Near Gayatri Mandir, Bilaspur, Tahsil & District Bilaspur (C.G.).
4. Shri Avinash Chandra Bhargava, Aged About 56 Years, Doctor, R/o. Magarpara Road, Bilaspur, Tahsil & District Bilaspur (C.G.).

---- Respondents

For Appellant : Mr. B.M.Rao, Advocate

For State/Respondents 1 & 2 : Mr. Neeraj Sharma, Dy. Govt. Advocate

For Respondents No.3 & 4 : No representation is made.

Hon'ble Shri Justice Goutam Bhaduri

Judgment On Board

17.09.2018

1. The present appeal is against the judgment & decree dated 12.05.2006 passed by the Court of First Additional District Judge Bilaspur in Civil Suit No.53-A/2005 whereby a suit filed by the appellant/plaintiff for declaration that the order dated 31.12.1999 passed in Revenue Case No.15-A-39/1998-99 in between "*State v. Avinash Chandra Bhargav & Others*" is not binding on the present appellant.
2. Case of the appellant/plaintiff was that she has purchased a land bearing Khasra Nos. 888/42 admeasuring 0.80 acre, 888/57 admeasuring 0.80 acre, 888/53 admeasuring 0.80 acre, 888/45 admeasuring 0.80 acre & 888/60 admeasuring 0.80 acre from Avinash Chandra Bhargav by a sale deed dated 11.01.1999 and

another land bearing Khasra No.888/46 admeasuring 0.50 acre from one Lakhanpuri by a sale deed dated 28.01.1999. It was stated that after purchase, the said land were mutated in name of the appellant/plaintiff by an order dated 18.06.1999. It was case of the plaintiff that the Additional Collector on a report made by the Tahsildar took up the matter *sue moto* under Section 50 of the Land Revenue Code and opened a revenue case wherein it was held that the subject lands were leasehold lands and without permission the initial sale were executed by the erstwhile lessee and consequently had set aside the sale along-with the lease granted to the different persons. Consequently, as a fallout of it, the sale deed executed in favour of Avinash Chandra Bhargav was set aside, which in turn affected the sale executed in favour of the present appellant Smt. Rukhmani Thakur by Avinash Chandra Bhargav.

3. The State in its written statement stated that the subject lands in question are the government leasehold land and the lease were given to different persons and no authority exists in favour of the defendant namely Avinash Chandra Bhargav to purchase the land from the lessee without permission of the State. It was contended that therefore the permission having not been obtained, the subsequent sale deed by the lessee and the purchaser do not get any right over the property so supported the order of the Additional Collector.
4. Learned counsel for the appellant would submit that the appellant has purchased the subject property by two sale deeds i.e. sale deed dated 11.01.1999 from Avinash Chandra and sale deed dated 28.01.1999 from Lakhanpuri. It is contended that both the

lands were recorded in name of the seller Avinash Chandra & Lakhanpuri and they were recorded as Bhoomiswami of the land in revenue records. It was further stated that the name of Rukhmani Thakur was further mutated in the revenue record and without hearing the purchaser and land owner, the orders were passed by the Additional Collector in the revenue case No.15-A-39/1998-99 on 31.12.1999. Therefore, no hearing was given to the plaintiff appellants, as such, the same is liable to be set aside and the dismissal of the suit by the Court below appears to be apparently wrong. He therefore submits that accordingly the order of the Court below and the order of the Collector may be set aside.

5. Per contra, learned State counsel opposes the argument and supports the case of the plaintiff and submits that the order is well merited, which do not call for any interference.
6. Perusal of the record would show that a suit was filed by the plaintiff claiming that the order dated 31.12.1999 is not binding on the plaintiff i.e. Rukhmani Thakur, which is marked as Ex.P-9. Reading of the plaint and the documents would reflect that Smt. Rukhmani Thakur, the plaintiff/appellant has purchased the land bearing Khasra Nos. 888/42, 888/57, 888/53, 888/45 & 888/60 admeasuring 4 acres from Avinash Chandra by the registered sale deed dated 11.01.1999. Ex.P-2 is another document wherein Khasra No.888/46 was purported to be purchased from Lakhanpuri. The Bhoo-Adhikar & Rin Pustika Ex.P-3 shows that five land in question were recorded in name of Avinash Chandra as Bhoomiswami thereof and further leaflets of the Rin-pustika Ex.P-3 shows that the name of the present appellant Smt.

Rukhmani Thakur was shown as owner thereof and the endorsement exists of that of the Sub Registrar Bilaspur.

7. The record of right Ex.P-4 shows that the earlier land holder were recorded as Bhoomiswami thereof and were corrected from that of lessee to Bhoomiswami. The document Ex.P-5 records the name of Avinash Chandra to be the owner of the same according to B-1. Therefore, the record of right *prima facie* would show that Avinash Chandra purchased the land from Dauram, Balram, Mukutram, Chandrika & Dashrath and they were all recorded as Bhoomiswami and their title was converted from lessee to Bhoomiswami as per record of rights. No document has been produced by the State to show that they were lessee of the land, therefore, the presumption of correctness of the entry under Section 117 of the Land Revenue Code will follow in favour of the land holders. The document which has been produced by the State is all after the impugned order dated 31.12.1999 was passed by the Additional Collector, Bilaspur and therefore would not support the contention of State to find out the original nature of holding of subject lands. Therefore, what was the nature of holding of the erstwhile land holder has not been proved by the State.
8. Perusal of the order dated 31.12.1999 would show that the present appellant was not noticed or was party before the Additional Collector in the revenue case. Only Avinash Chandra Bhargav & Yogendra Nayak, Tahsildar were the party. The plaintiff in his plaint has stated that the name of the plaintiff was recorded by an order dated 18.06.1999 by the revenue authorities. There is no specific denial has been made by the State in its written statement, the denial to this effect is vague. The Rin-pustika which

has been exhibited by the plaintiff Ex.P-3 records the endorsement about the sale to the present appellant. Therefore, under the circumstances, before passing such order dated 31.12.1999, in the opinion of this Court, in order to advance the cause of natural justice between the parties, the appellant ought to have been noticed and heard. In absence of the appellant being heard any order affecting his right which takes away the ownership cannot be sustained. The finding of the Court below drawing a presumption that the said land were recorded as lessee by the erstwhile owner cannot be sustained as the State has not discharged his burden to prove the same. The trial Court also failed to consider the fact that before passing the order, which is depropriatory in nature, the purchaser/ plaintiff was heard.

9. Accordingly, the judgment & decree dated 12.05.2006 is set aside. Consequently, the order dated 31.12.1999 is also set aside. The State would be at liberty, if so advised, to conduct enquiry afresh, if any, after noticing the appellant/plaintiff and giving an opportunity of hearing on merits.
10. With such observation, the appeal stands partly allowed. No order as to cost.

Sd/-
(Goutam Bhaduri)
Judge