

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25-7-2018

Judgment delivered on 9-8-2018

FA No. 409 of 1998

- Gouri Devi, aged 50 years, wife of Shri Sadashiv Nande, Caste Brahmin, occupation householding, resident of village Lodhma, Tahsil Kankuri, District Raigarh, M.P.(now CG).

---- Appellant

Versus

1. State of M.P (Now CG) . through Collector, Raigarh.
2. Competent Authority/Sub-Divisional Officer, Jashpur Nagar, District Raigarh M.P.
3. Shri Nityanand Prasad Sai s/o Durga Pd Sai;
4. Shri Shivgovind Pd Sai S/o Durga Pd Sai;
5. Laxmi Kumari Devi Wd/o Durga Pd Sai;
All r/o Ara House, Jashpur Nagar, District Raigarh
6. Sukra, aged 60 years S/o Budhiya Uraon;
7. Suleman, aged 45 years, S/o Stephen Uraon;
8. Sunil, aged 7 years, S/o late Konda, Minor
through GAL Nana Laha S/o Rohan r/o Lodhma;
9. Bajru, aged 45 years, S/o Somaru Gond;
10. Jatru, aged 40 years, S/o Bhouna Gond;
11. Lihaj, aged 40 years, S/o China Ghansi;
12. Yiharu, aged 25 years, S/o Kisun Ghansi;
13. Ranjan, aged 35 years, S/o Chunwa Ghansi;
14. Vishwanath, aged 40 years, S/o Manjit Ghansi;
15. Bhuwadeshwar, aged 30 years, S/o Sughan Nagesiya;
16. Ramkisun, aged 40 years, S/o Mahrang Ghansi;
17. Sughan, aged 50 years, S/o Manjan Nagesiya;
18. Rameshwar, aged 40 years, S/o Rachan Ram Gond;
19. Langdu, aged 40 years, S/o Budhu Ghansi;
20. Bhusdi, aged 28 years, S/o Chander Ghansi;
21. Musku, aged 30 years, S/o Madari Ghansi;
22. Sunwa, aged 28 years, S/o Domna Ghansi;

Nos. 6 to 22 all r/o village Lodhma, Tahsil Kunkuri, District Raigarh (M.P.)

---- Respondents

For appellants : Mr. N.K. Malviya, Advocate.
For respondent/State : Mr. Sanjeiv Pandey, Govt. Advocate.
For respondents No. : Mr. Harish Khuntiya, Advocate.
8,9,12,13,14 & 16 to 22

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV JUDGMENT

1) This appeal is preferred by the appellant under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 10-8-1998 passed by the Additional District Judge, Jashpurnagar (CG) in Civil Suit No.6-A/1992 wherein the said court dismissed the suit filed by the appellant for declaring his title over the land bearing survey No. 233/2 area 8.45 acres situated at village Lodhma, for declaring the order void of the competent authority under Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 which declared the suit land surplus vide order dated 7-2-1991, for cancellation of lease allotted to respondents No. 6 to 22 and for injunction.

2) As per the case of the appellant, she was occupancy tenant of the land since 1950 and she was recorded as occupancy tenant by order of Naib Tahsildar, Jashpurnagar, but the said land is declared surplus in a ceiling case registered against Laxmi Kumari Devi,

Nityanand Prasad Sai and Shiv Govindn Prasad Sai who were heirs of Jamindar Durga Prasad Sai and allotted to respondents No. 6 to 22. After hearing the parties, the trial Court opined that the appellant is not an occupancy tenant of the land in question since year 1950 and any order passed by the Revenue Court in this regard is not legal. Again, the trial Court opined that the finding of the competent authority under Ceiling Act is proper which is not liable to be interfered with.

3 Learned counsel for the appellants submits as under:

- I) The trial court erred in holding that the appellant/plaintiff's possession in 1950 as Sikmidar from the erstwhile owner Zamindar Durga Prasad Sai and upon his death from his heirs Smt. Laxmi Kumar Devi, Nityanand Prasad Sai and Shiv Govind Prasad Sai, (Respondents/defendants No. 3 to 5), has not been proved.
- ii) The trial Court erred in excluding material documents as determination of rights under order dated 30-1-1982 (Ex.P/4) in Revenue Case No. 136-A of 1982-83 passed by Naib Tahsildar Jashpurnagar and entries in Khasra Panchshala relating to 1963 -68 (Ex.P/10 establishing the plaintiff's possession and title over the suit land.
- iii) The trial court grossly erred in rejecting the application made by the appellant

under Order VI Rule 17 and Under Order XIII Rule 3 of CPC.

- iv) The trial Court has not scanned all oral and documentary evidence on record in its proper perspective vitiating the decree.

4) On the other hand, learned counsel for the respondents would submit that the finding arrived at by the trial Court is based on proper appreciation of the evidence which is not liable to be interfered.

5) I have heard learned counsel for the parties and perused the record/judgment and decree passed by the trial Court.

6) The first question for consideration of this court is whether the appellant is occupancy tenant as defined under Section 185 of the Chhattisgarh Land Revenue Code, 1959 (for short, "the Code, 1959"). As per this provision, every person who, at the time of coming into force of this Code, holds the land as lessee/sub-tenant shall be called as occupancy tenant. The date of enforcement of CG Land Revenue Code, 1959 is 2-10-1959 which is agriculture year 1959-60 and the appellant was under obligation to establish that she was occupancy tenant on that period. The pleading is not substantiated by the evidence of anyone who gave the land to the appellant as tenant or sub-tenant. No document is filed before the trial court to show that in the year 1950 the appellant was in possession of the land in question. Khasra entries (Ex.P/5 and Ex.P/9) are related to year

1988-89 and 1989-90 and entry of Ex.P/7 is made according to order of Naib Tahsildar, Jashpurnagar on 29-9-1982. No record is produced before the trial Court that the appellant was in possession of the land from year 1950 and continued in the possession till agriculture year 1959-60. In absence of oral and documentary evidence, it was not established that the appellant is an occupancy tenant as defined under Section 185 of the Code, 1959 and therefore, the trial Court is right in holding that the appellant is not occupancy tenant. Khasra entries do not confer any right on any person and therefore, entries made without there being any right as occupancy tenant are not to be considered while deciding the tenancy/occupation.

7) Admittedly, the suit land is vested in Government as per order of the competent authority in CG Ceiling Act, 1960 vide order dated 29-3-1989 and the Government is owner of the land. Again, the land is allotted to respondents No. 6 to 22 for cultivation and they are in possession of the land. Appellant did not challenge the order of the competent authority in appeal and the same is attained finality. True it is that the Civil Court has exclusive jurisdiction pertaining to question of title, but in the present case the appellant is no where title holder.

8) Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial

Court is based on proper appreciation of oral and documentary evidence and again it is based on settled law which is not liable to be interfered by this court.

9) Accordingly, the decree is passed against the appellant and in favour of respondents on the following terms and conditions.

- I) The appeal is dismissed with cost.
- ii) Appellant to bear the cost of the respondents.
- iii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.
- iv) A decree be drawn accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju