

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 383 of 2000**

Amilal, S/o Govind Das Panika, aged 25 years, Occupation Cultivation,
R/o Village Gamekala, Teh. Gharghoda, Distt. Raigarh (C.G.)

---- Appellant/defendant.

Versus

Lochan Das (Died) LRs

- 1(a) Smt. Padma, Wd/o Late Lochan Das, aged about 60 years,
- 1(b) Shivanand, Wd/o Late Lochan Das, aged about 30 years,
- 1(c) Gajanand, S/o Late Lochan Das, aged about 25 years,
- 1(d) Satya, S/o Late Lochan Das, aged about 32 years,
- 1(e) Anand Mohan, S/o Late Lochan Das, aged about 20 years,
- 1(f) Chandrashekhar, S/o Late Lochan Das, aged about 18 years,
- 1(g) Sabina, D/o Late Lochan Das, aged about 27 years,
- 1(h) Gajendra, S/o Late Lochan Das, aged about 14 years, Minor represented through mother Smt. Padma, Wd/o Late Lochan Das

All resident of Village-Gamekala, Police Station & Uptahsil-Lailunga, P.O. Birsingha, Tahsil Gharghoda, Distt. Raigarh (C.G.)

- 2. State of Chhattisgarh, through Collector, Raigarh (C.G.)

---- Respondents/plaintiffs

For Appellants	:	Mr. Ram Kumar Tiwari, Advocate.
For Respondents No.1(a) to 1(h)	:	Mr. Manoj Kumar Sinha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/10/2018

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

“1. Whether the first appellate Court was justified in granting decree of delivery of possession without any relief or prayer made in the plaint by the plaintiffs ?

2. Whether the first appellate Court was justified in granting the decree for declaration of title as the plaintiffs are not in possession of the suit land and the relief of the possession was not claimed ignoring the proviso contained in Section 34 of the Specific Relief Act, 1963 ?”

(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) Original plaintiffs namely Lochan Das & Mut. Gopobai filed a civil suit for declaration of title and permanent injunction stating inter alia that their grandfather namely Puran Panika has purchased the suit property by registered sale deed dated 19.9.1922 (Ex.P-1) and obtained possession thereof. After his death, the land was duly recorded in the revenue records in the name of Sukhram and Swikrit Das. Sukhram died issueless and plaintiff No.1 is the son and plaintiff No. 2 is the wife of late Swikrit Das and they have inherited the suit property and they were in peaceful possession of the suit property. It was further stated in the plaint that defendants got recorded their name in the suit property in collusion with the revenue authorities, they have no right or title in the suit property. The fact of entries of their names in the revenue records was known to the plaintiffs in the month of April, 1994 when they applied for demarcation of the suit property and thereafter they have filed civil suit for declaration of title and permanent injunction.

(2.2) During pendency of the civil suit, the plaintiffs amended their plaint by order dated 10.09.1997 and claimed relief of recovery of possession from the defendants.

(3) The trial Court, vide its judgment & decree dated 9.5.1998, dismissed the suit holding that the suit is not maintainable as the plaintiffs are not in possession of the suit land.

(4) On appeal being preferred by plaintiffs, the first appellate Court, by its impugned judgment and decree dated 19.01.2000, reversed the findings recorded by the trial Court holding that relief of recovery of possession has already been claimed in the suit by amending the plaint by order dated 10.09.1997 and finding title of the plaintiffs on the suit property, granted decree for declaration of title and possession in favour of plaintiffs.

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

(6) Learned counsel appearing for the appellant/defendant would submit that the first appellate Court is absolutely unjustified in reversing the well reasoned finding recorded by the trial Court holding that the suit is not maintainable as the relief of recovery of possession was not sought in the relief clause and, therefore, the impugned judgment and decree is liable to be set aside.

(6) Per contra, counsel for respondents No. 1(a) to 1(h)/plaintiffs would submit that the trial Court has clearly permitted the plaintiffs to seek relief of recovery of possession in the plaint and that was claimed and mere technical error i.e. non mentioning of the

relief of recovery of possession in the relief clause, would not make any difference and the plaintiffs have rightly been granted decree by the first appellate court.

(8) I have heard learned counsel appearing for the parties and perused the record of both the courts below including judgment & decree impugned with utmost circumspection.

(9) True it is that the trial Court has recorded a finding that plaintiffs are not in possession of the suit property and, therefore, the civil suit is not maintainable in view of the proviso to Section 34 of the Specific Relief Act, 1963 (for short "the Act of 1993"). The trial Court, while dismissing the plaintiff's suit, ignored the amendment incorporated in the plaint the plaint, which has been amended by order dated 10.09.1997 and the relief of recovery of possession has been permitted to be introduced in the plaint, which the first appellate court has noticed and finding title in favour of the plaintiffs granted decree in favour of the plaintiffs. Since the plaintiffs have already claimed the relief of recovery of possession in the plaint, the first appellant Court is absolutely justified in granting decree in favour of the plaintiffs after having found their title over the suit land, as such, the plaintiff's suit is not barred under proviso to Section 34 of the Act, 1963.

(10) Accordingly, the substantial questions of law are answered against the defendants and in favour of the plaintiffs and consequently, the second appeal is dismissed affirming the decree passed by the first appellate court leaving the parties to bear their own cost

(11) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

