

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 46 of 2000**

1. Pyare Lal, S/o Sarju Prasad Patel, aged 56 years,
2. Shiv Narayan, S/o Sarju Prasad Patel, aged about 83 years.

Both resident of village Bhedikona, Tahsil Dabhra, District Bilaspur.

---- Appellants/Plaintiffs.

Versus

1. Hulasram, S/o Chherka, aged 53 years.
2. Bhuneshwar, S/o Chherka, aged 48 years.

Both are residents of village Sakrali, Tahsil Dabhra, District Bilaspur.

3. State of M.P. (Now Chhattisgarh) Through Collector Bilaspur, District Bilaspur

---- Respondents/Defendants.

For Appellan : Shri H.S. Patel, Advocate.
 For Respondents No. 1 & 2 : Shri Anand Kesharwani, Advocate.
 For Respondent No. 3 : Shri Ashish Surana, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

24/08/2018

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

“1. Whether the finding recorded by both the Courts below that the suit land had vested with the State Government under the Urban Ceiling Act is contrary to law ?”

2. Whether the finding recorded by the First Appellate Court that the defendants had perfected title over the suit land is contrary to law?”

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

(2) The plaintiffs filed civil suit for declaration of title and recovery of possession stating inter alia that they have purchased the suit land from the family of Vishambhar Sao and his sons by registered sale deed dated 4.6.1967 and thereby obtained possession over the suit land but they have been dispossessed by the present defendants leading to filing of the civil suit.

(3) The defendants filed their written statement stating inter alia that the suit land was vested with the State Government under the Ceiling Act and thereafter it has been allotted to them in the year 1976-1977 and they have been granted patta to this effect on 14.12.1977 and, as such, they are in peaceful and uninterrupted possession of the suit land.

(4) The trial Court, by its judgment & decree, dismissed the suit stating inter alia that the suit land was vested with the State Government under the Urban Ceiling Act and thereafter it was allotted to the defendants and the patta to this effect has also been granted to them by the competent authority and the plaintiffs failed to prove their title over the suit land. It was also held by the trial Court that suit as framed and filed is barred by Section 46 of the Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (henceforth "Act, 1960").

(5) Plaintiffs preferred First Appeal there-against. The First appellate court, on re-appreciation of entire evidence and material placed on record, dismissed the plaintiffs' appeal. Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellants/plaintiffs 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 appellants/plaintiffs would submit that there is no evidence available on record to hold that the suit land has vested with the State Government under the provisions of Urban Ceiling Act and no document in shape of patta has been filed in the defendants' favour stating that the suit land has been allotted to them. He would further submit that the finding recorded by the first appellate court that the defendants are in possession of the suit land is perverse and contrary to the record.

(7) Learned counsel for the /respondents defendants No. 1 & 2 would support the impugned judgment & decree.

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

(9) Both the courts below have concurrently recorded a finding that the land in question has already been vested with the State Government under the provisions of Ceiling Act and thereafter allotted to the defendants by patta to this effect on 14.12.1977. The said finding is a finding of fact based on material available on record. However, grant of patta to the defendants is not proved as neither the certified copy of the patta has been filed and exhibited, nor any revenue officer has been examined to prove that at any point of time, patta has been granted to the defendants. But both the courts below have concurrently held that the plaintiffs have failed to prove their title over the suit land and the plaintiffs are claiming title over the suit land on the basis that they have purchased the suit land from Vishambhar Sao and his sons by registered

sale deed dated 4.6.1967, but neither certified copy of the sale deed was filed nor it has been proved by examining the said witness. At the second appellate stage, by filing an application under Order 41 Rule 27 of the CPC, photo copy of the registered sale deed dated 04.06.1967 has been brought on record on 23.08.2012, which cannot be admitted in evidence as photo copy is inadmissible in law and no reason has been assigned for non-production of original.

(10) Since the appellants cannot be permitted to fill-up the lacuna by filing the photo copy of registered sale deed dated 04.06.1967 at the second appellate stage, I do not find any illegality or perversity in the application filed under Order 41 Rule 27 of the Code of Civil Procedure.

(11) Coming to the next substantial question of law framed that whether the first appellate Court is justified in holding that defendants had perfected their title over the suit land is contrary to law, a close perusal of the judgment of the first appellate Court would show that no finding of perfection of title of defendant by adverse possession has been recorded by the said Court, therefore, the second substantial question of law is answered against the plaintiffs.

(12) It is pertinent to mention here that trial Court has clearly recorded a finding that Civil Suit as framed and filed is not maintainable and barred by Section 46 of the Act, 1960, that finding has not been challenged by plaintiffs either before the first appellate court or before this Court as no substantial question of law was proposed / framed in that regard, as such, finding that civil suit is not maintainable has become final against the plaintiffs.

(13) Accordingly, the second appeal as well as application under Order 41 Rule 27 of the Code of Civil Procedure fails and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

