

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17-01-2019

Judgment delivered on 15-03-2019

FA No. 35 of 2001

1. Laxmichand Gupta S/o Motilal Gupta, aged about 65 years, Occupation Agriculture, R/o Deviganj, Mohalla Ambikapur, P.S. & Teshsil Ambikapur, District Surguja, C.G. (died – deleted) through LRs.

(A) Smt. Sandhya Devi w/o Late Laxmi Chand Gupta, aged about 75 years.

(B) Kanhaiya Lal Gupta s/o Late Laxmi Chand Gupta, aged about 50 years.

(C) Ramlal Gupta s/o Late Laxmi Chand Gupta, aged about 38 years.

(D) Shankar Lal s/o Late Laxmi Chand Gupta, aged about 35 years.

(E) Kanti Lal S/o Late Laxmi Chand Gupta, aged about 32 years.

(F) Ku. Raj Kumari D/o Late Laxmi Chand Gupta, aged about 30 years.

All R/o Deviganj Road, Ambikapur, District Surguja, (C.G.)

(G) Padmavati W/o Lakhanlal Gupta, age 52 years, R/o Shyamnagar, Kakarmata, Banaras, (U.P.)

(H) Chandravati W/o Vasudev Gupta, aged about 48 years, R/o Udai Chowk, Mandla, District Mandla (M.P.)

(I) Vedanti Gupta W/o Durga Prasad Gupta, age 45 years, R/o Railway Station Road, Bargarh, District Bargarh, Orissa.

(J) Annapurna Gupta w/o Arun Gupta, aged about 42 years, R/o Near Bus Stand, Abhanpur, District Raipur (C.G.).

VERSUS

1. Satyanarayan Gupta S/o Sri Moharlal Gupta, aged about 55 years, Occupation Agriculture, R/o Deviganj Road, Ambikapur, PS & Tehsi Ambikapur, District Surguja, C.G. (died – deleted) through LRs.

(A) Smt. Urmila w/o Late Satyanarayan Gupta, age 52 years. (deleted)

(B) Sanjeef Gupta S/o Late Satyanarayan Gupta, aged about 35 years.

(C) Naveen Gupta S/o Late Satyanarayan Gupta, aged about 30 years.

(D) Pankaj Gupta S/o Late Satyanarayan Gupta, aged about 28 years.

All R/o Deviganj Road, Ambikapur, District Surguja. (C.G.)

(E) Smt. Archana Gupta W/o Raju, aged about 37 years.

(F) Smt. Vandana Gupta w/o Prakash, aged about 33 years.

Both R/o C/o Pankaj Furniture Mart, Deviganj Road, Ambikapur, District Surguja, (C.G.)

For appellants : Mrs. Hamida Siddiqui & Mr. Shaktri Raj Sinha, Advocates.

For respondents : Mr. Rahul Mishra, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 18-1-2001 passed by the 2nd Additional District Judge, Ambikapur, District Surguja (CG) in Civil Suit No. 2A/98 wherein the said court

dismissed the suit filed by the appellant/plaintiff for getting possession of one godown situated at survey No. 1052 area 80 x 40 feet shown in the map attached with plaint.

2) as per version of the original appellant/plaintiff, his father namely Motilal and father of original respondent No.1 namely Moharlal Gupta were real brothers. The land bearing Khasra No.1053 area 4.02 is self acquired property of Motilal and in earlier suit decree was passed in his favour. The godown in question was given to original defendant/respondent Satyanarayan. Motilal died in the year 1994. Respondent was in possession of the godown in question, but when the original appellant demanded the said godown, the original defendant/respondent refused to return back possession of the said property that is why suit was filed which was dismissed.

3. Learned counsel for the appellants would submit as under:

- i) There is ample evidence on record to show that the property was acquired by Motilal, therefore, finding of the trial court that it has not been proved that the original respondent was licensee, is without substance.
- ii) The original appellant and original respondent were cousins and there was cordial relation between them, therefore, expectation of the agreement in writing for

delivery of possession of the said godown is not proper.

- lii) In case of decree, the location of the property was easily demarkable for the purpose of delivery of possession, therefore, finding of the trial court is liable to be set aside.

Reliance has been placed in the matter of **Sodharam vs. Durga Prasad and others, reported in (2006) AIR (CG) 136, R.V.E. Venkatachala Grounder vs. Arulmigu Viswesarswami & V.P. Temple and another, reported in (2003) 8 SCC 752**

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial court is based on proper marshalling of the evidence which is not liable to be interfered with while invoking jurisdiction of the appeal. Reliance has been placed in the matter **Suraj Bhan and others vs. Financial Commissioner and others, reported in (2007) 6 SCC 186.**

5. I have heard learned counsel for the parties and perused the record of the court below in which judgment and decree has been passed.

6 The only question for consideration of this court is whether the original appellant delivered possession of the godown in the year 1994. No written agreement was filed before the trial Court that godown was handed over to original respondent by the original appellant. From the evidence of original appellant's witnesses, namely Sushil Kumar (PW/2) and Bhuvneshwar (PW/3), it is not established that the said godown was handed over to original respondent. On the contrary, respondent deposed before the trial court that he is in possession of the property since life time of his father, therefore, the appellant was required to establish the date of delivery of possession to original respondent but no written agreement was produced before the trial Court and oral evidence adduced on behalf of the original respondent was not sufficient to hold that the original appellant was in possession of the godown in the year 1994.

7. A suit for possession on the basis of title can be filed within 12 years as per Section 65 of the Limitation Act, 1963, but in the present case, it is not established whether the original appellant was ever in possession of the said godown. The trial Court recorded the finding that the parties were having litigation for the property for years together and therefore, it is not possible that any property was delivered to others without reducing the same in writing and that too without rent. The trial Court recorded that it

cannot be held that the original respondent was lessee of original appellant. It is further held by the trial Court that it is not clear on which part of survey No.1053 godown is existing. Therefore, when the property in question is not ascertainable, no executable decree can be passed in favour of the appellant.

8. After re-assessing the entire evidence adduced by both the parties, this court has no reason to record contrary finding. No court can pass unexecutable order. Looking to the evidence, the pleadings of the original appellant were not at all proved. Case laws cited by learned counsel for the appellants do not help to them as the same are distinguishable to the facts of the present case. The appeal is liable to be dismissed.

9) Accordingly, decree is passed in favour of respondents and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju