

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 180 of 2004****Judgment Reserved on 06.11.2019****Judgment delivered on 08.11.2019**

Banshi Ram Sahu, aged about 53 years, S/o Shri Mangloo Ram Sahu, R/o village Chand Khuri Bhatha, Tah. & Distt. Durg (C.G.)

----Appellant/Plaintiff**Versus**

1. Smt. Kali Bai, W/o Keshav Deshmukh
2. Guha, S/o Makhan Chandrakar
3. Makhan Chandrakar, S/o Kedar Nath,

Respondents No. 1 to 3 are resident of village Kuthel, Tah. & Distt. Durg.

4. State of Chhattisgarh, Through Collector, Durg, Distt. Durg (C.G.)

----Respondents/defendants.

For Appellant	:	Mr. V.G. Tamaskar, Advocate.
For Respondents No. 1 to 3	:	None present, though served.
For Respondent No. 4	:	Ms. Anjali Singh Chouhan, PL

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by plaintiff/appellant states as under:

“Whether the courts below were unjustified in dismissing the suit for possession even after holding vide the decision of issue no. 1 that the plaintiff was the owner of the suit lands and he was duly dispossessed by the defendants ?”

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

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiff filed a suit for declaration of title & recovery of possession stating *inter alia* that he has purchased suit land bearing Khasra Nos. 429 & 438/1, area 2.30 acres from one Kachara Bai, widow of Hridayram and came into possession thereof and immediately thereafter he was dispossessed by the defendants No. 1 to 3, as such, he is entitled for decree of declaration of title and possession of the suit land, which was disputed by the defendants No. 1 to 3, by filing written statement, stating *inter alia* that husband of defendant No.1 i.e. Keshav Deshmukh has purchased the aforesaid suit land from one Kachra Bai, widow of Hridayram Chandrakar and after his death, name of defendant No. 1 and his legal heirs were recorded in the revenue records, as such, they have not encroached upon the land owned by the plaintiff.

(2.2) The trial Court, after appreciation the oral and documentary evidence available on record, held that plaintiff is title holder of the suit land bearing Khasra Nos. 429 & 438/1, area 2.30 acres as he has purchased the suit land by registered sale deed dated 15.04.1982 but dismissed the suit on the ground that plaintiff is in possession of suit land.

(5) The plaintiffs preferred first appeal thereagainst. The First appellate Court, by its impugned judgment & decree dated 15.01.2004 in Civil Appeal No. 2-A/2001, after re-appreciating the oral & documentary evidence available on record, affirmed the

judgment and decree of the trial Court by dismissing the appeal, against which this second appeal has been preferred by the appellant/plaintiff in which the substantial question of law has been formulated and set out in the opening paragraph of the judgment.

(6) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in dismissing the suit of the plaintiff after having held that the plaintiff is title holder of the suit land, as such, at least decree of declaration of title could have been granted in favour of the plaintiff, as such, impugned judgment & decree passed by the first appellate Court affirming the judgment & decree of the trial Court deserves to be set aside.

(7) None for respondents No. 1 to 3, though served.

(8) I have heard learned counsel appearing for the appellant/plaintiff, considered his submissions and went through the record with utmost circumspection.

(9) The plaintiff filed a suit for declaration of title as well as for recovery of possession. The trial court while deciding the issues No. 1 & 2 has clearly recorded a finding that plaintiff is title holder of suit land bearing Khasra No.429, 438/1, total area 2.30 acres of the land, which he has purchased by registered sale deed from one Kachra Bai on 15.04.1982 and also while answering the issue No. 4 negated the title of defendant No. 1, but further recorded a finding that the plaintiff has failed to establish that he has been dispossessed by the defendants No. 1 to 3 and thereby dismissed the suit, which the first appellate Court has also maintained while dismissing the appeal preferred by the plaintiff.

(10) Thus, both the courts below have held that plaintiff is title holder of the suit land but failed to prove the fact of dispossession, in that case, the courts below ought to have granted decree for declaration of title in favour of the plaintiff, that has not been done. It was not only a suit for recovery of possession but it was also a suit for declaration of title, therefore, the instant appeal is allowed in part. Impugned judgment & decree passed by the first appellate Court is partly set aside by holding plaintiff is title holder of land bearing Khasra No. 429, area 1.80 and Khasra No. 438/1, area 0.50 acre, total 2.30 acres of the land situated at village Kuthrail, Tahsil & District Durg. However, the suit for recovery of possession, which was dismissed by both the courts below, are hereby reaffirmed as the finding that defendants have not dispossessed the plaintiff is a finding of fact based on material available on record. I do not find it either perverse or contrary to record. Consequently, the second appeal is allowed in part. No cost(s).

(11) Decree be drawn up accordingly.

(Sanjay K. Agrawal)
Judge

D/-