

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No. 525 of 2007

1. Narayan Prasad Suryavanshi aged about 40 years.
2. Manohar Lal Suryavanshi aged about 45 years.
Both S/o. Bishram Suryavanshi, R/o. Village- Sarwan Deori, Tah. & Distt. Bilaspur, Chhattisgarh.

---- Appellants/Plaintiffs

Versus

1. Smt. Nirabai W/o Lalta Prasad, aged about 50 years Ex- Sarpanch, Gram Panchayat, Kairkhundi.
2. Geetaram S/o Lalta Prasad, aged about 36 years Ex- Sarpanch, Gram Panchayat, Kairkhundi.
3. Madho Aged about 65 years S/o. Jagannath.
4. Chaitram S/o Kanhaiyalal Kachhi aged about 65 years.
5. Radhe Shyam Aged about 40 years, S/o. Jhurangi.
6. Ram Kumar S/o Khorbahra aged about 32 years.
7. Chandabai aged about 32 years, W/o. Viashnu Prasad.
8. Ram Kumari aged about 32 years, W/o. Ramdas.
Respondent No.3 Sachiv, 4 to 8 Panch-Gram Panchayat, Khaikhundi).
9. Kriparam Aged about 40 years, S/o. Bodhan.
10. Gangaram aged about 40 years, S/o. Ramlal.
11. Manharn aged about 50 years, S/o. Dhansay.
All are R/o. Village Sarwan Deori, Tah & Distt. Bilaspur, Chhattisgarh)
Wrongly written 2 to 11 R/o. Sarwan Deori.
12. State of Chhattisgarh, through Collector Bilaspur, Chhattisgarh.

---- Respondents/Defendant

For Appellants	: Mr. B.P. Gupta, Advocate.
For Respondent nos.1 - 11	: Mr. Curtis Collins, Advocate on behalf of Mr. Vijay K.Desmukh, Advocate.
For State	: Mr. Saleem Qazi, Dy AG.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

18/07/2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiffs is as under :-

“Whether the lower appellate Court was justified in reversing the judgment and decree passed by the trial Court in Civil Suit No.183-A/2002 on the ground that notice under Section 80 C.P.C was not given to the State Government ?”

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

2. The plaintiffs filed a suit for declaration of title and permanent injunction stating *inter-alia* that defendant Nos.1 to 11 are interfering with their possession by digging the land for the purpose of construction work of Gram Panchayat, Khairkhundi as such they cannot do that and, therefore, temporary injunction and thereafter, decree for declaration that they are possession holders and title holders of the suit land be granted and defendants No.1 to 11 be restrained from interfering with their possession.
3. The trial Court framed as many as eight issues including, whether the suit is maintainable for want of notice under Section 80 of the CPC, but ultimately, after appreciating oral and documentary evidence available on record, the suit was decreed granting declaration of title and confirmation of possession and permanent injunction in favour of the plaintiffs.
4. Defendant Nos.1 to 11 preferred first appeal and the learned First Appellate Court by its impugned judgment and decree held that the suit land bearing Khasra No.894 is the Government land and therefore, serving the service of notice under Section 80 of the C.P.C was mandatory before instituting the suit and thereby allowed the appeal and set aside the judgment and decree of the learned trial Court and dismissed the suit, against which, this second appeal has been preferred by the plaintiffs.

5. Mr. B.P. Gupta, learned counsel for the appellants/plaintiffs, would submit that no relief was claimed by the plaintiffs against the State of Chhattisgarh and in fact, no relief was granted against the State by the learned trial Court and, therefore, notice under Section 80 of the C.P.C was not necessary, as such, the judgment and decree of the learned First Appellate Court deserve to be set aside and that of the trial Court be restored.
6. No return has been filed by the State Government.
7. Learned counsel for respondent Nos.1 to 11 and learned counsel for the State would support the impugned judgment and decree.
8. I have heard learned counsel for the parties and considered their rival submissions made herein above and also went through the records with utmost circumspection.
9. The documents filed by the plaintiffs (Ex.P-2 & Ex.P-3) would clearly show that the suit land is owned by the State Government and only in the remarks' column, plaintiffs' father's name is recorded. The learned First Appellate Court on the basis of appreciation of oral and documentary evidence available on record has clearly come to the conclusion that the suit land is Government land and in that view of the matter, notice under Section 80 of the C.P.C was mandatory.
10. In the matter of **State of A.P & Ors Versus Pioneer Builders, A.P**¹ it has been held by the Supreme Court that service of notice under Section 80 of the C.P.C is a condition precedent for institution of suit against

1 2006 12 SCC 119

Government or public officer. It imposes a statutory and unqualified obligation and in absence of compliance with Section 80 of the C.P.C thereof, suit is not maintainable except where Section 82 of the C.P.C applies, likewise in the matter of **Prem Lala Nahata & Anr. Versus Chandi Prasad Sikariya.P**², the Supreme Court has held that notice under Section 80 of C.P.C is mandatory.

11.Reverting to the facts of the case, it is quite vivid that the learned trial Court though framed the issue with regard to the service of notice under Section 80 of the CPC, but the learned trial Court erroneously held that before instituting the suit, the notice has already been served to the subordinate officer of the State Government, therefore, suit cannot held to be not maintainable for want of notice. The learned First Appellate Court has rightly noticed the suit land being the Government land and, therefore, notice under Section 80 of the C.P.C is mandatory and set aside the judgment and decree of the learned trial Court and dismissed the suit.

12.In the considered opinion of this Court, the suit land being the Government land, admittedly, notice under Section 80 of the C.P.C was necessary, which the learned First Appellate Court has rightly held and dismissed the suit and, as such, I do not find any perversity or illegality in the impugned judgment and decree passed by the learned First Appellate Court.

13. Consequently, the second appeal deserves to be and is accordingly dismissed affirming the judgment and decree of the learned First

Appellate Court. Plaintiffs shall bear their own costs as well as the costs of the defendants.

14. Decree be drawn-up accordingly.

Sd /-
(Sanjay K. Agrawal)
Judge

J/-