

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 83 of 2003

1. Heeravan (Died) Through Legal Heirs-

(i) Ramkhilawan S/o Hirawan Aged About 48 Years R/o Vill- Sonpuri Tah. Mungeli, District Bilaspur, District : Bilaspur, Chhattisgarh

(ii) Umed Prasad S/o Hirawan Aged About 42 Years R/o Vill- Sonpuri, Tah. Mungeli, District Bilaspur, District : Bilaspur, Chhattisgarh

---- Appellants

Versus

1. Amar Das S/o Khorbahra, Aged About 37 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Devprasad S/o Khorbahra, Aged About 39 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Bharat S/o Khorbahra, Aged About 35 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Dayaldas S/o Gangaram, Aged About 47 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
5. Manorath S/o Gangaram, Aged About 43 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
6. Rajan S/o Gangaram, Aged About 41 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
7. Savitri Bai D/o Gangaram, Aged About 39 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
8. Chander S/o Gangaram Aged About 37 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
9. Baby D/o. Gangaram Aged About 32 Years R/o. Village Sonpuri, Tah. Mungeli, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
10. (Deleted) Mongra Bai As Per Honble Court Order Date- 22-02-2019.
11. (Deleted) Khorbahra As Per Honble Court Order Date- 22-02-2019.
12. State Of M.P. (Now C.G.) Through Collector Bilaspur, District : Bilaspur, Chhattisgarh

---- Respondents

For Appellant/Defendant	: Shri Shreekumar Agrawal, Senior Advocate with Shri Anand Kumar Gupta, Advocate
For Res./Plaintiffs No. 1 to 3	: Shri Aditya Bhardwaj, Advocate on behalf of Shri B.D. Guru, Advocate
For State	: Shri Anmol Sharma, Panel Lawyer

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

06/11/2019

1. This appeal is directed against the impugned judgment and decree dated 9th January 2003 passed by learned Additional District Judge, Mungeli, whereby the learned lower appellate Court, reversing the judgment and decree dated 18.8.1986, passed by learned Civil Judge Class-I, Mungeli in Civil Suit No.43-A of 1981, has decreed plaintiff's suit.
2. The respondents- plaintiffs filed a suit seeking a declaratory decree on the pleadings, inter alia, that their father- Khorbahara (defendant No.4) had received extensive property admeasuring 11.20 acres of land as described in Schedule-"A" appended to the plaint from his ancestors. Plaintiffs' case was that the plaintiffs being sons of Khorbahara were also shareholders in the disputed property along with their father- Khorbahara. According to the plaintiffs, the property comprised in 11.23 acres was joint family property of the plaintiffs and their father which was being cultivated by them. Further case of the plaintiffs is that in the month of January 1977, when defendant No.3- Heeravan threatened to reap the crops over the disputed land as shown in Schedule- "B" which led to dispute, then upon inquiry, the plaintiffs came to know that their father/defendant No.4 had earlier sold the disputed property in favour of Mongara Bai (defendant No.2) by sale deed and later on, these properties were sold by defendant- Gangaram in favour of defendant No.3- Heeravan by registered sale deed. According to the plaintiffs, their father had sold the property without there being any legal necessity and such sale deed, therefore, is not binding on them. Further case was that when a dispute with regard to possession arose, proceedings under Section 145 Cr.P.C. were drawn and the property was attached. According to the plaintiffs,

till the property was attached, it was in the possession of the plaintiffs only. On the said cause of action, the plaintiffs filed suit seeking relief of declaration that the plaintiffs be declared title holder of the property in dispute and entitled to remain in possession thereof.

3. The case of defendant No.3- Heeravan was that property in dispute shown in Schedule-"B" was sold by Khorbahara, father of the plaintiffs to Mongarabai by registered sale deed (Ex.D1) and, thereafter, property was sold to Heeravan by another sale deed (Ex.D-2) on 20.6.1974 and he came in possession of the property. According to this defendant, Khorbahara was facing criminal case and in order to meet the expenses of litigation and another family needs, he sold the disputed property which was for permissible legal necessity of the family.
4. Learned trial Court recorded a finding that the property in dispute was sold by Khorbaharan by registered sale deed to Mongarabai and thereafter, the title was transferred in favour of Heeravan, the defendant-Heeravan was found to be in cultivating possession of the property in dispute, holding that the plaintiffs failed to prove his case that there was no legal necessity for sale of the property in dispute and thus, suit was dismissed.
5. On appeal preferred by the plaintiffs, learned lower appellate Court, however, reversed the judgment and decree by holding that it was for the defendant to establish that the property which was admittedly joint family property of the plaintiffs and Khorbahara was actually sold for legal necessity. On such finding, the learned lower appellate Court decreed the suit of the plaintiffs.
6. This appeal was admitted on the following sole substantial question of law:

"Whether in absence of obligatory claim of relief of possession, suit for mere declaration of title and mere declaration of entitlement of

possession was maintainable under the proviso to Section 34 of the Specific Relief Act, 1963? "

7. Learned senior counsel appearing for the appellants-defendants would make a short and pointed submission that the plaintiffs' suit itself was not maintainable in view of provision contained in Section 34 of the Specific Relief Act, 1963. He would submit that, though, the plaintiffs came out with a case that the plaintiffs were in cultivating possession of the disputed property described in Schedule-"B" of the plaint and that till its attachment, they were in possession of the property, learned trial Court clearly recorded a finding that the property in dispute was sold to Mongara Bai by Khorbaharan and, thereafter, purchased by Heeravan and that Heeravan is in cultivating possession of the property in dispute. This finding of learned trial Court was not traversed in appeal before learned lower appellate Court. According to learned counsel for the appellant-defendant, the plaintiffs having sought only declaratory relief without any consequential relief either of decree of permanent injunction or any alternative relief to the effect that if they are not found to be in possession, for recovery of possession, the suit itself was not maintainable and liable to be dismissed.
8. Learned counsel for the respondents- plaintiff, however, would argue that the plaintiffs' suit, as pleaded, was that the plaintiffs are in possession of the property in dispute. It was not necessary for the plaintiffs to seek other consequential relief because appropriate relief could always be granted by moulding the reliefs. He would argue that in the plaint, the plaintiffs clearly pleaded in the relief clause that a decree of declaration of title of plaintiffs be granted and it be also declared that the plaintiffs are entitled to remain in possession of the property coupled with residuary relief clause that any other relief as may be appropriate in the circumstances of the case be also granted.

Therefore, it is argued, that even if it was found that the plaintiffs were not in possession of the property in dispute, appropriate relief of recovery of possession could be granted in their favour, once it is held that the plaintiffs are entitled to appropriate declaratory relief.

9. I have heard learned counsel for the parties and perused the records of the Courts below.
10. The plaint's averments as contained in the plaint are that the property in dispute belonged to Khorbaharan. According to plaintiffs, Khorbaharan owned 11.20 acres of land described in Schedule-"A". However, the disputed property is only to the extent of 7.01 acres as described in Schedule-"B". According to the plaintiffs, in the year 1977, defendant No.3- Heeravan started interfering with the plaintiffs' possession, which led to serious dispute and attachment of property and that gave the plaintiffs cause of action for filing a suit. In the plaint, the plaintiffs throughout maintained that the plaintiffs always remained in cultivating possession of the property. In para-9 of the plaint also, it was averred by the plaintiffs that till attachment, the plaintiffs were in possession of the disputed property. The relief sought by the plaintiffs was as below:--

"14.अतः प्रार्थना है कि वादीगण के पक्ष में निम्नलिखित आज्ञाप्ति दी जावे :-
:अ: यह अधिघोषित किया जावे कि वादग्रस्त भूमि वादीगण के स्वामित्व की है तथा वादीगण उस पर काबिज रहने के अधिकारी हैं ।
:ब: वाद व्यय दिलाया जावे ।
:स: अन्य कोई अनुतोष जो न्यायालय वाद की परिस्थितियों में उचित समझें वादीगण को दिलावें ।"

11. It would thus be seen that the plaintiffs sought declaration of their own title in respect of land in dispute and also a declaration that they are entitled to remain in possession of the property in dispute. Except this, a residuary relief clause and relief for costs was made. But the

plaintiffs neither sought relief of injunction nor they asked for any relief in alternative that if they are not found to be in possession, a decree of possession be also granted in their favour. Learned trial Court recorded specific finding on issue No.3 that Heeravan being bonafide purchaser from Mongra Bai is in possession of the property in dispute and is entitled to continue in possession. This specific finding of learned trial Court has remained untraversed in the first appeal also.

12. Section 34 of the Specific Relief Act provides as under:

“34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

13. It is settled legal position that where the plaintiff is entitled to consequential relief, he is required to seek that relief, failing which the suit itself would not be maintainable for want of seeking consequential relief.

14. Applying the aforesaid legal position to the present case, it is evident that the plaintiffs only sought declaratory relief that they are the title holder and in possession of the property in dispute. There was no

alternative relief sought by the plaintiffs that in case they are not found to be in possession of the property, a decree of possession be also granted in their favour. In fact, according to the plaintiffs, they were in possession of the property, but, even then they did not seek any relief of injunction against the defendant that they be restrained from interfering with plaintiff's possession. Plaintiffs' suit was apparently not maintainable for want of consequential relief of recovery of possession. Once the finding that defendant No.3 is in possession of the property attains finality, the plaintiffs' suit is liable to be dismissed only on the ground that for want of seeking appropriate relief for recovery of possession, suit itself was not maintainable.

15. Accordingly, the question of law is answered in affirmative in favour of appellant-defendant and against respondent-plaintiffs.
16. In the result, the appeal is allowed. Impugned judgment and decree passed by learned lower appellate Court is set aside. Parties to bear their respective costs.
17. Let appellate decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge