

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.328 of 2004**

1. Tulsi Ram aged about 30 years S/o Dukalu Gond.
2. Itwari aged 28 years S/o Dukalu Gond.
3. Sunder Singh aged 34 years S/o Dukalu Gond.

All residnet of Village Salouni, Patwari halka No.73, R.I. Circle and Tehsil Baloda Bazar, District Raipur (CG)

---- Appellants

Versus

1. Bhaira S/o Johan Satnami, r/o Saloni, Thana and Tehsil Baloda Bazar, District Raipur (CG)
2. State of Chhattisgarh, through Collector Raipur (CG)
3. Daras Ram S/o Abhay Ram Gond, r/o Village Salouni, Tehsil Baloda Bazar, District Raipur (CG)

---- Respondents

For Appellants/Defendants 1 to 3: Mr.Awadh Tripathi and Mr.Vivek Tripathi, Advocates

For Respondent No.1/Plaintiff : Mr.Pritam Tiwari, Advocate

For Respondent No.2/State : Mr.Vimlesh Bajpai, G.A.

For Respondent No.3 : Mr.Abhishek Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/02/2019

1. The substantial question of law involved, formulated and to be answered by this Court in this second appeal preferred by defendants

No.1 to 3 is as under:-

“Whether the lower appellate Court was justified in decreeing the suit for declaration and possession, especially in the light of admission of respondent No.1 relating to possession over the suit property from the alleged date of purchase by respondent No.1 ?”

[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 plaintiff filed a suit for declaration of title against defendants No.1 to 3 and 5 stating inter-alia that he is owner and title-holder of the suit land, therefore, he is entitled for decree for declaration of title. By way of amendment on 17.12.1996, he also claimed relief of possession over the suit land.

3. Defendants No.1 to 3 by filing written statement set up a plea that they have purchased the suit land by way of registered sale deeds dated 8.4.81 (Ex.D/1) and 25.3.1983 (Ex.D/6) from defendant No.5 and thereby became owner and in possession of the suit land. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 29.4.2003, held that the plaintiff is title-holder of the suit land and defendant No.5 has not purchased the suit land from the plaintiff. Defendants No.1 to 3 are in possession of the suit land, but dismissed the suit of the plaintiff holding that the plaintiff has only filed a bare suit for declaration of title and he has not sought consequential relief of recovery of possession, therefore, the suit is barred by proviso to Section 34 of the Specific Relief Act, 1963 (hereinafter called as "the Act of 1963"). On appeal being preferred by the plaintiff, the First Appellate Court by holding that the plaintiff has also claimed relief of possession on 17.12.1996 allowed the appeal and decreed the suit. Questioning legality and validity of the

judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants No.1 to 3, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

4. Mr.Vivek Tripathi, learned counsel for the appellants/defendants No.1 to 3, would submit that the First Appellate Court is absolutely unjustified in granting relief of declaration of title and possession as possession of defendants No.1 to 3 has been admitted by the plaintiff Court from the date of purchase of the suit land. Therefore, the judgment and decree passed by the First Appellate Court deserves to be set aside.

5. On the other hand, Mr.Pritam Tiwari, learned counsel for respondent No.1/plaintiff, would support the impugned judgment and decree.

6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

7. The plaintiff initially filed a suit for declaration of title, but latter on he was permitted to claim relief of possession by order dated 17.12.1996, as such, the suit was for declaration of title and for recovery of possession. The trial Court held that the plaintiff is title-holder of the suit land and defendants No.1 to 3 have no title over

the suit land, but declined to grant decree for declaration of title and recovery of possession on the premises that the plaintiff has not claimed consequential relief of possession in the plaint, therefore, the suit is barred by proviso to Section 34 of the Act of 1963. In first appeal preferred by the plaintiff, the First Appellate Court has rightly noticed that consequential relief of possession has been asked for by the plaintiff and since the plaintiff has already been held to be title-holder of the suit land by the trial Court, which has not been questioned by defendants No.1 to 3 by filing appeal/cross-objection, the First Appellate Court in my mind rightly granted a decree for declaration of title and recovery of possession as the suit was not barred by proviso to Section 34 of the Act of 1963. Since, it is a finding of the trial Court that defendants No.1 to 3 are in possession of the suit land and the plaintiff has asked for relief of possession, which has rightly been granted by the First Appellate Court, in which I do not find any perversity or illegality. The substantial question of law is answered in favour of the plaintiff and against defendants No.1 to 3.

8. Accordingly, the second appeal is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

9. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge