

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.366 of 2002

Ramkhelawan Mistri (Dead) Through LRs

(Plaintiff)

- i. Smt. Barti Kuwar, aged about 55 years, Wd/o late Sukul (Daughter in law of appellant)
- ii. Reeta Devi, aged about 45 years, W/o Suchit (daughter of appellant)

Both R/o Ramanujganj, Tahsil & District Balrampur-Ramanujganj (C.G.)

---- Appellants

Versus

1. Ganesh (Dead) Through LRs

(a) Smt. Panbashiya Devi, Wd/o Ganesh Nageshya, aged about 50 years

(b) Smt. Jhubali Devi @ Nanki, W/o Ramnath Nageshya, aged about 26 years, D/o Ganesh Nageshya

Both R/o Ward No.1, Post Ramanujganj, Tahsil Pal, District Surguja (C.G.)

2. Kailash (Dead) Through LR

(i) Rani, aged about 40 years, D/o late Kailash, R/o Ward No.1, Post Ramanujganj, Tahsil Pal, District Surguja (C.G.)

3. Rajaram, S/o Jadunath, Aged 42 years, R/o Vill. Ramanujganj, Ward No.1, Tah. Pal, Distt. Sarguja

4. Jagdish Singh (Dead) Through LRs

(A) Vijay Singh, S/o Late Jagdish Singh, aged about 45 years,

(B) Sumer Singh, S/o Late Jagdish Singh, aged about 40 years,

(C) Sanjay Singh, S/o Late Jagdish Singh, aged about 55 years,

All R/o Village Ramanujganj, Tahsil Ramanujganj, Distt. Balrampur (C.G.)

5. The State of Chhattisgarh, Through Collector, Sarguja (C.G.)

(Defendants)

---- Respondents

For Appellants: Mr. Sanjay Agrawal, Advocate.
For Respondents No.1(a), (b), 2(i), 3 and 4(A) to (C): -

Mr. Vijay K. Deshmukh, Advocate.
For Respondent No.5 / State: -
Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

06/02/2019

1. The substantial questions of law formulated for determination while admitting the appeal state as under: -

“i) Whether the two Courts below were justified in not considering the claim of the appellant in respect of the title over the land measuring 4.023 hectare in Khasra No.78/2?

ii) Whether the finding arrived at by the two Courts below in refusing to grant the relief as prayed by the appellant on the ground of non production of the Patta was justified?”

(For the sake of convenience, parties would be referred as per their status shown in the trial Court.)

2. The plaintiff filed suit for declaration of title that he is owner and title holder of Khasra No.78/2, area 4.023 hectares, in which defendant No.1 has encroached and constructing his house, that be demolished and he be given possession and further sought permanent injunction against defendants No.1, 2, 3 and 4.
3. After appreciation of oral and documentary evidence, the trial Court recorded finding that the plaintiff is in possession of only 2 acres of land and rest of the land is possessed by the defendants and granted declaration and permanent injunction for 2 acres of land and dismissed the rest of the claim, as the plaintiff is not in possession of the suit land except 2 acres and not claimed recovery of possession from the defendants which was upheld by the first appellate Court in appeal against which this second appeal has been preferred in which the substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.

4. Mr. Sanjay Agrawal, learned counsel appearing for the appellants/ plaintiffs, submits that concurrent finding recorded by the Courts below in not considering the claim of entire suit land is perverse and contrary to record, as patta was not produced by whom the Bhumiswami right was granted to the plaintiff.
5. On the other hand, Mr. Vijay K. Deshmukh, learned counsel appearing for the defendants/respondents No.1 to 4 opposes the submission.
6. I have heard learned counsel for the parties and went through the record with utmost circumspection.
7. The plaintiff claimed that he is owner and title-holder of Khasra No.78/2, area 4.023 hectares, and further claimed that defendant No.1 has encroached upon the said land between 27-1-1991 to 3-2-1991 and constructed house which be demolished and he be given permanent possession of the land. The trial Court found that the plaintiff is in possession of the suit land to the extent of 2 acres only and thereby granted declaration of title and permanent injunction to that extent. The trial Court further held that encroachment by defendant No.1 is not proved and dismissed the rest of the claim on the ground that the plaintiff is not in possession of the suit land which was challenged in appeal, but the appellate Court has also concurred and agreed with the reasonings entered into by the trial Court. It is un-controverted position on record that the plaintiff is in possession of only 2 acres of land to which the trial Court has already granted declaration of title and permanent injunction, but rest of the land is neither in his possession nor he sought for possession from the defendants and even the patta has been held to be not genuine by the trial Court.
8. Proviso to Section 34 of the Specific Relief Act, 1963 provides as

under: -

“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.”

9. In the instant case, the plaintiff filing suit for declaration ought to have claimed consequential relief of possession so far as the suit land in which he is not in possession which admittedly he failed to claim as such the plaintiff is not in possession of the remaining land and he has not sought consequential relief of possession, therefore, his suit is partly barred by the proviso to Section 34 of the Specific Relief Act, 1963 to the extent of suit land in which he is admittedly not in possession. As such, both the Courts below are justified in partly dismissing the suit of the plaintiff in which I do not find any perversity or illegality. The second appeal deserves to be and is accordingly dismissed. The substantial questions of law are answered accordingly. No order as to cost(s).
10. It is made clear that the question of genuineness of patta is kept open for the plaintiff to be raised in appropriate proceeding, as the patta has been produced before this Court for the first time.
11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma