

HIGH COURT OF CHHATTISGARH, BILASPUR
Second Appeal No.449 of 2006

Hari Prasad S/o Sadhu Lal Kachhi – Dead – By LRs.

1. Teerath Prasad age 38 years S/o Hari Prasad
 2. Sheetal Prasad age 34 years S/o Hari Prasad
 3. Uttam Prasad age 25 years, S/o Hari Prasad
 4. Vijay Kumar age 20 years, S/o Hari Prasad
 5. Ajay Kumar age 16 years, S/o Hari Prasad
 6. Ajay Kumar, aged about 16 years, S/o Hari Prasad, minor, through his natural guardian i.e. the mother Kalawati, aged about 64 years, widow of Late Hariprasad (i.e. appellant No.6)
 7. Renuka age 29 years D/o Hari Prasad
 8. Rekha age 18 years D/o Hari Prasad
- All are resident of Village Pendra, Purani Basti, Pendra, P.S. Pendra, Distt. Bilaspur (CG)

---- Appellants/Defendants

Versus

1. Janak Lal age 75 years, S/o Sundar Lal Kachhi R/o Pendra, Tahsil-Pendra, Purani Basti, Distt. Bilaspur (CG)
2. Ramma Bai (Dead) through her LRs
 - 2(a) Bharatlal Kachhi son of Janklal Kachhi, R/o Purani Basti, Pendra, District Bilaspur (CG)
 - 2(b) Kantilal son of Janklal Kachhi, R/o Purani Basti, Pendra, District Bilaspur (CG)
 - 2(c) Chanda Bai D/o Janklal Kachhi, R/o Purani Basti, Pendra, District Bilaspur (CG)

---- Respondents/Plaintiffs

3. State of M.P. (Now State of C.G.) through Collector, Bilaspur

---- Respondents

For Appellants/LR's of : Mr.Jitendra Gupta, Advocate
 Defendant

For Res.No.1 and LR's : Mr.Dhirendra Mishra, Advocate
 of Res.No.2

For Respondent No.3 : Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

11/12/2019

1. This defendant's second appeal under Section 100 of the CPC was admitted for hearing by formulating the

following substantial question of law: -

"Whether the trial Court as well as the first appellate Court were justified in granting decree for permanent injunction in favour of the plaintiffs after having held that plaintiffs do not have any title over the suit land by recording a finding which is perverse and contrary to record ?"

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

2. The plaintiffs firstly filed a suit for permanent injunction and thereafter by amendment also prayed for declaration of title stating inter-alia that they are title-holders of the suit land shown in the map annexed with the plaint and they are staying in the suit accommodation for a fairly long time and deposited tax to the Municipal Council, Pendra. The defendant is trying to interfere with their possession on the basis of decree dated 24.7.80 passed in his favour with respect to Khasra Nos.2150 and 1832, as such, they are entitled for declaration of title and permanent injunction.
3. The defendant set up a plea that the suit land on which the house is constructed is his own land, but thereafter on 8.9.99 amended his written statement stating inter-alia that the suit land on which the plaintiffs are alleged to have constructed their house is adjoining to his land bearing Khasra No.2150

area 1.07 decimal and he got a decree vide Ex.D-2 and as such, the plaintiffs have no title over the suit land.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 20.10.99, held that neither the plaintiff nor the defendants are title-holders of the suit land, but since the plaintiffs are settled their possession over the suit land for a fairly long time, they are entitled for permanent injunction. On appeal being preferred by the defendant under Section 96 of the CPC before the first appellate Court, the said Court affirmed the finding of the trial Court, against which, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant before this Court, in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

5. Mr.Jitendra Gupta, learned counsel for the appellants/legal representatives of the defendant, would submit that both the Courts below have committed illegality in granting decree for permanent injunction after holding that the plaintiffs are not title-holders of the suit land, as such, the appeal deserves to be dismissed.

6. On the other hand, Mr.Dhirendra Mishra, learned counsel for respondent No.1 and legal representatives

of respondent No.2, would support the impugned judgment and decree. He relied upon the judgment of the Supreme Court in the matter of **M. Kallappa Setty v. M.V. Lakshminarayana Rao**¹.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and went through the record with utmost circumspection.
8. The trial Court as well as the first appellate Court after holding that neither the plaintiffs nor the defendants have title over the suit land and it is independent land, but finding the plaintiff is in long and settled possession over the suit land, proceeded to grant decree for permanent injunction in their favour. The defendant while filing written statement took a plea that the suit land on which the house is said to have been constructed by the plaintiffs is their land (defendants), but thereafter on 8.9.99 amended his written statement stating inter-alia that the suit land on which the plaintiffs are alleged to have constructed their house is adjoining to the defendant's land bearing Khasra No.2150 area 1.07 decimal, which was decreed in his favour vide Exs.D-2 to D-7 and after amendment it has been inserted that the suit house is situated in the land held by him. After appreciating oral and

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documentary evidence available on record, the trial Court held that the defendants have also failed to establish that the suit land is owned by them which he got possession vide Exs.D-2 to D-7 by a decree of the civil Court. Since, the trial Court found that the plaintiffs have no title over the suit land, but considering that the plaintiffs are settled possession over the suit land for a fairly long time, proceeded to grant decree for permanent injunction, which is based on evidence available on record [See M. Kallappa Setty (supra)]. It is neither perverse nor contrary to record. The substantial question of law is answered in favour of the plaintiffs and against the defendant.

9. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s). However, this will not preclude the legal representatives of the defendant to assert their title by independent proceeding in accordance with law.

10. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-