

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 1-3-2019

Judgment delivered on 29-03-2019

FA No. 102 of 2006

1. Tarun Kumar Dey s/o. Nirmal Kumar Dey aged about 35 years.
2. Smt. Reema Dey w/o. Tarun Kumar Dey, aged about 30 years.

Both r/o. Mata Deva,aya Ward, Bhatapara, Dist. Raipur (CG).

----Appellants

Versus

1. Nirmal Kumar Dey s/o. Latwe Khagendranath Dey aged about 64 years (died and deleted) through Lrs.
 - 1.1 Vikas Kumar Dey s/o. Late NirmalKuamr Dey, aged about 47 years, r/o. Mata Devalaya Ward, Bhatapara, District Baloda Bazar – Bhatapara (CG).
 - 1.2 Sulekha Rai w/o. ShriVishwajeet Rai, aged about 45 years, r/o. Ratakhar, Korba, Dist. Korba (CG).
2. Smt. Malti Rani w/o. Nirmal Kumar Dey, aged about 55 years, r/o.Mata Devalaya Ward, Bhatapara, Dist.Raipur (CG).

---- Respondents

For appellants : Ms. Sharmila Singhai, Advocate

For respondents : Mr. Malay Shrivastava, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 14-2-2006 passed by the Additional District Judge, Bhatapara, Dist Raipur (CG) in Civil Suit No. 4-A/2005 wherein the said court decreed the

suit in favour of original respondent No.1 namely Nirmal Kumar Dey and respondent No.2 Smt. Malti Rani for declaration of title, eviction of the appellants and injunction regarding house in question at Survey No. 110/83 and 110/88 situated at village Mata Devalaya Ward, Bhatapara.

2. Appellant No.1 is son of late respondent No.1 Nirmal Kumar Dey and appellant No.2 Smt. Reema Dey is wife of appellant No.1.. As per version of respondents No. 1 and 2 after retirement of respondent No.1 from Railways he constructed the house in the land in question which was constructed from retiral benefits. Appellants harassed the original respondents No. 1 and 2 and due to constant harassment they filed a suit which is decreed by the trial Court. As per version of the appellants, the house was constructed jointly by the original respondent No.1 and appellants and they did not harass them, even then the trial Court decreed suit.

3) Learned counsel for the appellants would submit as under:

i) The trial Court erred in holding that the appellants have not incurred any money for construction of disputed house whereas Tarun Kumar (DW/1) has clearly stated that he spent about Rs. 2 1/2 lakhs for constructing the house.

ii) As per version of Smt. Sulekha (PW/3) at

the time of “Grih Pravesh” all the family members including the present appellants were present, therefore, it cannot be said that the appellants forcibly entered into the house of the respondents.

iii) Firoz Khan (DW/5) deposed before the trial court that the windows and grills for disputed house were manufactured by him and the payment was made by the appellant No.1 which shows that the appellant No.1 contributed in construction of the house.

iv) Respondent No.1 failed to produce evidence of contractor, plumber and Architect regarding the construction of house, therefore, finding of the trial court is set aside.

4) On the other hand, learned counsel for the respondents would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal,.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) From the evidence of Nirmal Kumar Dey (PW/1) and Smt. Malati Dey (PW/2) it is established that the land in which the

house was constructed was purchased by respondent No.1 Nirmal Kumar Dey in the name of his wife/respondent No.2 Smt. Malti Rani for which sale deed was executed as per Exs.P/1 and P/2. Ex.P/1 was valued to Rs.24,000/- and Ex.P/2 was valued to Rs. 16,390/-. From the evidence it is established that Nirmal Kumar Dey was earlier working in Railways who retired from services and got his retiral benefit dues amounting to Rs.6,09,370/-. There was no documentary evidence in rebuttal of the same, therefore, it is established that from the record that the land for constructing the house was purchased by respondent No.1 out of his retiral dues received by him from Railways. Though appellant Tarun Kumar (DW/1) deposed before the trial Court that he also contributed money for construction of house, but no documentary evidence is adduced by him before the trial Court. One Firoz Khan (DW/5) deposed before the trial court that he had constructed some railing and windows for which the amount was paid by appellant Tarun Kumar but his version is not substantiated by any documentary evidence. From his statement it is not clear as to when the said articles were manufactured by him and how much amount was paid to him and whether it is recorded by him or not. Therefore, version of the appellant is plainly based on bald statement which is not substantiated by the documentary evidence.

7) Looking to the entire evidence of both sides, the trial Court opined that the appellant has not contributed any money in constructing the house and house was completely constructed by late respondent No.1. Finding of the trial Court is based on oral and documentary evidence adduced by both sides and this court has no reason to substitute contrary finding.

8. From the evidence of Gopal Prasad Shukla (PW/4), Ashok Kumar Sen (PW/5) and Satish (PW/6) it is established that appellant harassed the respondent No.1 Nirmal Kumar Dey that is why one meeting was convened and while trying to settle the dispute, the appellant Tarun Kumar did not hear their voice. Version of these witnesses is unrebutted that is why the trial Court recorded the finding that the appellant harassed the real owner of the property and they are liable to be evicted. Looking to the sufficient evidence on record and finding of the trial court is based on preponderance of probability and appellant had no right to stay in the house after harassing the real owner of the house in question.

9) Learned counsel for the appellant would further submit that without there being relief of possession, decree of injunction cannot be granted.

10) In the present case, injunction is sought on the ground of title and relief of injunction is consequential which is proved before

the trial Court and when original respondents No. 1 and 2 were already in possession of the house in question being owners of the said house, the trial Court is right in granting decree against injunction. It is for the owner to stay or not to stay with any person who is staying without right, therefore, finding of the trial Court does not call for any interference by this-court.

11) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju