

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.79 of 2009

1. Suresh Kumar, S/o Brijmohan Singhaniya, Aged about 24 years, Occupation Agriculturist, R/o Village Khamhriya Dhekapur, Tahsil Bemetara, District Durg (C.G.)
2. Smt. Choupai Devi, Wd/o Ghevarchand, aged about 60 years, Occupation Agriculturist
3. Sanjay Singhaniya, S/o Ghevarchand, aged about 35 years, Occupation Agriculturist, R/o Samta Colony, Behind Amrit Talkies, Tahsil & District Raipur (C.G.)
4. Smt Sarita, Wd/o Gopal Agrawal, aged about 41 years, R/o Tiroda, District Bhandara (Maharashtra)

(Plaintiffs)
---- Appellants

Versus

1. State of Chhattisgarh, Through Collector, Durg.
2. Ashish Kumar, Aged about 35 years, S/o Punaram, Agriculturist
3. Smt Victoriya Bai, aged about 60 years, Wd/o Punaram, Agriculturist,

Both R/o Village Dhekapur, Tahsil Saja, District Durg (C.G.)
4. Dwarika, S/o Ramchandra, Aged about 35 years, Occupation Agriculture, R/o Village Dhekapur, Tahsil Bemetara, District Durg (C.G.)
5. Rupsingh @ Bhupat Singh, S/o Chatussingh, Aged about 40 years,
6. Rajasingh, S/o Chatussingh, aged about 31 years, Occupation Agriculturist,

Both R/o Village Thekapur, Tahsil Saja, District Durg
7. Smt Kejabai, W/o Bhuwan, Agd about 37 years, Agriculturist, R/o Village Dhangaon, Tahsil & District Kawardha
8. Smt Umabai, W/o Bali, Aged about 36 years, Agriculturist, R/o Kadai, Tahsil Bemetara, District Durg (C.G.)

9. Smt Bimla Bai, W/o Shivcharan, Aged about 34 years, R/o Village Semariya, Tahsil & District Kawardha.
10. Futubai, W/o Shravan Kumar, Aged about 32 years, R/o Sonbarsa, Tahsil & District Kawardha.
11. Smt Mandakani Bai, W/o Chatur, Aged about 22 years, Agriculturist, R/o Thekapur, Tahsil Bemetara (Saja), District Durg (C.G.)
12. Dakvarsingh, S/o Anjor Singh, Aged about 42 years, R/o Village Munglatola, Tah Saja, District Durg (C.G.)
13. Shankar, S/o Anjor Singh, Aged about 35 years, R/o Village Munglatola, Tah Saja, District Durg (C.G.)
14. Gajendra, S/o Anjor Singh, Aged about 35 years, R/o Village Munglatola, Tah Saja, District Durg (C.G.)
15. A. Smt Gayatri Bai, Wd/o Kamta Prasad, Aged about 36 years,
 B. Balram, S/o Kamta Prasad, Aged about 15 years,
 C. Gorelal, S/o Kamta Prasad, Aged about 19 years,
 D. Ku. Anita, D/o Kamta Prasad, Aged about 19 years,
 No.15B through legal guardian mother Gayatri, Wd/o Kamta Prasad
 All R/o Village Munglatola, Tah Saja, District Durg (C.G.)
16. Tara Bai, W/o Devsingh, Aged about 30 years, R/o Village Jatagharra, Tahsil Dhamdha, District Durg.
17. Shakun, W/o Ganga Singh, Aged about 35 years, R/o Village Kanhpuri, PO Kareli, Tahsil Dhamdha, District Durg.
18. Sarswati, D/o Anjor Singh, Aged about 32 years, R/o Village Rakhi, Tahsil Saja, District Durg (C.G.)
19. Meena Bai, W/o Tamskar Lodhi, Aged about 31 years, R/o Village Padmi, Tah Saja, District Durg (C.G.)
20. Gajra Bai, D/o Anjor Singh, Aged about 28 years, Tahsil Bemetara, District Durg (C.G.)
21. Ramsahay, S/o Dukalu, Aged about 45 years, Occupation Agriculturist, R/o Thekapur, Tahsil Saja, District Durg (C.G.)

(Defendants)
 ---- Respondents

For Appellants / Plaintiffs: -

Mr. Y.C. Sharma, Advocate.

For Respondent No.1 / Defendant No.1 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate and
Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

20/11/2019

1. This plaintiffs' / appellants' second appeal was admitted for hearing on the following substantial question of law: -

"Whether the Court below has erred in holding that the appellants are not bona fide purchasers of the suit land mentioned in paras 2 & 3 of the plaint?"

(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 suit land shown along with the plaint situated at Village Thekapur, now in Tehsil Bemetara, District Durg, earlier held by Rajnandgaon Riyasat, was formally held by one Girdhari as Thekedar. He died leaving no issue and the Thekedari devolved on his widow Smt. Sukhiya Bai. Smt. Sukhiya Bai also died in the year 1947 and on her death, Anjor Singh claimed Thekedari on the ground that he was the adopted son of Girdhari. The claim was rejected by the Deputy Commissioner, Durg on 30-7-1949 and Village Thekapur was declared as a 'Kham' village. The Deputy Commissioner's order was upheld by the Board of

Revenue on 7-3-1951. After the abolition of proprietary rights on 31-3-1951 in former Madhya Pradesh by the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (for short, 'the Act of 1950'), said Anjor Singh – defendant No.5, who was substituted by his legal representatives during the pendency of suit, filed an application for conferral of Raiyati rights in respect of Sir land held by him. On 14-4-1954, the Deputy Commissioner passed order under Section 54(i) of the Act of 1950 reserving the rights of Raiyati in respect of the lands in dispute in favour of Anjor Singh. Since Village Thekapur was a 'Kham' village and no rights of Raiyati would in the circumstances accrue under Section 54 of Act of 1950, the Deputy Commissioner sought permission of the Board of Revenue for review of the order passed by his predecessor under Section 47 of the Madhya Pradesh Land Revenue Code, 1954, which was granted and ultimately, on 19-5-1958, it was declared by the Deputy Commissioner that the lands in dispute would vest in the State. Ultimately, after two rounds of litigation, on 5-8-1971, the Additional Commissioner directed the Collector to enquire the matter afresh and on 10-4-1973, the Collector came to the conclusion that the provisions of Section 54(ii) of the Act of 1950 would not be applicable and the lands would vest to the State. The Commissioner rejected the first appeal and second appeal was also rejected by the Board of Revenue on 17-2-1977 holding that Section 54(ii) of the Act of 1950 would not be applicable as

the lands which are in personal cultivation of the proprietor would be settled and the Board of Revenue clearly held that the initial order granting Patta under Section 54(i) of the Act of 1950 to Anjor Singh on 14-4-1954 was clearly without jurisdiction and without authority of law.

3. Thereafter, Anjor Singh allotted the suit lands to defendants No.2, 3 & 4 in partition and thereafter, the plaintiffs purchased the suit lands from defendants No.2, 3 & 4, the description of which is as follows: -

Date of Sale deed	Who sold to whom	Description of area	Exhibit
7-6-1967	Plaintiff No.1 Suresh Kumar Singhaniya purchased from defendant No.3 Dwarika	Khasra No.69, area 11.34 acres	Ex.P-1
10-7-1962	Plaintiff No.2 Ghevarchand purchased from defendant No.4 Chatur Singh	Area 27.03 acres	Ex.P-2
7-6-1967	Plaintiff No.1 Suresh Kumar Singhaniya purchased from defendant No.2 Punaram	Khasra No.138/1, area 3.30 acres	Ex.P-5

4. The aforesaid purchasers filed suit against Punaram – defendant No.2, Dwarika – defendant No.3, Chatur Singh – defendant No.4 and Anjor Singh – defendant No.5, alleging that they are the bona fide purchasers of the suit land and the suit land is not the land held by the Government, it was held by Anjor Singh since the time of abolition of proprietary rights came into force and the Patta dated 14-4-1954 granted in favour of Anjor Singh was valid, as such, they are entitled for decree of declaration of title in which the defendants setup the plea that it is the Government land

which has already been vested in the State by virtue of the provisions of the Act of 1950 and as such, the suit deserves to be dismissed.

5. In the first round of litigation, the civil suit was dismissed which was remanded by the first appellate Court to the trial Court and in second round, the trial Court held that the plaintiffs are title holders of the lands in dispute except Khasra No.138/1, area 3.30 acres, as they are the bona fide purchasers and Patta was granted in favour of defendant No.5 Anjor Singh by order dated 14-4-1954 by the Deputy Commissioner, Durg and the order dated 14-4-1954 is valid in accordance with law and decreed the suit. On appeal preferred by the State, the first appellate Court allowed the appeal and set-aside the judgment & decree of the trial Court and held that the plaintiffs are not bona fide purchasers of the suit land and dismissed the suit against which this second appeal has been preferred by the plaintiffs in which substantial question of law has been formulated and which has been set-out in the opening paragraph of this judgment.

6. Mr. Y.C. Sharma, learned counsel appearing for the appellants / plaintiffs, would submit that the first appellate Court is absolutely unjustified in holding that the plaintiffs are not bona fide purchasers of the suit land, as they were duly recorded in the revenue records and after due enquiry, they have purchased the suit lands from defendants No.2, 3 & 4 by registered sale deeds Exs.P-1, P-2 & P-5 and as such, the judgment & decree of the first

appellate Court deserve to be set-aside and that of the trial Court deserve to be restored.

7. Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate appearing for the State / respondent No.1 herein / defendant No.1, would submit that the plaintiffs though were clearly aware of the fact that the order passed by the Deputy Commissioner dated 14-4-1954 under Section 54(i) of the Act of 1950 reserving the right of Raiyati in respect of the lands in dispute in favour of Anjor Singh has already been set-aside by the Collector on 10-4-1973 holding the order dated 14-4-1954 as without jurisdiction and without authority of law which has been confirmed by the second appellate authority (Board of Revenue) also on 17-2-1977, but they did not seek any setting aside of that order of the Collector dated 10-4-1973 as well as the order of the Board of Revenue dated 17-2-1977, therefore, the suit was apparently barred by the proviso to Section 34 of the Specific Relief Act, as the plaintiffs did not challenge those orders and the trial Court declared the order dated 14-4-1954 as illegal and void without being any challenge even without set-aside the order dated 17-2-1977 passed by the Board of Revenue and the land was declared to be vested upon the State under the provisions of the Act of 1950. As such, the plaintiffs cannot be considered to be bona fide purchasers under Section 41 of the Transfer of Property Act, 1882 and the first appellate Court has rightly set-aside the judgment & decree of the trial Court and therefore the second appeal deserves

to be dismissed.

8. I have heard learned counsel for the parties, considered the rival submissions made herein-above and went through the records with utmost circumspection and thoroughly as well.
9. As already noticed in the preceding paragraphs, the land was earlier held by Girdhari as Thekedar of Rajnandgaon estate and after his death, the land devolved upon his wife Smt. Sukhiya Bai and on her death, one Anjor Singh – defendant No.5 claimed Thekedari on the ground that he is the adopted son of Girdhari which was rejected by the Deputy Commissioner, Durg on 30-7-1949, but ultimately, Raiyati rights were granted by the Deputy Commissioner under Section 54(i) of the Act of 1950 in favour of Anjor Singh on 14-4-1954, as in between, the Act of 1950 came into force on 31-3-1951 and ultimately, on 10-4-1973, the Collector held that the provisions of Section 54(ii) of the Act of 1950 would not be applicable and land would vest on the Government and finally, the Board of Revenue on 17-2-1977 confirmed the order dated 2-11-1973 dismissing the first appeal against the order dated 10-4-1973. As such, the order dated 14-4-1954 reserving Raiyati rights in favour of Anjor Singh has already been set-aside by the revenue authority and has become final by order dated 17-2-1977 passed by the Board of Revenue. In the plaint filed by the plaintiffs, the order of the Board of Revenue was not assailed though it was mentioned that they were aware of the order of the Board of Revenue.

10. The Supreme Court in the matter of Jugraj Singh and another v. Jaswant Singh and others¹, in identical fact-situation, has held that where the plaintiff omits to seek cancellation of the order of the revenue authority, suit would be hit by the proviso to Section 42 of the Specific Relief Act (old), by observing as under: -

“11. ... We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order.”

11. As such, the first appellate Court has rightly held that the trial Court fell into legal error in setting aside the order dated 10-4-1973 passed by the Collector, the order dated 2-11-1973 passed by the Commissioner and the order dated 17-2-1977 passed by the Board of Revenue as null and void, as the same were not challenged before the trial Court by seeking the said orders to be void.

12. Now, the question is, whether the plaintiffs are bona fide purchasers of the lands, as they have purchased the suit lands from defendants No.2, 3 & 4 by registered sale deeds Exs.P-1, P-2 & P-5?

13. At this stage, it would be appropriate to notice Section 41 of the Transfer of Property Act, 1882, which states as under:-

¹ AIR 1971 SC 761

“41. Transfer by ostensible owner.”-Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.”

14. From a careful perusal of the aforesaid provision, it is evident that to avail protection available under Section 41 of the Transfer of Property Act, 1882, the following requirements need to be established:-

- a. The transferor is the ostensible owner of the property. Ostensible as per the Black's Law Dictionary is a word used to describe something that is apparent or obvious. Meaning thereby, ostensible owner is one who is not the real owner but an apparent or obvious owner of the property, discernible from the facts and circumstances of each case.
- b. There should be consent of the real owner for the transaction, implied or express.
- c. Sale is for a consideration.
- d. The transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer and an ostensible owner is one who has all indicia of ownership without being the real owner. It must be shown that with the consent of the true owner, the ostensible owner was able to represent himself as the owner of the property to the purchaser for value without notice.

15. In the matter of **Gurbaksh Singh v. Nikka Singh and another**²,

² AIR 1963 SC 1917

the Supreme Court has held that Section 41 of the Transfer of Property Act, 1882, is an exception to the general rule that a person cannot confer a better title than what he has. Being an exception, the onus certainly is on the transferee to show that the transferor was the ostensible owner of the property and that the transferee had, after taking reasonable care to ascertain that the transferor had power to make the transfer, acted in good-faith.

16. Similarly, in the matter of **Crystal Developers v. Asha Lata Ghosh and others**³, it has been held by the Supreme Court that where a transferee for valuable consideration seeks protection under section 41 of the Transfer of Property Act, 1882, the transferee must show that the real owner had permitted the apparent owner either by express words, consent or conduct to transfer the property in favour of the transferee.

17. In the matter of **Anatula Sudhakar v. P. Buchi Reddy (Dead) by LRs and Ors.**⁴, the Supreme Court has held that the party has to make specific pleadings to attract the benefit of Section 41 of the Transfer of Property Act, 1882.

18. Similarly, the Supreme Court in the matter of **Suraj Rattan Thirani and others v. Azamabad Tea Co. Ltd. and others**⁵ has clearly held as under: -

“(16) In order that S. 41 of the Transfer of Property Act could be attracted, the respondents should prove that Ismail was the ostensible owner of the property with the consent of his co-sharers and besides that they took

3 (2005) 9 SCC 375

4 (2008) 4 SCC 594

5 AIR 1965 SC 295

reasonable care to ascertain whether Ismail had the power to make a transfer of the full 16 as. interest. Now, the facts however were that except the property being entered in the revenue records in Ismail's name, and that the management of the property was left by the co-sharers with Ismail, there is not an iota of evidence to establish that Ismail was put forward by them as the ostensible owner of the property. ...”

19. In the matter of Hardev Singh v. Gurmail Singh (Dead) by

LRs.⁶, the Supreme Court while dealing with application of

Section 41 of the Transfer of Property Act, 1882, held as under: -

“9. Application of Section 41 of the Act is based on the law of estoppel to the effect that if a man has represented that the transferor consents to an act which has been done and that he would not offer any opposition thereto, although the same could not have been lawfully done without his consent and he thereby induces others to do that from which they might have abstained, he could not question the legality of the act he had so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

10. The ingredients of Section 41 of the Act are:

- (1) the transferor is the ostensible owner;
- (2) he is so by the consent, express or implied, of the real owner;
- (3) the transfer is for consideration;
- (4) the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.”

20. Reverting to the facts of the present case in light of the principles

of law laid down in the aforesaid decisions, it is quite vivid that in the instant case, the suit lands have been vested in favour of the State Government on 31-3-1951 and Anjor Singh transferred the suit lands in favour of defendants No.2, 3 & 4 from whom the

⁶ (2007) 2 SCC 404

plaintiffs have purchased. After coming into force of the Act of 1950 with effect from 31-3-1951 though on 14-4-1954 Raiyati rights were reserved in favour of Anjor Singh, but subsequently, the same was set aside and reviewed by the competent authority and ultimately, the Additional Collector on 30-12-1970 came to the conclusion that the provisions of Section 54(ii) of the Act of 1950 were not attracted and declared the lands in dispute to be vested in the State which was subsequently confirmed in first appeal and second appeal by the Additional Commissioner and the Board of Revenue, respectively, and during the pendency of revenue proceeding, Anjor Singh gave the suit lands to defendants No.2, 3 & 4 in partition and thereafter, they have transferred the same in favour of the plaintiffs. As such, the State of Chhattisgarh was real owner of the suit land and there was no consent express or implied by the State of Chhattisgarh, which is one of the main ingredients of Section 41 of the Transfer of Property Act, 1882. Defendants No.2, 3 & 4 were not ostensible owners of the suit land, as there was no consent of real owner and except enquiring the revenue records, nothing has been done by the plaintiffs to ascertain whether defendants No.2, 3, 4 & 5 were competent to transfer or alienate the lands or not. The plaintiffs have purchased the suit property as such, the provisions of Section 41 of the Transfer of Property Act, 1882 are not attracted at all and they cannot be said to be bona fide purchasers.

21. In view of the aforesaid discussion, the first appellate Court is

absolutely justified in setting-aside the judgment of the trial Court dismissing the suit. The substantial question of law formulated for the decision of this appeal is answered accordingly. The appeal is dismissed. No order as to cost(s).

22. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma