

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 100 of 2005****Judgment reserved on 27/11/2019****Judgment delivered on 02/12/2019**

1. Smt. Saritano W/o Late Ogar say (died and deleted).
2. Mansay S/o Late Ogar Say (died) through Lrs.
 - (a) Duhana Ram S/o Late Mansay, Aged about 40 years, R/o Village Bankipur, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh.
3. Balbhadra S/o Late Ogar Say, Aged 20 years.
All R/o Village Bankipur, P.S. Jainagar, Tahsil Ambikapur, District Surguja, Chhattisgarh.
4. Smt. Sundari Bai W/o Karansay, Aged 40 years, R/o Labji, Post Bhittikala, Tahsil Ambikapur, District Surguja, Chhattisgarh.
5. Mundri Bai W/o Basaram, R/o Village Vishnupur, Tahsil Ambikapur, Distt. Surguja, Chhattisgarh.
6. Basanta Bai W/o Karima, R/o Village Podi, P.S. Jainagar, District Surguja, Chhattisgarh.
7. Prabhudayal S/o Bigna Ram, Aged 35 years, R/o Village Bankipur, P.S. Jainagar, District Surguja, Chhattisgarh.
8. Chola Ram S/o Ram (died) through Lrs.
 - (a) Kendi W/o Late Chola Ram, Aged 65 years, Caste Kanwar, R/o Village Bankipur, P.S. Ambikapur, Tahsil Ambikapur, District Surguja, Chhattisgarh.

(b) Prem Prasad S/o Late Chola Ram, Aged 45 years, Occupation Agriculture, R/o Village Bankipur, P.S. & Tahsil Ambikapur, District Surguja, Chhattisgarh.

--- Appellants/Defendants

Versus

1. Smt. Amari Devi W/o Late Dukalu Ram (died and deleted).
2. Bal Govind S/o Dukalu Ram, Aged 48 years.
3. Kendan Ram S/o Late Dukalu Ram, Aged 40 years.
4. Indra Kunwar D/o Late Dukalu Ram, Aged 50 years.

All R/o Village Bankipur, P.S. & Tahsil Ambikapur, District Surguja, Chhattisgarh.

--- Plaintiffs

5. The State of M.P. (Now C.G.) through Collector, Ambikapur, Surguja, Chhattisgarh.

--- Respondents

For Appellants	:	Mr. A.K. Prasad, Advocate
For Respondents No. 2 to 4	:	Mr. Lalit Jangde, Advocate
For State/Respondent No. 5	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the defendants was admitted for hearing on the following substantial questions of law :-

"1. Whether the learned Court below committed an error of law by granting relief of possession which was not prayed for ?

2. Whether the plaintiff has proved the encroachment made by the defendant as the question of identity of the plot itself was not properly established ?"

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

2. Late Shri Dukaluram was granted patta/bhoomiswami right over the suit property bearing Khasra No. 78/1 area 4.08 acres situated at Village Bakipur, Tahsil Ambikapur pursuant to revenue case No. 66A-1982/83 on the basis of his possession. Later on, defendants started interfering with his possession pursuant to which proceedings under Section 250 of the CPC was initiated against them and thereafter, dispute arose between the parties with regard to the possession over the suit land and it necessitated the plaintiffs to file a civil suit originally for declaration of title and permanent injunction, but thereafter, by

order dated 22/12/1995 an amendment was sought in the plaint further claiming relief for possession as well.

3. Defendants filed their written statement and claimed that they are in possession of the suit land and plaintiffs are neither title-holders nor the possession-holders of the suit land, as such, their suit deserves to be dismissed.

4. Learned trial Court, upon appreciating the oral and documentary evidence on record, held that plaintiffs are title-holders of the suit land as the original plaintiff – Late Shri Dukaluram was granted patta/bhoomiswami right over the suit land, but further recorded a finding that defendants are not interfering with the possession of the plaintiffs and consequently, by its judgment and decree dated 03/02/2000 dismissed the suit of the plaintiffs.

5. On first appeal being preferred by the plaintiffs, learned first appellate Court allowed the appeal by its judgment and decree dated 20/01/2005 and decreed the suit of the plaintiffs holding that they are entitled to decree of possession over the suit land from the defendants.

6. Being aggrieved by the said judgment and decree passed by the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the defendants in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

7. Mr. A.K. Prasad, learned counsel appearing for the appellants/defendants would submit that the first appellate Court is absolutely unjustified in granting the relief of possession to the plaintiffs which was not prayed by them initially and moreover, the encroachment made by the defendants has also not been established, yet the decree for possession has been granted in their favour, therefore, the judgment and decree of the first appellate Court deserves to be set aside.

8. Mr. Lalit Jangde, learned counsel for the respondents/plaintiffs would support the impugned judgment and decree passed by the first appellate Court and would submit that the second appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made herein-

above and went through the records with utmost circumspection.

Answer to 1st substantial question of law :-

10. It is true that original plaintiff – Late Shri Dukaluram initially brought the suit only for declaration of title and permanent injunction, but later on, vide order dated 22/12/1995, relief for possession was also claimed by way of amendment in the plaint. Therefore, the first question of law is answered in negative as plaintiffs had already claimed the relief of possession, though by incorporating amendment in the plaint by order dated 22/12/1995.

Answer to 2nd substantial question of law :-

11. It is the case of the plaintiffs that suit land was allotted to their predecessor in title Late Shri Dukaluram and they have succeeded the property from him, but during the pendency of the suit, defendants have dispossessed them from the suit land as the trial Court rejected plaintiffs' application for temporary injunction on 14/12/1990, and therefore, by way of amendment in the plaint on 22/12/1995, relief for possession was also sought by them.

12. A careful perusal of the written statement would show that dispute as to the identity of the suit land which runs into 4.08 acres was never expressly raised before the trial Court and consequently, no issue was struck by the trial Court in this regard.

13. Learned counsel for the appellants/defendants has taken me through some observations made by the trial Court in paragraphs 9 to 12. It is not the case of the defendants before the trial Court that they are owners of the suit land bearing Khasra No. 78/1 and they are not disputing the title of the plaintiffs over the suit land, as such, the dispute with regard to identity of the suit land was never raised by the defendants before the trial Court or before the first appellate Court except proclaiming that the lease granted in their favour is illegal, which the two Courts below have not found favour with, thus, the said substantial question of law does not arise for consideration.

14. The second appeal deserves to be and is accordingly dismissed. No cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet