

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.392 of 2008

Dwarika Singh, aged about 67 (61) years, Son of Shri Arjun Singh, Resident of Village Gumanpur, Post Mudhipur, Tahsil Khairagarh, District Rajnandgaon (CG)

(Plaintiff)

---- Appellant

Versus

Kamalwati Bai, aged about 76 (70) years Wife of Late Shri Ram Singh, Resident of Village Khajri, Post Khajri, Via Dargaon, District Durg (CG)

(Defendant)

---- Respondent

For Appellant/Plaintiff : Mr.Shashi Bhushan, Advocate
For Respondent/Defendant : Mr.R.N.Jha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment On Board

27/11/2019

1. This plaintiff's second appeal under Section 100 of the CPC was admitted for hearing by formulating the following substantial question of law: -

"Whether both the Courts below were justified in holding that defendant/respondent has perfected his title over 62 square meter of the land owned by plaintiff by recording finding, which is perverse to the 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. Dispute in this appeal relates to the suit land being nazul land situated in Diwanpara Ward No.9,

Sheet No.40, Plot No.41 area 174 sq.mtr., Rajnandgaon, District Rajnandgaon. The plaintiff filed a suit that the defendant, who is her mother's sister, has no right and title over the suit land as the suit land particularly Plot No.41/1 area 62 sq.mtr. has been allotted on lease by the Additional Collector, Rajnandgaon by order dated 27.9.97 and appeal preferred by the plaintiff has been dismissed by the Commissioner, Raipur Division, Raipur on 20.8.2001 as stated by the plaintiff in para-11 of the plaint, therefore, he be declared title-holder and be granted declaration of title and possession.

3. The defendant filed his written statement and claimed that she is in possession over 62 sq.mtr. for last 50 years and by order dated 27.9.97 the Additional Collector, Rajnandgaon has granted patta vide Ex.D-3 and against that order, the plaintiff preferred the appeal before the Commissioner, Raipur Division, Raipur and the Commissioner has dismissed the appeal on 20.8.2001, as such, the order of the Additional Collector has become final. The defendant is in possession for last 50 years and as such, she has perfected her title by way of adverse possession and the suit deserves to be dismissed.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its

judgment and decree dated 31.12.2007, partly decreed the suit with regard to Plot No.41/1 area 112 sq.mtr. only for declaration and dismissed the suit with regard to possession, but further held that the defendant has acquired title over Plot No.41/2 area 62 sq.mtr. by way of adverse possession, against which, the plaintiff preferred first appeal under Section 96 of the CPC before the first appellate Court, but he remained unsuccessful and thereafter the plaintiff preferred this second appeal under Section 100 of the CPC, in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

5. Mr.Shashi Bhushan, learned counsel for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in not granting decree with regard to Plot NO.41/1 area 62 sq.mtr. and thereby fell into legal error, which deserves to be set aside by decreeing the suit in toto.
6. On the other hand, Mr.R.N.Jha, learned counsel for the respondent/defendant, would support the impugned judgment and decree.
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. It is the case of the defendant that the suit land is admittedly nazul land, in which earlier patta was granted in favour of the plaintiff in toto, which the defendant challenged in two rounds of litigations and ultimately on 27.9.1997 the Additional Collector, Rajnandgaon passed an order and granted patta in favour of the defendant with regard to Plot No.41/2 area 62 sq.mtr. holding that she is in possession for last 50 years. That order was assailed by the plaintiff before the Commissioner, Raipur Division, Raipur, but he remained unsuccessful and the Commissioner dismissed the appeal/revision on 20.8.2001 holding that since the defendant is in possession over the aforesaid land for last 50 years, therefore, patta has rightly been granted in her favour by the Additional Collector.

9. The trial Court as well as by the first appellate Court has concurrently held that the defendant is in possession of the suit land for more than 50 years duly recorded by the Additional Collector, Rajnandgaon and upheld by the Commissioner, Raipur Division, Raipur that she is in possession without any interruption from the plaintiff and when the plaintiff tried to interfere, ultimately it was considered and patta granted in favour of the

defendant was renewed by the order of the Additional Collector and upheld by the Commissioner, as such, finding of both the Courts below that the defendant is in possession of the suit land for more than 50 years without any interruption from the plaintiff is finding of fact based on evidence available on record. It is neither perverse nor contrary to record. Even otherwise, order of the Additional Collector duly upheld by the Commissioner directing the name of the defendant to be recorded in nazul records and granting patta in favour of the defendant has not been challenged by the plaintiff. It ought to have been challenged, as such, the suit appears to be barred and hit by proviso to Section 34 of the Specific Relief Act, 1963. In this regard, decision of the Supreme Court in the matter of Jugraj Singh and another v. Jaswant Singh and others¹ is pertinent and may be noticed profitably herein, in which it has been held as under:-

"11. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary in view of our decision, to say anything more about this case. 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

1 AIR 1971 SC 761

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."

10. One more reason for not interfering with the impugned judgment which is apparent from the records that the suit land is apparently nazul land, in which patta has been granted by the competent authority in favour of the defendant, which the plaintiff has also not challenged and the suit land being government land, the plaintiff cannot claim title as it has already been leased to the defendant, as such, I do not find any merit in this second appeal as the impugned judgment is neither perverse nor illegal. The substantial question of law is answered in favour of the defendant and against the plaintiff.

11. 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).

12. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-