

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 607 of 2003**

1. Ram Kumar aged about 40 years S/o Mayaram, R/o. Village – Kodwa, Tah. - Berla, Distt. - Durg (CG)
2. Vishnu aged about 30 years S/o Mayaram, R/o. Village – Kodwa, Tah. - Berla, Distt. - Durg (CG)

---- Appellants**Versus**

1. Sant Ram S/o. Dukhit aged about 40 years R/o Village – Danganiya, Tah.- Berla, Distt. - Durg, C.G.
2. State of Chhattisgarh Through – Collector, Durg (CG)

---- Respondents

For Appellants	:	Shri Y.C.Sharma with Shri Sachin Nidhi, Advocates
For Respondent No.1	:	None
For State	:	Shri Ankur Kashyap, Panel Lawyer

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/10/2019**

This second appeal is directed against impugned judgment and decree dated 30/08/2003 passed by the Additional District Judge, Bemetara in Civil Appeal No.16-A/03 whereby the judgment and decree dated 28/01/2003 passed in favour of respondent / plaintiff has been reversed and plaintiff's suit has been dismissed.

2. Respondent / plaintiff filed a suit seeking decree of declaration and permanent injunction on the pleadings *inter alia* that the property in dispute was purchased from one Puran Lal vide registered sale deed dated 20/04/1988 for a valid consideration of Rs.38,600/- and since then, the plaintiff acquired possession and title. It was further

pleaded that since 1996-97, the defendant started interfering with plaintiff's possession, which led to proceedings before the Revenue Court. The plaintiff, however, could not get relief and ultimately the plaintiff filed a suit based on title seeking appropriate declaratory relief and also possession.

3. The defendant's case was that his father had purchased the property in dispute from one Laxmi Prasad vide registered sale deed dated 23/05/1952 and acquired possession and after his death, the defendants are in actual and physical possession of the property in dispute and the plaintiff's suit is liable to be dismissed. The defendants also raised counter claim seeking decree in their favour.

4. Learned Trial Court framed issues and recorded finding that the property in dispute was in title and ownership of the plaintiff by virtue of sale deed dated 20/04/1988 (Ex.P/1). The defendant's counter claim was dismissed and plaintiff's suit was decreed. Aggrieved by the judgment and decree of the Trial Court, the defendants filed an appeal. Learned lower Appellate Court having concurred with the finding of the Trial Court that the plaintiff is the owner in title of the property in dispute, proceeded to dismiss plaintiff's suit by reversing the judgment and decree of the Trial Court on the finding that the evidence has come on record to the effect that during the pendency of the suit, certain super-structure was raised by the defendant.

5. This appeal was admitted on following substantial question of law -

“Whether the Lower Appellate Court was not justified in dismissing the suit of the plaintiffs by reversing the judgment of the Trial Court only on the ground that the plaintiffs could not pray either for vacant possession or for demolition of the super-structure, which according to learned Appellate Judge was raised by the defendant during the pendency of the suit, particularly, when there are concurrent findings of the two Courts that the plaintiffs were the owners of the suit land?”

6. Learned counsel for the appellant made short and pointed submission by submitting that even according to the finding of the learned lower Appellate Court, the plaintiff is held to be the title holder and owner of the property in dispute by virtue of sale deed dated 20/04/1988, learned lower Appellate Court failed to see that the evidence with regard to raising of certain super-structure on the land in dispute was only during the pendency of the suit and it is not a case of the defendant that such structure was standing prior to filing of the suit. It is also stated that such super-structure was raised during the pendency of the suit and the learned lower Appellate Court did not consider it simply for the reason that formal amendment seeking additional relief of removing super-structure was not made. He would argue that such reliefs are always being granted by the Courts.

7. Learned Courts below have recorded concurrent finding of fact that the plaintiff was the owner and title holder of the property in dispute on the basis of registered sale deed dated 20/04/1988 (Ex.P/1) and defendant's case based on sale deed dated 23/05/1952 has been rejected.

8. Learned lower Appellate Court has dismissed plaintiff's suit on the ground that the plaintiff did not modify the relief clause on the basis of subsequent events of raising certain super-structure.

This finding of the learned lower Appellate Court is patently illegal. The super-structure, as has been observed by the learned lower Appellate Court on the basis of evidence of Ramkumar (PW1) and Punaaram (DW2), was raised during the pendency of the suit. Therefore, in such circumstances, the Court had all the authority and jurisdiction to mould the reliefs in view of subsequent events after filing of the suit. Merely because such relief was not sought by way of subsequent amendment, the plaintiff could not be non-suited. It is not a case that such structure was raised prior to filing of the suit. The finding of the learned lower Appellate Court cannot be sustained

in law and is accordingly set aside.

9. The question of law is accordingly answered in the manner that the learned lower Appellate Court was not justified in reversing the finding of the learned Trial Court and dismissing plaintiff's suit only on the ground that the relief of removal of super-structure raised subsequent to filing of the suit was not sought by specific amendment.

10. Appeal is accordingly allowed. The finding of the learned lower Appellate Court is set aside and that of the Trial Court is affirmed. Let appellate decree be drawn accordingly. Parties to bear their respective costs.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge