

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.252 of 2004

1. Gangadhar Patel (Dead) through LR's
 - 1-A. Smt.Indumati Nayak D/o Late Gangadhar Patel, W/o Late Purshottam Nayak age about 65 years, R/o Village & Post-Loharsi, Tahsil-Pusour, Dist. Raigarh (CG)
 - 1-B. Smt. Fulkurhari Choudhary D/o Late Gangadhar Patel, W/o Shri Dileshwar Choudhary, aged about 62 years, village & Post Nadeli, Tahsil Kharsiya, Dist. Raigarh (CG)
 - 1-C. Eakamber Patel S/o Late Gangadhar Patel, aged about 58 years,
 - 1-D. Shuklal Patel S/o Late Gangadhar Patel, aged about 53 years,
 Both are R/o village & Post Kondatarai, Tahsil Pusour, Dist. Raigarh (CG)
 2. Thakur Ram S/o Shri Tejram Patel aged about 62 years, occupation-Agriculturist.
 3. Loknath Patel S/o Shri Tejram Patel aged about 65 years, occupation-retired teacher.
 4. Govind Ram Patel S/o Shri Chandrika Patel aged about 40 years, occupation-Agriculturist,
- All resident of village-Kondatarai, Tahsil and District-Raigarh (CG)

----- Appellants

Versus

1. Bhoj Kumar S/o Shri Vidyadhar aged about 19 years.
2. Minor Mahendra Kumar S/o Shri Vidyadhar aged about 14 years through guardian their father Shri Vidyadhar S/o Shri Nandram Yadav,
Both resident of village Kondatarai, Tahsil and District-Raigarh (CG)
3. State of Chhattisgarh through Collector Raigarh, District Raigarh (CG)

----- Respondents

And

Second Appeal No.253 of 2004

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3. State of Chhattisgarh through Collector Raigarh, District Raigarh (CG)

---- Respondents

For Appellants/Defendant :Mr.R.S.Patel and Mr.Malay Jain, Advocates
 For Res.No.1&2/Plaintiffs:None present
 For Respondent No.3 :Mr.Anshuman Rabra, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

17/10/2019

1. These two second appeals preferred by the defendants/appellants were admitted for hearing by formulating the following common substantial questions of law:-

"1. Whether the findings of the first appellate Court that from the revenue record of Ex.D/7, it is established that Damrudhar

and after his death plaintiff Ramela Bai was in possession of the suit land as owner, is perverse and contrary to the entries of document of Ex.D/7 wherein the name of Usatram etc. and his father Ramsingh is also entered in possession column ?

2. Whether in view of the document of Ex.D/1 which was exhibited by Damru Rawat through whom the plaintiffs are claiming title and by which he has surrendered his right over the property in favour of Trilochan Goutiya, who subsequently transferred the same to Chandan Singh Bihari by the deed of Ex.D/2 through whom the defendants are claiming title, the findings of both the Courts below that the plaintiffs have established their title over the suit property is legally justified?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. The suit property was originally held by Damrudhar Rawat. Deceased-original plaintiff was her wife. She filed a bare suit for permanent injunction stating inter-alia that earlier her husband was in possession of the suit land and after his death, she is in possession of the suit land, to which the defendants disputed her possession and tried to dispossess her necessitated the filing the suit that she is entitled for permanent injunction over the suit land by restraining the defendants.
3. The defendants set-up the plea that the suit property belonged to Damrudhar and Damarudhar has relinquished his share in the suit property vide Ex.D-1 on 28.5.43 in favour of Trilochan Goutiya and vide Ex.D-2 Trilochan Goutiya has transferred the same in favour

of Charan Singh on 28.5.43, from whom defendants No.1 to 4 have purchased the suit land on 28.5.50 vide Ex.D-3 and since then they are in possession of the suit land and as such, the plaintiff has no right and title over the suit land.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 24.2.2003, dismissed the suit holding that though the plaintiff was in possession of the suit land on the date of institution of suit i.e. 8.7.96, but the defendants in the year 1995-96 illegally dispossessed her from the suit land and since then they are not in possession over the suit land, against which, legal representatives of the plaintiff and the defendants both had filed first appeals under Section 96 of the CPC. The first appellate Court dismissed the appeal of the defendants, however, allowed the appeal of the plaintiff and decreed the suit holding that the plaintiff is in possession over the suit land on the date of institution of the suit and therefore, she is entitled for decree for permanent injunction, against which, these two second appeals under Section 100 of the CPC have been preferred by the appellants/defendants, in which common substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

5. Mr.R.S.Patel, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in entertaining a bare suit for permanent injunction. He would further submit that title of the plaintiff was seriously disputed by the defendants as the suit land has ultimately been transferred in favour of the defendants vide Ex.D-3, therefore, decree for permanent injunction ought not to have been granted by the first appellate Court in favour of the plaintiff, as such, decree granted by the first appellate Court in favour of the plaintiff deserves to be set aside and that of the trial Court be restored.
6. None present for respondents No.1 and 2/plaintiffs.
7. I have heard learned counsel for the appellants, considered his submissions made hereinabove and also went through the records with utmost circumspection.
8. The plaintiff filed a suit for permanent injunction simpliciter stating inter-alia that she is in possession of the suit land as the suit land was ultimately held by Damrudhar, husband of the original plaintiff and after his death, she (plaintiff) is in possession of the suit land as owner and she is continuing in possession, which is being interfered with by defendants No.1 to 4, therefore, she is entitled for permanent injunction, in which the

defendants set-up the plea of title vide Ex.D-3 stating that Damrudhar has relinquished his right in favour of Trilochan Goutiya vide Ex.D-1 and thereafter Trilochan Goutiya transferred the suit land to Charan Singh vide Ex.D-2 and Charan Singh sold the suit land to the defendants vide Ex.D-3. The trial Court after analyzing the evidence available on record clearly held that the plaintiff was in possession over the suit land on the date of institution of the suit and thereafter she has been dispossessed by the defendants and negated the plea of title based on Ex.D-1 to Ex.D-3 taken by the defendants and in appeal under Section 96 of the CPC, the first appellate Court dismissed the appeal of the defendants and affirmed the finding on issue Nos.2, 5, 6 and 7 in favour of the plaintiff and thereby it was held that the plaintiff is in possession over the suit land since the date of institution of the suit and thereby granted decree for permanent injunction in favour of the plaintiff.

9. In these appeals, learned counsel for the appellants/defendants attempted to demonstrate that the plaintiff was not in possession over the suit land on the date of institution of the suit, but he could not demonstrate that finding of the first appellate Court holding that the plaintiff is in possession of the suit land since the date of institution of suit is perverse and contrary to law.

10. The Supreme Court in the matter of Anathula Sudhakar v. P. Buchi Reddy (dead) by LRS. and others¹

has held as under:-

"15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession.

1 (2008) 4 SCC 594

But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

11. Following the principle of law laid down by the Supreme Court in Anathula Sudhakar (supra) to the facts of the present case, it is quite vivid that the plaintiff is in lawful possession over the suit land on the date of institution of the suit and it is her case that her lawful possession is being interfered with by the defendants and ultimately she filed a simpliciter suit for permanent injunction, which is maintainable in view of para 15 & 21(b) of the judgment of the Supreme Court in Anathula Sudhakar (supra).

12. The defendants though tried to claim title over the suit land, but did not lay any counter-claim claiming title over the suit land, as such, the first appellate Court is justified in holding that the plaintiff is in possession over the suit land since the date of institution of the suit and the defendants have attempted to dispossess her from the suit land during pendency of the suit, but the plaintiff is in possession and therefore, she is entitled for decree for permanent injunction. Finding recorded by the first appellate Court that original plaintiff/now his legal representatives are in possession of the suit land is finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality in

the said finding.

13. Accordingly, the second appeals deserve to be and are hereby dismissed. However, this will not preclude the defendants from filing comprehensive suit for declaration of their title over the suit land within four months from the date of this judgment, if so advised, as the suit filed by the plaintiff was only for permanent injunction and question of title was not directly an issue in the instant suit filed by the plaintiff herein. No cost(s).

14. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-