

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.706 of 2003

1. Banshidhar Sethiya, S/o Late Shrinath, age 35 years, R/o Village Dhobiguda, Tah. Jagdalpur, Distt. Bastar (C.G.)

A. Jamuna, W/o Kurso, aged about 44 years, R/o Aamgaon, Tah. Jagdalpur, District Bastar (C.G.)

B. Radha, W/o Kalash, aged about 33 years, R/o Village Dhobhigada, Tah. Jagdalpur, Distt. Bastar (C.G.)

C. Heeramany, W/o Kamlochan, aged about 30 years, R/o Village Bastar, Tah. Jagdalpur, District Bastar (C.G.)

(LRs of deceased plaintiff Shrinath)
---- Appellants

Versus

1. Vishvambhar Singh (Dead) Through LR

Brijendra Singh Bhadoriya, S/o late Vishvambhar Singh, aged about 65 years, R/o Nayapara, Near District Court, Jagdalpur, District Middle Bastar (C.G.)

2. Aaskaran Pawar (Dead) Through LRs

2.A. Smt. Mankarana Devi Pawar, aged about 75 years, W/o Late Ashkaran Pawar,

2.B. M. Prakash Pawar, aged about 55 years, S/o Late Ashkaran Pawar

2.C. Bheemraj Pawar, aged about 45 years, S/o Late Ashkaran Pawar.

At R/o Main Road, Jagdalpur, Behind Pawar Lodge, Near Bombay Stores, Jagdalpur, Distt. Bastar (C.G.)

3. State of Chhattisgarh, through Collector Bastar, Distt. At Jagdalpur (C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. R.N. Jha, Advocate.

For Respondent No.1: -

Ms. Rajkumari Yadav, Advocate.

For Respondents No.2.A, 2.B and 2.C: -

None present though served.

For Respondent No.3 / State: -

Miss K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board08/03/2019

1. In this second appeal preferred by the plaintiffs, following substantial questions of law were formulated for determination at the time of hearing of the appeal on admission: -

“1. Whether the finding arrived at by the Trial Court and which has been affirmed by the First Appellate Court is erroneous finding of facts inasmuch as the Court below has not considered the material evidences which have come on record?

2. Whether the Plaintiffs acquired right over the suit property by way of an adverse possession?”

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

2. The suit property was originally held by Ramdhar. Plaintiff Srinath was the grand-son of Ramdhar. Ramdhar sold the suit property in favour of Vishwambhar and Askaran vide sale deed Ex.P-3 on 14-7-1960 and said to have given the peaceful possession of entire land except 0.11 hectares in which house and badi of the original plaintiff is situated. On 27-8-1999, the original plaintiff brought suit for declaring the sale deed dated 14/15-7-1960 as null and void and also not binding on him and also for permanent injunction and sought relief that he is in continuous possession of 0.11 hectares of land in which house, badi and well are situated as such, he is in settled possession thereof and therefore defendant No.1 be restrained from interfering with his possession to which defendant No.1 setup a plea that half share of the suit property has been sold by Ramdhar to him as such he has become bhumiswami and sole owner of the said suit property and on demarcation, he came to know that the plaintiff is in possession of 0.11 hectares of land and therefore notice has been

given to the plaintiff by the Tahsildar for eviction, therefore, the plaintiff has no right and title over the suit land and the suit be dismissed.

3. The trial Court by its judgment and decree dismissed the suit holding that the sale deed dated 14-7-1960 is valid and in accordance with law and the plaintiff has no title over the suit land. The first appellate Court agreed with the reasoning given in the judgment and decree of the trial Court and dismissed the appeal against which this second appeal has been preferred in which substantial questions of law have been formulated which have been set-out in the opening paragraph of this judgment.
4. Mr. R.N. Jha, learned counsel appearing for the appellants/plaintiffs, made two fold submissions. Firstly, both the Courts below are absolutely unjustified in holding that the sale deed is binding on the plaintiff and it has conferred valid title to defendant No.1 vide Ex.P-3. Secondly, even if the finding that valid sale is recorded in favour of the defendants is upheld, then also, the plaintiff is entitled for injunction so far as 0.11 hectares of land is concerned in which house, badi and well of the original plaintiff was situated, as he is in settled possession of the suit land by constructing house, badi and well and being in settled possession thereof, he cannot be evicted from the said premises except in accordance with law or by resorting to due process of law and therefore he is entitled for injunction so far as this part is concerned.
5. On the other hand, Ms. Rajkumari Yadav, learned counsel appearing for respondent No.1/defendant No.1, would support the judgments and decrees of the two Courts below and submit that since defendant No.1 is owner and title holder of the suit land, the plaintiffs are not entitled for injunction and also not entitled for injunction with regard to

0.11 hectares of land.

6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.
7. The suit land was sold by the plaintiff's grand-father vide Ex.P-3 way back on 14-7-1960, thereafter, the plaintiff's father did not question the sale deed executed in favour of defendant No.1 and the original plaintiff in the suit filed on 27-8-1999, for the first time, questioned the sale deed that it is null and void, consideration has not been passed and it is not binding which the two Courts below have not accepted holding it to be valid sale and binding on the plaintiff and further held that there is no evidence to hold that the sale is not binding on the plaintiff and even it is barred by limitation. The sale deed was executed by the plaintiff's grand-father in favour of defendants No.1 & 2 way back on 14-7-1960 as such, the plaintiff is questioning the sale deed on the ground that it is not binding, whereas his grand-father being party to the sale deed and the plaintiff is claiming through him, the plaintiff ought to have sought for setting aside of the sale deed which he did not seek, as such, the suit suffers from legal defect, as to that extent the suit is not properly constituted. Apart from that, both the Courts have rightly held that the suit is barred by limitation so far as the sale deed is concerned which appears to be based on the evidence available on record. The plea of mortgage is also not sustainable in the light of the proviso to Section 58(c) of the Transfer of Property Act, 1882, as the fact of mortgage has not been mentioned in the sale deed Ex.P-3. Therefore, suit for declaring the sale deed as void has rightly been dismissed by both the Courts below in which I do not find any illegality or perversity in the said finding concurrently

recorded by the two Courts below.

8. Next part of the submission of learned counsel for the plaintiffs/appellants is that both the Courts below have committed legal error in holding that the plaintiff is not entitled for permanent injunction qua 0.11 hectares of land. The plaintiff has clearly stated that he is in settled possession of the suit land for which notice vide Ex.P-1 was given to him and pursuant to that defendant No.1 filed an application under Section 250 of the M.P. Land Revenue Code, 1959 for delivery of possession that the plaintiff is in possession of 0.11 hectares of land. Defendant No.1's application for restoration of possession under Section 250 of the M.P. Land Revenue Code, 1959 was filed on 22-4-1999 and suit by the plaintiff was immediately filed on 27-8-1999. Defendant No.1 Vishwambhar in his statement in paragraphs 18 and 19 has clearly stated that in the suit land (0.11 hectares), the plaintiff's boundary wall is existing and mango trees and well are also situated and the plaintiff is still residing with his family in that part of the suit accommodation. The said statement has been made in the cross-examination as such, it is a clear cut evidence available on record that the plaintiff is in settled possession of the suit land to the extent of 0.11 hectares by construing house, badi, etc. since the date of sale by his grand-father to defendant No.1 on 14-7-1960 and thus, the plaintiff has claimed that he is entitled for declaration of title based on adverse possession and also for permanent injunction.
9. In the matter of Gurdwara Sahib v. Gram Panchayat Village Sirthala and another¹, the Supreme Court in paragraph 8 of the judgment has clearly held that suit for declaration to the effect that adverse possession has matured into ownership based on adverse

¹ (2014) 1 SCC 669

possession is not maintainable and held as under: -

“8. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

10. Thus, on the basis of above-stated declaration, the plaintiff is not entitled for declaration of title on the basis of above-stated settled possession for continuous long time and finding so recorded in that regard cannot be disturbed. However, Their Lordships in Gurdwara Sahib (supra) further held that though the plaintiff cannot maintain suit for declaration of title based on adverse possession, but his suit for injunction on that count cannot be held not maintainable and observed as under: -

“10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of Issue 1 to the effect that the appellant is in possession of adverse possession since 13-4-1952 operates as res judicata. Subject to this clarification, the appeal is dismissed.”

11. Since the plaintiff is in settled possession of the suit land as per own showing of defendant No.1 right from the date of purchase by defendant No.1 from the plaintiff's grand-father Ramdhar, settled possession of the plaintiff over 0.11 hectares of the suit land cannot be disturbed except by due process of law. As such, judgments & decrees of both the Courts below not granting permanent injunction in

favour of the plaintiff is set aside and the plaintiff's suit is partly decreed. It is held that his possession qua 0.11 hectares of land cannot be disturbed except by due process of law. However, in case, defendant No.1 files suit for possession or ejectment of the plaintiffs, it would be open to the plaintiffs to plead in defence, the plea of adverse possession, if any. The substantial questions of law are answered accordingly.

12. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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