

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.472 of 2007

Loknath alias Laxminarayan Sahu (Dead) Through LRs

(Plaintiff)

1. Smt. Sandhya Rani, aged about 48 years, Wd/o Loknath Sahu,
2. Labhan Singh Sahu, aged 22 years, D/o Loknath Sahu,
3. Lohit Kumar Sahu, aged 21 years, S/o Loknath Sahu,
4. Lalas Sahu, aged 18 years, D/o Loknath Sahu, and
5. Lokshakti Sahu, aged 16 years, D/o Loknath Sahu.

No.5 minor through natural guardian mother Smt. Sandhya Rani.

All R/o Ward No.10, Ganjpara, Mahasamund, District Mahasamund (C.G.)

---- Appellants

Versus

1. Dhanau, S/o Manharan, aged 47 yrs.,
2. Manharan Lal, S/o Ramratan, aged 70 years,
3. Bhuneshwar, S/o Manharan, aged 50 years,

All by caste Chandrakar, R/o Village Koundkera, R.I.C. Mahasamund, Tahsil, Thana and District Mahasamund (C.G.)

(Defendants)

---- Respondents

For Appellants: Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma, Advocate.

For Respondents: None present, though served.

Hon'ble Shri Justice Sanjay K. AgrawalJudgment On Board22/07/2019

1. Heard on admission and formulation of substantial question of law in the second appeal preferred by the plaintiff / appellants.
2. Mr. H.B. Agrawal, learned Senior Counsel appearing for the plaintiff / appellants, would submit that both the Courts below are absolutely unjustified in dismissing the suit holding it to be barred by the principle

contained in Section 11 of the CPC to be barred by res judicata. He would further submit that no pleadings of the earlier suit (Civil Suit No.14-A/82 between Sharda Prasad v. Bhuneshwar and two others) were filed and therefore the question of res judicata could not have been examined that too by framing a preliminary issue. He would also submit that the applications under Order 41 Rule 27 of the CPC, under Order 6 Rule 17 of the CPC, and under Order 1 Rule 3(b) of the CPC were wrongly rejected by the first appellate Court.

3. I have considered the submissions of learned Senior Counsel for the appellants on admission and went through the record with utmost circumspection.
4. The plaintiff initially filed suit for declaration of title and permanent injunction that defendants No.1 & 3 therein Bhuneshwar, Dhanau and Manharan Lal illegally got the sale deed dated 15-4-1968 recorded in their favour with respect to the agricultural land of 8.04 acres and thus, that sale deed be declared void in which the defendants appeared and filed an application that it is barred by limitation and court fees has not been paid and cancellation of sale deed dated 15-4-1968 is required. The trial Court framed three preliminary issues on the aforesaid three points and by order dated 12-2-1985 dismissed the suit holding that relief seeking cancellation of sale deed dated 15-4-1968 is necessary, the suit is barred by limitation and the requisite court fees has not been paid in the suit. That order was allowed to become final and immediately thereafter, on 8-4-1985, with respect to the subject land, bare suit for possession was filed. The cause of action in the suit is that the sale deed dated 15-4-1968 was illegally got executed and on 31-10-1981, the plaintiff was forcefully dispossessed from the suit premises which was also the cause of action as reflected from the order in the earlier suit. In that situation, the trial Court by order dated 12-2-1985 decided the issue

as a preliminary issue and held that in the earlier suit, cause of action was based on the dispossession dated 31-10-1981 and the earlier suit based on the sale deed dated 15-4-1968 be declared to be void and in that case, the court had already held that the prayer seeking cancellation of sale deed dated 15-4-1968 is required and suit was held to be barred by limitation and requisite court fees has not been paid. In that view of the matter, the suit is definitely barred by res judicata which has not been upheld by the appellate Court.

5. The first suit is for declaration of title and declaration that sale deed dated 15-4-1968 is null and void and permanent injunction was sought which was dismissed as barred by limitation and the relief of cancellation of sale deed has not been sought for. In the instant case, cause of action of the suit property is substantially the same and parties are same. Suit for declaration of title and permanent injunction has been held to be barred by limitation in the earlier suit. If the relief of possession, if any, could not have been claimed in the earlier suit, that was not done. Therefore, the instant suit is apparently barred by the principle of constructive res judicata for the relief which the plaintiff ought to have claimed in the earlier suit but which he did not claim.
6. As such, the trial Court is absolutely justified in dismissing the suit as barred by the principles of res judicata. In my opinion also, the plea of constructive res judicata is squarely applicable to the facts of the present case. I do not find any substantial question of law in the rejection of three applications by the first appellate Court. Consequently, the appeal is dismissed at the admission stage itself leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge