

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 215 of 2005

Reserved on : 23.07.2019

Delivered on : 30.08.2019

Ram Rati Bai (Dead) through Lrs.

Sanju Kachhawaha (Khatik), D/o Shri Kallu Prasad Khatik, aged about 36 years, R/o Near Jain Mandir, Pendra Road, Gourela, District- Bilaspur (C.G.)

---- Appellant

Versus

1. State of M.P. (Now C.G.) through Collector, Bilaspur (M.P.) (Now C.G.)
2. Tahsildar Pendra Road, District- Bilaspur (C.G.)
3. I.L. Markam, aged about 50 years, Bilaspur (C.G.), Tahsildar, Presently posted at Korba, District- Bilaspur (C.G.)

---- Respondents

For Appellant	:	Mr. Sourabh Sharma, Advocate.
For State/ respondents No. 1 & 2	:	Mrs. Shubha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 21.08.1997 passed by Seventh Additional District Judge, Bilaspur (M.P.) (Now C.G.) in Civil Suit No. 2A/1996, wherein the said court dismissed the suit filed by the appellant/ plaintiff for possession of land shown in Schedule-A of the plaint and for compensation.
2. As per the appellant/ plaintiff, the suit house was constructed by her

father 40 years back which was demolished by the respondent/ defendant on 11.06.1992 in absence of the appellant/ plaintiff saying that plaintiff's husband has encroached on the suit land. It is pleaded on behalf of the respondent/ defendant that the appellant has encroached the land, but no notice was served to the appellant before demolishing the structure, therefore, she filed a suit before the trial court, but the said court dismissed the suit contrary to the facts and legal aspects of the matter.

3. Learned counsel for the appellant submits as under:-

(i) Father of the appellant constructed a house over the property in question about 40 years ago and the appellant is in constant possession of the property.

(ii) No notice was served to the appellant and no opportunity of hearing was given to the appellant. When proper procedure was not followed, the trial court ought to have granted decree in favour of the appellant, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State/ respondents No. 1 & 2 submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6. The appellant side adduced evidence of Ram Rati Bai (PW-1), Suraj Prasad Khatik (PW-2), Abdul Samad (PW-3) & Kallu Prasad (PW-4) and produced document Ex. P/1 to P/30. The respondent side adduced evidence of Patwari- Bharatlal Dewangan (DW-1) and produced documents Ex. D/1 & D/2. The appellant side is not able to depose the survey number of the land. Bharatlal Dewangan (DW-1) deposed before the trial court the land in question is Survey No. 401/1 and total area is 8 acres and 82 dismal. As per version of this witness, the land is government land and husband of the respondent namely Kallu Prasad encroached 1062 sq.ft. of land of Survey No. 401/1 and after proceeding by the Tahsildar, the encroachment was removed. Version of this witness is supported by document Ex. P/26 to P/29. Removal of encroachment proceeding was initiated against Kallu Prasad and he has been ordered by the Tahsildar, Pendra Road to remove the structure and pay fine of Rs. 500/-. The encroachment is removed as per legal order passed by the Tahsildar.
7. The appellant side is not able to prove that the construction in the land in question was done legally after acquiring the land as per the law, therefore, their version is not acceptable and evidence adduced on behalf of the appellant side is not sufficient to establish that their possession was legal. On the contrary, evidence of respondent side is acceptable that the proceeding against encroachment was initiated and thereafter order of removal was passed. Argument advanced on behalf of the appellant is not sustainable.

8. Accordingly, the appeal is liable to be dismissed. The decree is passed against the appellant and in favour of the respondents on the following terms and conditions:-

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
- (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge