

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 70 of 2006**

Smt. Kumar Bai, aged about 33 years, W/o Harishanker (D/o Kripa Ram), R/o Village Ukhara, Tahsil & Distt. Mahasamund (C.G.)

---- Appellant/Defendant No. 1

Versus

1. Mukund Singh Gond, aged 56 years, S/o Paklu Gond, R/o Village Ukhara, Tahsil & Distt. Mahasamund (C.G.)

....Plaintiff

2. Mahendra Singh, aged 52 years, S/o Paklu Gond, R/o Village Ukhara, Tahsil & Distt. Mahasamund (C.G.)

... Defendant No. 2

3. Narsingh, aged about 47 years, S/o Paklu Gond, R/o Village Ukhara, Tahsil & Distt. Mahasamund (C.G.)

... Defendant No. 3

4. State of Chhattisgarh, Through Collector, Mahasamund, Distt. Mahasamund (C.G.)

---- Respondents

For Appellant/defendant No.1	: Mr. H.V. Sharma, Advocate.
For Respondents No. 1	: Mr. Awadh Tripathi, Advocate.
For Respondent No. 4	: Ms. Shivali Dubey, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/08/2019

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by defendant No. 1 states as under:

“ Whether the first appellate Court is justified in reversing the well reasoned judgment and decree of the trial Court holding that the transfer made is in contravention to the provisions contained in Section 165 (6) of the Chhattisgrh Land Revenue Code, 1959 without there being any pleading or issue raised in this behalf before the trial Court ?

(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) Plaintiff – Mukund Singh Gond filed a suit for possession based on title after demolishing the house constructed therein stating inter alia that the suit property was owned by his father Paklu Gond and after death of Paklu Gond, he is in possession over the suit land but in the month of February- March, 1995, the defendant No. 1 forcibly entered into the possession of suit land and constructed Well, House and Badi and, therefore, he is entitled for decree of possession after demolishing the house etc. constructed therein.

(3) Defendant No. 1 set up a plea stating inter alia that her husband Kriparam has purchased the suit property from grandfather of plaintiff – Dokri Singh by un-registered sale deed dated 29.03.1962 (Ex.D-1) for a cash consideration of Rs.95/- and came in possession of the suit land; and also set up plea of adverse possession.

(4) The trial Court, after framing as many as 11 issues, dismissed the suit holding that husband of defendant No. 1 has purchased the suit land vide Ex. D-1 from the plaintiffs' grandfather – Dokri Singh and in possession of the suit land. On an appeal being preferred, the first appellate Court affirmed the finding recorded by the trial Court in paragraph 15 holding that the suit land could not have been sold by the plaintiff grandfather in favour of Kripa Ram, husband of defendant No. 1 in view of the provisions contained in Section 165 (6) of the Land Revenue Code and in that count allowed the appeal and granted decree for possession in favour of the plaintiff, against which this second appeal has been preferred by the appellant/defendant No. 1 in which the substantial question of law has been formulated and set out in the opening

paragraph of the judgment.

(5) Learned counsel appearing for the appellant/defendant No. 1 would submit that the plaintiff did not raise any plea with regard to Section 165 (6) of the Code and, therefore, he had no opportunity to meet such pleading and contest the issue, and even the trial Court has rejected the plea of Section 165 (6) of the Code on the ground that no such plea was raised in the plaint and since it has not been tried, therefore, it cannot be gone into, as such, for want of pleading, issue and evidence, the first appellate Court is absolutely unjustified in entertaining the plea based on Section 165 (6) of the Code while granted decree in favour of plaintiff.

(6) Shri Awadh Tripathi, counsel for respondent No. 1 has entered into appearance on behalf of plaintiff No. 1 but he pleads no instructions in the matter, therefore, this Court is left with no other option but to hear the matter finally.

(7) I have heard learned counsel appearing for the appellant, considered his submissions made hereinabove and went through the record with utmost circumspection.

(8) The trial Court has clearly recorded a finding that husband of defendant No. 1 has purchased the suit land from plaintiff's grandfather of plaintiff – Dokri Singh by un-registered sale deed dated 29.03.1962 (Ex.D-1) for a cash consideration of Rs.95/- and came into possession, which has partly affirmed by the appellate court in appeal preferred by the plaintiff but further applying the provisions contained in Section 165 (6) of the Code, plaintiffs' grandfather could not have sold the suit property in favour of husband of defendant No. 1 without prior permission of the Collector and set aside the decree and granted decree in favour of the plaintiff decreeing the suit.

(9) Plea based on under Section 165(6) of the Code was never raised in the plaint filed before the trial Court and defendant No. 1 did not have any opportunity to meet any such plea based on aforesaid provision. At the fag end of the trial, a plea with regard to Section 165 (6) of the Code was sought to be raised in the trial Court, which was noted by trial Court in paragraph 24 of judgment and rejected the same holding that no such averment has been made in the plaint, therefore, the first appellant Court ought not to have entertained a new plea, which was never pleaded and no evidence was led by the plaintiff and the defendant No. 1 as well.

(10) In the matter of **Bachhaj Nahar v. Nilima Mandal & others**¹, the Supreme Court, while highlighting the object and purpose of framing issue, held as under :-

“9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

12. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied

1 AIR 2009 SC 1103

that that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in **Bhagwati Prasad Vs. Shri Chandramaul² & Ram Sarup Gupta (dead) by LRs., V. Bishun Narain Inter College³** referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, *suo motu*.”

(11) In the instant case, plea based on Section 165 (6) of the Code is absolutely missing in the plaint filed before the trial Court, which was sought to be raised before the trial Court, which the trial Court declined to be entertained on the ground that no such specific pleading was raised by the plaintiff, but even thereafter plaintiff did not amend his plaint in appeal raising the plea by invoking the provisions contained in Order 6 Rule 17 of the CPC, if any, then also first appellate Court entertained the plea based on Section 165 (6) of the Code, which is clearly impermissible as there is no iota of averment in the plaint that the sale made in favour of husband of defendant No. 1 by plaintiff's grandfather Dokri Singh way back on 29.03.1962 is in teeth of the provisions contained in Section 165 (6) of the Code, therefore, the first appellate Court is absolutely unjustified in granting decree in favour of the plaintiffs

² AIR 1966 SC 735

³ AIR 1987 SC 1242

by entertaining the new plea based on Section 165 (6) of the Code and granted decree contrary to law.

(12) Resultantly, judgment and decree passed by the first appellate Court are set aside and judgment and decree passed by the trial Court are restored. The second appeal is consequently, allowed and the plaintiffs' suit stands dismissed with no order as to cost(s).

(13) A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

