

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 16-8-2019

Delivered on 04.10-2019

FA No. 97 of 2009

- Smt. Lilabai W/o. Purushottam, aged about 30 years, caste Kalar, r/o.village Sivni, Tahsil Balod, District Durg (CG).

---- Appellant/plaintiff

Versus

1. The State of Chhattisgarh through the Collector, Durg District, Durg (CG).
2. Faguaram s/o. Mahar Singh aged about 60 years, r/o. Village Sivni, Post Jhalmala, Tahsil Balod, District Durg (CG).

---- Respondents/defendants

For the appellant : Mr. A.K. Prasad, Advocate.

For respondent No.1/State : Mr. Pawan Kesharwani, PL.

For respondent No.2 : Mr. R.S. Patel, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 2-3-2009 passed by Additional District Judge, Balod, District Durg (CG) in Civil Suit No. 12-A/2007 wherein the said court dismissed the suit filed by the appellant for declaration of title and for declaring the order dated 31-7-2006 passed by the Collector, Durg void,

possession and permanent injunction regarding land bearing survey No. 338 area 0.14 hectare situated at village Sivni, Patwari Halka No.10, Tahsil Balod, District Durg (CG).

2. As per plaint averment of the appellant/plaintiff she purchased the land in question from one Tomanlal. Originally the land was owned by one Murhi Bai who executed the will in favour of Tomanlal. As per version of appellant side lease of land was not allotted to Murhi Bai that is why sale deed could not be executed, however, one agreement dated 15-2-2001 was executed between appellant and Tomanlal. Tomanlal filed an application for lease before Naib Tahsildar, Balod which was dismissed and the order of Naib Tahsildar was affirmed by the Collector that is why suit was filed.

3. Learned counsel for the appellant submits as under.

- i) From the evidence it appears that the appellant is in possession of property, therefore, finding of the trial court in this regard is not liable to be sustained.
- ii) The sale deed was not executed in favour of the appellant because lease was not granted by the Revenue Authorities, therefore, finding of the trial court is liable to be reversed.

- iii) The trial court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside.

4. On the other hand, learned counsel appearing for the respondents would submit that Murhi Bai and Tomanlal were never owner of the property in question, therefore, any agreement between the appellant and Tomanlal is no valid. The property in question belongs to State Government which cannot be alienated by any individual. It is further contended on behalf of the respondents that when lease is not granted by the Revenue Authorities, Tomanlal will not enter into agreement with appellant and the trial court is right in dismissing the suit.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. The first question for consideration of this court is whether Tomanlal could have entered into agreement for sale of land in question with appellant. Admittedly, Tomanlal is claiming right through a will executed in favour of Murhi Bai, but there is nothing on record to show that Murhi Bai was ever recorded owner of land in question. Admittedly, an application was filed for grant of lease, but same was dismissed by the Revenue Authorities. It means, the land was never owned by any individual, but it is the property of the

State Government. Even if lease is granted, the same is within the ambit of the terms and conditions of lease and any one cannot go beyond terms of lease. In the present case, no lease is granted to Murhi Bai and again it is not granted to Tomanlal, therefore, Tomanlal was not owner of the property and he had no right to enter into contract with the appellant regarding the land in question, therefore, agreement between the appellant and Tomanlal itself is illegal. It is settled principles of law that no person can deliver better title than what he is having. In the present case, Tomanlal was not having any right over the property, therefore, no right is transferred to appellant. The trial court is right in holding that relief of declaration of title to appellant cannot be granted. It is in the domain of Revenue Authorities to grant lease as per law of the land and rules framed thereunder. Any lease granted by the authorities is subject to terms and conditions of the said lease. In the present case the authorities did not find it fit to grant lease to Murhi Bai or Tomanlal. The order of the Collector is not challenged before the higher authority/court as per provisions of Chhattisgarh Land Revenue Code 1959, therefore, that order attained finality. Any one who is in illegal possession of the Government land, is liable to be evicted and he is also subjected to punishment, therefore, the trial court is right in not granting other reliefs as sought by the appellant.

7. On overall assessment, it is not a case where finding of the trial court is liable to be reversed. Argument advanced on behalf of the appellant is not sustainable and the appeal is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellant as under:

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

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju