

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 4-9-2019

Judgment delivered on 18-9-2019

FA No. 22 of 2010

1. Rameshwar S/o Arti Sahu, Aged About 27 Years R/o Village Sarhar, Tahsil Shakti, District Janjgir Champa Chhattisgarh.
2. Kaushilya, W/o Gopiram, Aged About 33 Years R/o Village Ratipura, Tahsil Shakti, District Janjgir Champa Chhattisgarh/
3. Shushila, Wo Shyam Kumar, Aged About 31 Years R/o Village Dhamni, Tahsil Shakti, District Janjgir Champa Chhattisgarh.
4. Damodar S/o Parsadi Aged About 36 Years R/o Village Sarhar, Tahsil Shakti, District Janjgir Champa Chhattisgarh
5. Bharat, S/o Parsadi, Aged About 42 Years R/o Village Sarhar, Tahsil Shakti, District Janjgir Champa Chhattisgarh..

---- Appellants/defendants.

Versus

1. Smt Gurwari Bai Wd/o Tulshi Sahu, Aged About 65 Years R/o Village Sarhar, Tahsil Shakti, District Janjgir Champa Chhattisgarh. Through General Power Of Attorney Miluram, S/o Motiram Sahu, Aged About 55 Years, R/o Sarhar, Thasil Shakti, District Janjgir Champa Chhattisgarh.
2. Smt. Toran Bai (Died) Through Legal Heir-
2(A) Miluram S/o Motilal Sahu, Aged About 75 Years R/o Village Sarhar, Police Station Baradwar, Tahsil Shakti, District Janjgir Champa Chhattisgarh.
3. Smt. Chanda Bai, D/o Tulshi Sahu, Aged About 48 Years R/o Village Darang, Thasil Shakti, District Janjgir Champa Chhattisgarh.

4. State of Chhattisgarh Through Collector, District Janjgir Champa Chhattisgarh.

5. Land Acquisition Officer, District Office Janjgir Champa, District Janjgir Champa Chhattisgarh.

---- Respondents

For appellants : Mr. Yogendra Singh Rajput, Advocate.

For respondents : Mrs. Renu Kochar, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Heard on application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908.

2. By this application, the appellants seek to file certified copy of the award and objection made by the respondent before the Land Acquisition Officer (Annexure A/5).

3. To decide the aforesaid application, Order 41 Rule 27 of the Code of Civil Procedure may be read as under:

“The parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the Appellate Court. But if -

- (a) The Court from whose decree the appeal is preferred has refused to admit evidence

which ought to have been admitted, or

(aa) The party seeking produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge of could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate court may allow such evidence or document to be produced, or witness to be examined.

4. It is not the business of the appellate court to supplement the expedience adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

5. The two tests for admissibility of additional evidence, is whether the appellate court is able to pronounce judgment on the material before it, without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examine the evidence, as it stands the court comes to the conclusion that some inherent lacuna or defects becomes apparent to the court. It is only for removing a lacuna in the evidence, that the appellate court is empowered to admit additional evidence. When a party failed to discharge its onus before the trial court, he is not entitled to a fresh opportunity to produce evidence.

6. The trial court has provided full opportunity to adduce evidence to the appellant and the parties have adduced evidence of oral and documentary as well. It is not a case that this Court is not able to pronounce judgment without taking into consideration the additional evidence sought to be adduced. Accordingly, the application is liable to be and is hereby dismissed.

7. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 2-1-2000 passed by the Additional District Judge, Shakti, Janjgir-Champa (CG) in Civil Suit No.2-B/2004 wherein the said court ordered the appellant to pay half of the compensation amount

awarded for acquisition of the land bearing Khasra No. 241 area 0.44 acres and Khasra No.243 area 0.48 acres (out of 1.06 acres) situated at village Naya Baradwar, Tahsil Shakti, District Janjgir-Champa (CG).

8. Admittedly, the land in question was acquired by the State Government and compensation is awarded to the tune of Rs.3,50,000/- Respondents No. 1 to 3/plaintiffs filed a suit before the trial Court for getting half of the compensation as the property was owned by two persons namely Parsadi and Tulsi Ram and said respondents No.1 to 3 being legal representatives of late Tulsi Ram, are entitled to get half of the compensation amount. The trial court after recording evidence and after hearing both parties, decreed the suit filed by the respondents No. 1 to 3 and awarded half share in the compensation in question.

9. Learned counsel for the appellants would submit as under:

- i) Only Parsadi was recorded owner and therefore, his successors are entitled for compensation. As Tulsi ram was not recorded owner, respondents No. 1 to 3 are not entitled for compensation.
- ii) The finding of the trial court that half share of the compensation amount will go to

respondents No. 1 to 3, is contrary to the material available on record.

10. On the other hand, learned counsel for the respondents would submit that the finding of the court below is based on proper marshalling of the evidence and same is not liable to be interfered with while invoking jurisdiction of the appeal.

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

12. The only question for consideration of this court is whether the property was owned by Parsadi and Tulsi Ram. To substantiate their pleadings, both parties adduced oral and documentary evidence. It is admitted in written statement by the appellants (para 1-A) that Tulsi Ram had $\frac{1}{2}$ share in the property, but it is their pleading that same was relinquished by Tulsi Ram in favour of Parsadi. As per record (Ex.D/5) and as per evidence of both sides, it is established that Tulsi Ram had $\frac{1}{2}$ share in the property in question. If any property that valued more than Rs.100/- is to be relinquished, the same can be done only by registered document as per Section 17 of the Registration Act, 1908. There is no record produced before the trial Court that any registered deed was executed by Tulsi Ram in favour of Parsadi

for relinquishing the said property, therefore, oral evidence or any unregistered document is not sufficient to extinguish right of Tulsi Ram in the property in question. Admittedly, respondents No. 1 to 3 are successors of Tulsi Ram and they will inherit $\frac{1}{2}$ share in the property in question which is owned by Tulsi Ram.

13. The trial court has elaborately discussed the entire evidence and recorded finding that respondents No. 1 to 3 are entitled for half of the share of compensation which is awarded by the Land Acquisition Officer for acquisition of land in question. In view of this court, the trial court recorded finding on the basis of oral and documentary evidence adduced by both sides and it cannot be said that marshaling of the evidence and finding of the trial court is not proper. This court has no reason to take a contrary view. Argument advanced on behalf of the appellants is not sustainable. The appeal is liable to be dismissed.

14. Accordingly, decree is passed in favour of respondents No. 1 to 3 and against the appellants as under:

- (i) The appeal is dismissed with cost.
- (ii) Appellants to bear the cost of respondents No. 1 to 3 through out.
- (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