

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 205 of 2012

Vinod Kumar Soni, aged about 54 years, S/o Shri Ram Charan Soni, R/o Satgudi Chowk, Raigarh, Presently residing at Sunalia Jewellers, Power House Road, Tahsil and District Korba (C.G.)

---- Appellant

Versus

1. State Of Chhattisgarh through Collector, Korba (C.G.)
 2. Commissioner Municipal Corporation, Korba (C.G.)
 3. Tehsildar, Korba, District Korba (C.G.)
 4. Executive Engineer, Hasdeo Baraj Water Management Division, Rampur, Korba, Irrigation Department Korba, Tahsil and District Korba (C.G.)
- Respondents**

For the Appellant	:-	Mr. Surfaraj Khan, Advocate
For the Respondents	:-	Mr. Anmol Sharma, Advocate.
No. 1, 3 & 4		
For the Respondent No.2	:-	Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Justice Manindra Mohan Shrivastava J.

16.07.2019

1. This appeal is preferred against the judgment and decree dated 30.10.2012 passed by District Judge, Korba in Civil Suit No.39-A/2011 by which appellant/plaintiff's suit for declaration of title in so far as lands comprised in Khasra No.589/5 are concerned, has been dismissed, though suit partly decreed in respect of lands bearing Khasra Nos.588/1 and 588/3 at Korba.
2. Plaintiff filed a suit seeking a decree of declaration of title and permanent injunction on the pleadings *inter alia* that vide sale deed dated 29.07.1975, he had purchased agricultural land admeasuring 0.02 acres situated in Khasra No.589/5 at Patwari Halka No.4 in Village Korba. It was further pleaded that with the

passage of time, a dispute arose when the Corporation started constructing/widening of road. The plaintiff filed a Civil Suit No.17-A/95 based on the cause of action that the Corporation has demolished the boundary wall on 06.03.1995. During the pendency of the said suit the plaintiff and defendant/Corporation entered into an agreement/settlement on 30.05.1995 under which, it was agreed that the two shops situated on Khasra No.589/5 would be demolished to pave way for construction/widening of public road and in exchange, plaintiff would be given 470 Sq.ft. of land comprised in Khasra No.588/1 and 588/3. Further pleading was that later on, the plaintiff was granted permission to construct his house on lands received by him by way of exchange under the agreement of 1995. The plaintiff constructed his house also. Further case is that except two shops, which were standing on the land comprised in Khasra No.589/5, remaining part of the land continued to be in the title and possession of the plaintiff and that land was not surrendered under agreement dated 13.05.1995. Later on, the plaintiff came to know that the revenue records have been mutated in the name of defendant No.4., therefore, a declaration was sought that land admeasuring 0.02 acres comprised in Khasra No.589/5 is held in title and in ownership of the plaintiff and further that the defendants be restrained from interfering with plaintiff's possession over 470 Sq.ft. of land comprised in Khasra Nos.588/1 and 588/3 and further, defendants be restrained from interfering with plaintiff's possession of the house situated in Khasra No.589/5. Plaintiff also sought a

declaration that mutation of the name of defendant No.3 in the revenue records in respect of the land comprised in Khasra No.589/5 admeasuring 0.02 acres of land is illegal and inoperative in law.

3. The defendants filing their respective written statements denied the plea of the plaintiff. According to the defendants, the plaintiff had entered into an agreement with the respondent/ Corporation on 30.05.1995 under which, the shops as well as the land comprised in that Khasra number were surrendered in the name of the Corporation and he had received in exchange the land admeasuring 470 Sq.ft. situated in Khasra No.588/1 and 588/3 on which also he was granted permission to construct the land. Therefore, the suit is liable to be dismissed.

4. Learned trial Court relying upon an agreement dated 30.05.1995 and the evidence on record held that the plaintiff having surrendered the two shops as also the land, was not entitled to any decree and the suit was dismissed in so far as plaintiff's claim over the land comprised in Khasra No.589/5 is concerned. However, the plaintiff's suit in so far as land comprised in Khasra Nos.588/1 and 588/3 were decreed. Hence, this appeal.

5. Learned counsel for the appellant would argue that the learned trial Court committed gross illegality in recording the finding that in the settlement arrived at between the plaintiff and Corporation, plaintiff's property contained in Khasra No.589/5 admeasuring 0.02 acres was surrendered in exchange of another

land admeasuring 470 sq.ft. comprised in Khasra Nos.588/1 and 588/3. He would argue that according to the terms of agreement (Ex.P-6) and map (Ex.P-7), attached with building permission, the two shops which were coming in the way of widening of road were to be removed whereas the third shop was not touched and it is this third shop behind which the plaintiff was given 470 sq.ft. of land. He would further argue that the agreement between the parties which was executed on 13.05.1995 (Ex.P-6) did not amount to surrender of entire land admeasuring 0.02 acres comprised in Khasra No.589/5. The learned trial Court having recorded a clear finding that as there was no acquisition of land comprised in Khasra No.589/5, the plaintiff was entitled to decree as prayed for in respect of land admeasuring 0.02 acres comprised in Khasra No.589/5.

6. On the other hand, learned counsel for respondent would submit that, even though, the trial Court recorded a finding that no acquisition of land comprised in Khasra No.589/5 had taken place, after examination of oral and documentary evidence, particularly, the agreement and the plaintiff's own application for withdrawal of suit, the learned trial Court came to the conclusion that the plaintiff failed to establish his title in respect of remaining part of the land comprised in Khasra No.589/5, therefore, the suit has been partly decreed but plaintiff's claim in respect of land comprised in Khasra No.589/5 has been rejected.

7. The only point requiring determination in this case is whether the plaintiff is entitled to claim title and permanent injunction in respect of 0.02 acres of land comprised in Khasra No.589/5 or in the alternative, whether he is entitled to such declaratory relief and injunction at least in respect of that part of land comprised in Khasra No.589/5, which according to the plaintiff was not part of agreement (Ex.P-6).

8. The respondents have not assailed the finding of the learned trial Court in so far as the issue of acquisition is concerned. In a clear finding as far as acquisition is concerned, the acquisition proceedings and orders passed therein do not establish that any part of the land comprised in Khasra No.589/5 was acquired.

9. The undisputed position between the plaintiff and the defendant-Corporation is that when the dispute arose between the Corporation and the plaintiff on account of demolition of boundary wall on 06.03.1995, the plaintiff filed a suit registered as Civil Suit No.17-A/95. It is also an admitted position that during the pendency of that suit both, the plaintiff as well as defendant-Corporation entered into a settlement, reflected by way of an agreement dated 13.05.1995 (Ex.P-6). The dispute lies in whether the plaintiff had surrendered only the shops or other lands appurtenant thereto and comprised in Khasra No.589/5.

10. The agreement dated 13.05.1995 (Ex.P-6) states that in public interest, the plaintiff has surrendered the two shops in favour of the Authority (Special Area Development Authority), Korba and

in exchange, he would be resettled over the land admeasuring 470 sq.ft.. Para 3 of the said agreement states that the settlement would be as per the plan attached along with the agreement. However, the plaintiff did not file the plan attached with the agreement and has only filed the agreement. The map attached along with building permission dated 19.07.1995 (Ex.P-7) is not that plan which is referred to in Para 3 of the agreement dated 13.05.1995, but is merely a construction plan.

11. The learned trial Court has relied upon plaintiff's application under Order 23 Rule 1 CPC seeking withdrawal of suit on the stated ground of compromise entered into between the parties. In Para 4 of the application, it has been stated by the plaintiff that plaintiff has agreed to surrender land shown in the area marked as E, F, L, M and all appurtenant lands shown in yellow colour as B, C, F. If read in juxtaposition with what has been stated in Para 3, it shows that the two shops out of three are said to be situated in the area E, F, L, M. In Para 5, it has been further mentioned that in exchange, the plaintiff would be allotted land in Khasra Nos.588/1 and 588/3. In Para 6 of the application, the plaintiff admits that, even though, he would be given lesser extent of land than what has been surrendered, he has agreed to surrender the land in larger public interest for development of public work.

12. In order to get a declaratory decree the plaintiff was required to plead and prove by leading clinching oral and documentary evidence that the part of land which was surrendered

by him was the total extent of land surrendered by him as stated in his application under Order 23 Rule 1 CPC and thereafter how much part of the land remained in his possession. The plaintiff has miserably failed even to prove by leading specific evidence as to what was the total construction area of the two shops which was surrendered by him and what was the total area of the land referred to in Para 4 of application under Order 43 Rule 1 CPC which he surrendered in favour of the Corporation. The map which is said to be attached along with this application has also not been filed before the learned trial Court, much less proved by leading any specific oral evidence. Therefore, the plaintiff's claim for declaration of title in respect of entire land comprised in Khasra No.589/5 admeasuring 0.02 acres remain under the cloud and, therefore, the learned trial Court committed no illegality in refusing to grant decree in favour of the plaintiff in so far as land comprised in Khasra No.589/5 is concerned.

13. The plaintiff's title in respect of Khasra Nos.588/1 and 588/3 has been accepted and to that extent decree has been granted in favour of the plaintiff, therefore, no interference is called for. Appeal is, therefore, dismissed. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay