

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.15 of 2004**

- (a) Smt. Durgawati Devi Jaiswal, aged about 64 years, Widow of Late Shri Kubernath Jaiswal,
- (b) Durgesh Prasad Jaiswal, aged about 29 years,
- (c) Ganesh Prasad Jaiswal, aged about 27 years,
- (d) Dinesh Prasad Jaiswal, aged about 24 years,
- (e) Nilkanth Jaiswal, aged about 22 years,

(b) to (e) sons of Late Shri Kubernath Jaiswal All Residents of Late (Gali) No.2 Tulsipur Ward No.17 Rajnandgaon, Tah. and Dist.Rajnandgaon (CG)

---- Appellants

Versus

1. Kamlabai alias Kamlesh Ben, wife of Shri Shiv Prasad Singh, resident of Qtr No.1316 Aadinath Rajeev Park, Udhaw, Ahmadabad,
Present Address: C/o. Latabai Rajput, Teacher, resident of near Nahar Naali, in front of Government Press, Chikhli, Rajnandgaon (Chhattisgarh)
2. Sanjeev Jain S/o Sureshchandra Jain R/o Heeramoti Line, Ward No.37 Tahsil & District Rajnandgaon (CG)

---- Respondents

For Appellant/Defendant	:	Mr.P.K.C.Tiwari, Senior Advocate with Mr.Ashutosh Trivedi, Advocate
For Respondent No.1/Plaintiff	:	Mr.Anoop Mazumdar, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

10/01/2019

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the defendant are as under:-

- “1. Whether in absence of Yogendra Singh, the decree of possession passed in favour of appellant is lawful ?
2. Whether the suit was barred under Section 257 of the C.G. Land Revenue Code ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and raking given in the suit before the trial Court]

2. The plaintiff filed a suit for possession based on title stating inter-alia that she is owner and title-holder of the suit land bearing khasra Nos.337/31 and 338/31 admeasuring 5 decimal, which was given to the defendant for running wood depot and when she requested for vacating the said depot, the defendant refused claiming to be inducted by one Yogendra Singh leading to issuance of notice on 20.5.96 for eviction of the defendant and prayed for decree of possession.

3. The defendant filed his written statement stating inter-alia that he has been inducted by Yogendra Singh and the suit is barred by limitation as application filed by the plaintiff under Section 257 of the C.G. Land Revenue Code, 1959 (hereinafter called as “the Code”) has already been rejected by the revenue officer and prayed for dismissal of the suit.

3. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 3.1.2003, held that the plaintiff is owner and title-holder of the suit land and entitled for possession of the suit land with damages.

4. On appeal being preferred by the defendant, the First Appellate Court affirmed the judgment and decree passed by the trial Court.
5. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/defendant, in which substantial questions of law have been framed by this Court, which have been set-out in the opening paragraph of this judgment.
6. Mr.P.K.C.Tiwari, learned Senior Counsel appearing for the appellant/defendant, would submit that both the Courts below are absolutely unjustified in decreeing the suit for possession in absence of Yogendra Singh, who was not only necessary but proper party and the suit was barred under Section 257 of the Code. He has invited my attention to last paragraph of statement of the plaintiff in which she is said to have admitted that Yogendra Singh has taken possession of the suit land.
7. On the other hand, Mr.Anoop Mazumdar, learned counsel appearing for respondent No.1/plaintiff, would support the judgment and decree impugned.
8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to substantial question of law:-

9. The trial Court has clearly recorded the finding that the plaintiff is owner and title-holder of the suit land based on sale deed dated 13.1.1975 (Ex.P/1) and found proved the title of the plaintiff over the suit land. The plaintiff in her plaint has stated that she and Yogendra Singh were staying together and there was no relationship of husband and wife between them. In the year 1982, she left for Ahmadabad (Gujarat) and staying at Ahmadabad, whereas Yogendra Singh has been examined as DW-2 and has claimed himself to be husband of plaintiff-Kamla Bai. However, he has admitted that the suit land is recorded in the name of Kamla Bai in revenue records.

10. The fact remains that both the Courts below concurrently held the plaintiff to be title-holder. The plaintiff has not claimed any relief from Yogendra Singh as there is dispute between the plaintiff and Yogendra Singh. Even the defendant has taken a plea that he was induced by Yogendra Singh. The First Appellate Court has held that Yogendra Singh is neither necessary nor proper party.

11. In view of above-stated finding recorded by two Courts below that the plaintiff is owner and title-holder of the suit land to which she has given to the defendant to run wood depot is the finding of fact based on evidence available on record, which is neither perverse nor contrary to record. The finding recorded by the First Appellate Court that Yogendra Singh is neither necessary nor proper party and said finding cannot be said to be erroneous requiring interference by this Court under Section 100 of the Code of Civil Procedure.

Answer to substantial question of law No.2:-

12. Though no question has been raised by the defendant before the trial Court that the suit is barred by Section 257 of Code, but it is quite vivid that the suit instituted by the plaintiff was the suit for possession based on title and therefore, bar under Section 257 (x) of the Code would be apply.

13. The Supreme Court in the matter of **Rohini Prasad and others v. Kasturchand and another**¹ relying upon Full Bench judgment of the Madhya Pradesh High Court in the matter of **Ramgopal Kanhaiyalal v. Chetu Batte**² has held that suit for possession based on title is maintainable. It was observed as under:-

“8.....The Full Bench observed : "Under the general law, a suit for possession based on title can be instituted in the Civil Court within 12 years from the date of dispossession. The principle that possession must follow title has received greater weight and sanctity when the distinction between the scope and effect of Article 142 and those of article 144 of the Limitation Act, 1908, has been watered down and simpler provisions have been substituted in Articles 64 and 65 of the Limitation Act of 1963. It will be anomalous to read section 250 as providing for a suit for possession based on title, which is to be instituted within two years only. It will entail a fantastic result that if a suit is not brought within two years under section 250, the Bhumiswami's right will be extinguished, because by virtue of section 26 of the Limitation Act, if a suit for possession is not instituted within the period of limitation prescribed therefor, not only the remedy is barred but the right is also extinguished. Section 26 is an exception to the general rule that limitation bars the remedy but does not extinguish the right."

The Full Bench then went to hold :

¹ (2000) 3 SCC 668

² AIR 1976 Madhya Pradesh 160

"The remedy provided in section 250 of this Code can be resorted to by a Bhumiswami by an application to the Tehsildar. He has to show either (1) that he was dispossessed by the non-applicant otherwise than in due course of law, or (2) that he was dispossessed within two years from the date on which the possession of such person became unauthorised (although initially the possession of that person may be authorised). Thus, clearly enough, this section provides for a remedy at the hands of the Tehsildar for restoration of possession, when a Bhumiswami is improperly dispossessed, that is, without due process of law. Clause (x) of section 257 excludes the jurisdiction of the Civil Court to challenge "any decision regarding reinstatement of a Bhumiswami, improperly dispossessed under section 250". In both these provisions the subject matter of enquiry is possession not title.

Determination of the question of title is the province of the civil Court and unless there is any express provision to the contrary, exclusion of the jurisdiction of the civil court cannot be assumed or implied."

In three different appeals coming to the Madhya Pradesh, Hon'ble Judges sitting singly have consistently held that the civil suit of possession based on title is triable by the Civil Court. That being the law laid by the High Court of Madhya Pradesh while interpreting the Code which applies to the State of Madhya Pradesh and held the field for all these years, it is not desirable for the Supreme Court to give a different interpretation and to upset the settled law. Merely because a different view is possible and that on that ground the decision of the High Court is erroneous, in our view, should not be a ground to interfere. Law should be certain and parties should know where they stand. We have already said that the finding of the First Appellate Court on reading of the evidence was perverse and the High Court rightly interferes to upset the same. As a matter of fact there was no evidence to come to the conclusion that Rohini Prasad was in possession of the land in continuation or renewal of the lease after expiry of the year 1975-76."

14. In view of the above-stated authoritative pronouncement of the Supreme Court, it cannot be held that the suit for possession based on

title filed by the plaintiff was barred at all. It was maintainable. Resultantly, both the substantial questions of law are answered in favour of the plaintiff and against the defendant.

15. Accordingly, the second appeal deserves to be and is hereby dismissed bearing the parties to bear their own cost(s).

16. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-