

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.616 of 2003**

Santosh Kumar, S/o Hariram, R/o Sonarpara, Mungeli, District Bilaspur (CG)

---- Appellant

Versus

1. Ramkhilawan, S/o Bhuwanlal, aged about 68 years, R/o Ramgopal Tiwari Ward, Mungeli, District Bilaspur (CG)
2. State of Chhattisgarh through Collector, Bilaspur

-----Respondents

For Appellant:	Shri Malay Shrivastava Advocate.
For Respondent No.2/State:	Shri RK Jaiswal, Panel Lawyer

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Judgment On Board

01.04.2019

1. This Appeal has been preferred by the Defendant under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the judgment and decree dated 31.07.2003 passed by the Additional District Judge, Mungeli in Civil Appeal No.04-A/2000 by which, the lower appellate Court, while reversing the finding of the trial Court dated 19.01.2000 passed in Civil Suit No.44-A/1997, has decreed the Plaintiff's claim.

2. Briefly stated, facts of the case are that the Plaintiff instituted a suit claiming possession and damages to the tune of Rs.1,240/- by submitting *inter alia* that by virtue of the registered deed of sale dated 19.06.1965, the Plaintiff's sons namely Raj Kumar and Vijay Kumar purchased the suit property bearing Khasra No.427/8 admeasuring 0.87 acres, the part of Khasra No.427/1 from Dwarika Prasad, Ambika Prasad and Chandrika

Prasad. It is pleaded in the Plea that after purchasing the property as such, an application was made for mutation which was objected by the said vendors and obtained the possession forcefully in the year 1968. Therefore, the suit for possession was filed by Plaintiff Ramkhilawan against them, which was decreed by the trial Court vide judgment and decree dated 21.07.1978 in Civil Suit No.69-A/1976 and the Possession was accordingly delivered to him on 09.10.1978. It is pleaded further that the revenue papers were mutated in his sons' names vide order dated 20.02.1985. However, the said order has been reversed on 30.06.1986 by mentioning the name of Defendant No.1 upon deleting the names of Plaintiff's sons even without prior notice to them. It is pleaded further that after obtaining the revenue papers as such, Defendant No.1, in the year 1987, has dispossessed the Plaintiff illegally giving rise to a suit in the instant nature, instituted on 14.05.1997. The Defendant has not filed any written statement and was proceeded *ex parte*.

3. After considering the evidence led by the Plaintiff, the trial Court has dismissed the suit by holding *inter alia* that the order as passed on 30.06.1986 has not been questioned by the Plaintiff and has failed to establish the fact that the suit property bearing Khasra No.427/8 admeasuring 0.87 acres is a part of Khasra No.427/1 and observed further that the Plaintiff, while instituting the suit, has failed to produce the demarcation report. As such, he is not entitled to relief of possession and damages as claimed by him. The suit was accordingly dismissed.

4. Being aggrieved, the Plaintiff has preferred an Appeal and the appellate Court, in turn, after considering the revenue papers and also by considering the judgment and decree dated 21.07.1978 (Ex.P-2) passed in

Civil Suit No.69-A/1976 instituted earlier by the Plaintiff against the vendors namely Dwarika Prasad and others, arrived at a conclusion that the Plaintiff is the owner of the property in question bearing Khasra No.427/8 admeasuring 0.87 acres and has been dispossessed by Defendant No.1 without any authority. In consequence, the Plaintiff's claim has been decreed in part while entitling him to obtain the relief of possession of the suit property from Defendant No.1.

5. Being aggrieved, Defendant No.1 has preferred this Appeal. Shri Malay Shrivastava, learned Counsel for the Appellant submits that the judgment and decree as passed by the lower appellate Court while reversing the finding of the trial Court is apparently contrary to law. He submits further that in absence of questioning the order of mutation dated 30.06.1986, the suit itself is not maintainable. He submits further that in absence of a demarcation report and documents showing that Khasra No.427/8 admeasuring 0.87 acres purchased by the Plaintiff's sons under registered deed of sale dated 19.06.1965 (Ex.P-1) is the part of Khasra No.427/1, therefore, it cannot be held that the Plaintiff is the owner of the property in question.

6. I have heard learned Counsel for the Appellant and perused the entire record carefully.

7. A suit was filed by the Plaintiff on the basis of the registered deed of sale dated 19.06.1965 (Ex.P-1) purported to have been executed by Dwarika Prasad, Ambika Prasad and Chandrika Prasad in favour of his sons. After obtaining the property as such, it was recorded in their names in revenue papers on 20.02.1985. A perusal of the record would show that this order has been reversed by the competent revenue authority vide its

order dated 30.06.1986 without issuing any prior notice to the Plaintiff. It appears further from the perusal of the record that after obtaining revenue papers as such, Defendant No.1 started interfering in peaceful possession of the Plaintiff and dispossessed him illegally. The pleadings and the documentary evidence as produced by the Plaintiff have not been controverted by Defendant No.1 as he was proceeded *ex parte* without filing the written statement. Therefore, the appellate Court, after considering all the documentary evidence, has arrived at a conclusion that the Plaintiff is not only the owner of the property in question bearing Khasra 427/1 admeasuring 0.87 acres, but has been dispossessed illegally by Defendant No.1. The said finding is recorded based upon due and proper appreciation of the documentary evidence produced by the Plaintiff and therefore, it does not require to be interfered at this stage.

8. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE