

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 609 of 2003**

- Rambharosh son of Ramsharan, aged about 45 years, R/o Village – Sonhat, Tah. - Wadrafnagar, Distt. - Surguja, CG.

---- Appellant**Versus**

1. Vishwanath aged about 45 years S/o Late Ramkishun
2. Chitrakut, S/o Late Ramkishun, aged about 40 years
3. Janakdhari, S/o Late Ramkishun aged about 30 years
4. Ramlakhan, S/o Mathura Prasad, aged about 48 years
5. All caste – Koir and R/o Village – Sonhat, Tah.-Wadrafnagar, Distt. - Surguja (CG)
6. The State of Chhattisgarh through District – Collector, Surguja (CG)

---- Respondents

For Appellant	:	Shri Aman Upadhyaya, Advocate
For Respondents 1 to 4	:	Shri Devashish Biswas and Ms. Suchita Bais, Advocates
For State	:	Shri Vaibhav Singh, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****14/11/2019**

This second appeal is directed against impugned judgment and decree dated 18/06/2003 passed in Civil Appeal No.5-A/2003 by the District Judge, Surguja by which, the defendant's appeal against judgment and decree of the Trial Court has been allowed, decree granted in favour of the plaintiff was set aside and plaintiff's suit is dismissed.

2. The respondent / plaintiff filed a suit on the pleadings that the property in dispute belongs to them and he is the owner of the property in dispute and is the title holder of the same on the basis that the said land was granted by way of lease to him by the State Government. According to this lease deed, land admeasuring 0.24 and 0.33 R.A. situated in khasra No.334 and khasra No.723 of Village – Sonhat belong to the plaintiff in his ownership in title but the defendants have started interfering with his possession and threatening to dispossess him which gave him cause of action to file a suit seeking decree of permanent injunction.

3. The defendants denied plaintiff's claim stating that though the plaintiff has been granted lease on land comprised in khasra no.152 and khasra No.192/13, as far as land in dispute is concerned, which is comprised in khasra No.192/2 admeasuring 3.30 acres belongs to them by virtue of sale which has been developed by the defendants. According to the defendants, the plaintiff is claiming title over the land other than the land on which, he has been granted lease by the State Government. It is submitted that under the settlement proceedings, various orders were passed and finally, corrected the land records, according to which, the land granted by way of lease to the plaintiff is comprised in khasra no.494 whereas the land comprised in khasra no.334 belongs to the defendants.

4. After framing issues and allowing the parties to lead oral and documentary evidence, learned Trial Court decreed the suit of the plaintiff. Aggrieved by the same, appeal was preferred. Learned lower Appellate Court allowed the appeal, set aside the judgment and decree of the Trial Court and dismissed the suit relying mainly on the documentary evidence which were filed by the defendants at the appellate stage.

5. This appeal is admitted on following substantial question of law -

“Whether the First Appellate Court is justified in admitting the additional documents/additional evidence by the impugned judgment and thereby relying upon the said documents and granting the appeal

without affording an opportunity to lead rebuttal evidence to the appellant / plaintiff and thereby committed an illegality in granting the appeal ?”

6. Learned counsel for the appellant raised solitary submission that the learned lower Appellate Court committed patent illegality in admitting additional documents / evidence and relying upon the documentary evidence without affording any opportunity to lead evidence in rebuttal to the appellant / plaintiff.

7. On the other hand, learned counsel for the respondent would submit that though the respondents / defendants had filed an application under Order 41 Rule 27 CPC to bring additional documentary evidence on record during the appeal, the documents were extremely relevant and have direct bearing on the dispute between the parties. According to him, the additional documents clearly supported the case of the defendant that the disputed property does not belong to the plaintiff because it is not the part of that land which was granted by way of lease to the plaintiff by the Government and the plaintiff's land is situated in some other khasra number than the one plaintiff claims. According to learned counsel for the respondent, the land comprised in khasra No.334 comprised of land which belong to the defendant.

8. After hearing learned counsel for the parties, in the considered opinion of this Court, the legal position arising for consideration in this case is clear. Under Order 41 Rule 28 CPC, the mode of taking additional evidence has been prescribed as below -

“Order 41 Rule 28 (Mode of taking additional evidence) –
Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.”

The aforesaid provision makes it clear that it prescribes the procedure to be followed once prayer for taking additional evidence is allowed. In such a case, either

the Appellate Court may take such evidence or may direct the Court from whose decree the appeal is preferred or any other subordinate Court to take such evidence and to send it, when taken, to the Appellate Court. Apparently, as soon as the Court below allowed the additional evidence to be produced, the only course open for it was to direct the subordinate Court to take necessary evidence and then send it to the Appellate Court. This is necessary because mere production of the documents is not proof. The document which is sought to be led in additional evidence is required to be proved in accordance with law. This would require recording of evidence. The other party would also be entitled to cross-examine the witnesses led to prove the document. Once that evidence is recorded, it is then required to be sent to the Appellate Court so that the Appellate Court may pronounce judgment by considering the additional evidence. This procedure has not at all been followed by learned Court below. Similar view has been taken by this Court in the case of **Sukhnandan Sunau Satnami and anr. v. Rajni Shanti Lal and ors., ILR 2019 Chhattisgarh 1284.**

9. In view of above, the question of law answered in favour of the appellant and against the respondent. The impugned judgment and decree passed by the learned lower Appellate Court is set aside and the case is remitted to the lower Appellate Court for taking necessary steps for collection of evidence on the aspect of additional evidence led by the respondent / defendant. After collection of necessary evidence as may be led by both the parties, learned lower Appellate Court shall proceed to decide the appeal as early as possible, preferably within a period of four months from the date of receipt of copy of this order.

10. The appeal is accordingly allowed. Decree be drawn accordingly. Parties to bear their respective costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge