

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.309 of 2007

Shivpyari, Wd/o Hariprasad, Aged about 76 years, R/o Vill. Chhura,
Tahsil Chhura, District Raipur (C.G.)

---- Appellant

Versus

1. Nek Mohammad, aged about 50 years,
2. Sabir Mohammad, aged about 52 years,
3. Sabina Bano, Aged about 54 years,

No.1 to 3 all S/o Late Room Mohammad, R/o Village Chhura, Tahsil
Chhura, District Raipur (C.G.)

4. State of Chhattisgarh, Through Collector, Raipur (C.G.)

---- Respondents

AND

Second Appeal No.397 of 2007

Shivpyari, Wd/o Hariprasad, aged about 76 years, R/o Village
Chhura, Tahsil Chhura, District Raipur (C.G.)

(Plaintiff)

---- Appellant

Versus

1. Nek Mohd., aged about 50 years,
2. Shabir Mohd., aged about 52 years,
3. Shabina Bano, aged about 54 years,

Respondent No.1 & 2 S/o Late Room Mohd. & Respondent No.3
D/o Late Room Mohd., All R/o Village Chhura, Tahsil Chhura,
District Raipur (C.G.)

4. State of Chhattisgarh, Through the Collector, Raipur, District Raipur
(C.G.)

(Defendants)

---- Respondents

For Appellant: Mr. Bhaskar Payashi, Advocate.

For Respondents No.1 to 3: -

Mr. Ram Kumar Tiwari, Advocate.

For Respondent No.4 / State: -

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

24/07/2019

1. Delay in filing S.A.No.397/2007 is condoned after hearing the parties, as sufficient cause has been shown for delay of 133 days in preferring the appeal.
2. This judgment will govern the disposal of S.A.Nos.309/2007 & 397/2007, as both the appeals have arisen from one civil suit filed by Shivpyari – plaintiff therein.
3. Heard on the question of admission and formulation of substantial question of law in the second appeals preferred by the plaintiff.
4. Sole plaintiff Shivpyari filed a suit for declaration of title and permanent injunction stating inter alia that her late father-in-law Sheoratan Prasad was the occupancy tenant of the suit land bearing Khasra No.41, area 2.047 hectares, as per the settlement year 1921-22 and the plaintiff is successor of Late Hari Prasad being his widow and has inherited the property which the defendants are interfering with, therefore that has necessitated the filing of suit for declaration of title and permanent injunction. The defendants therein not only filed written statement setting up the title on themselves, but also laid counter-claim that the suit land was settled in their grand-father's name Faiz Mohammad vide Ex.D-1 and ultimately, his name was finally directed to be recorded by the order of the Board of Revenue vide Ex.D-4 and that has

become final. The trial Court after appreciating oral and documentary evidence on record dismissed the suit and the counter-claim as well. On appeals being preferred by the defendants and the plaintiff, both, the first appellate Court dismissed the first appeal of the plaintiff and decreed the counter-claim of the defendants holding that they are title holders of the suit land and directed for delivery of possession. Feeling aggrieved against the judgment & decree dismissing the first appeal of the plaintiff and decreeing the counter-claim of the defendants, these two second appeals have been preferred by the plaintiff.

5. Mr. Bhaskar Payashi, learned counsel appearing for the plaintiff / appellant, mainly concentrating on decreeing the counter-claim by the first appellate Court, would submit that the first appellate Court is absolutely unjustified in holding that the suit land bearing Khasra No.41, area 2.047 hectares, as claimed by the plaintiff, is not the same land which the defendants have claimed vide Ex.D-1, as Khasra number mentioned in that document is 10/1, area 5.03 hectares, as such, the first appellate Court could not have decreed the counter-claim of the defendants by recording finding which is not only perverse, but also contrary to record and these appeals involve substantial question of law for determination.
6. I have considered the submissions of learned counsel for the appellant / plaintiff and went through the records with utmost circumspection.
7. The first appellate Court has clearly recorded a finding that vide Ex.D-1, patta was granted to the grand-father of the defendants

Faiz Mohammad on 5-5-1938 by evicting father-in-law of the plaintiff and in Ex.D-2 1971-72, the possession holder is held to be Room Mohammad – father of defendants No.2 & 3 and in Ex.D-3, it appears that, evicting Sheoratan Prasad, possession has been handed-over to the defendants' grand-father – Faiz Mohammad, as Sheoratan Prasad was evicted on failure to pay the land revenue against that land and thereafter, patta vide Ex.D-1 was granted by the then Zamindar of Bindranawagarh to the defendants' grand-father – Faiz Mohammad which was recorded in the document of 1991-92 when the name of Hari Prasad was recorded against which appeal was preferred and ultimately, the Board of Revenue maintained the order of the Sub-Divisional Officer vide Ex.D-4 and the land now, still stood recorded in the name of the defendants. The aforesaid finding recorded by the learned first appellate Court is based on documents Exs.D-1 to D-4 which is neither perverse nor contrary to law.

8. While filing reply to the counter-claim filed by the defendants, the plaintiff did not even took the plea that the suit land bearing Khasra No.41 and the land shown in patta Ex.D-1 is not one and same and is different land, therefore, no decree can be granted in favour of the defendants while decreeing the counter-claim. The first appellate Court has considered the matter in great detail and has reached to a correct finding that by evicting the plaintiff's father-in-law, patta was granted vide Ex.D-1 to the defendants' grand-father Faiz Mohammad on 5-5-1938 and continued to be recorded vide Exs.D-2 to D-3 in the name of Hari Prasad – plaintiff's husband

which was set aside by the Sub-Divisional Officer and it has been maintained by the Board of Revenue vide Ex.D-4, as such, the names of the defendants are continuing in the revenue records and therefore there is no such dispute with regard to the identity of the suit land. The suit land claimed by the plaintiff and the land shown in Ex.D-1 is one and same. Therefore, in both the appeals, I do not see and find any infirmity or illegality much less substantial question of law for determination. The appeals deserve to be and are accordingly dismissed at the admission stage itself finding no substantial question of law for determination under Section 100 of the CPC, leaving the parties to bear their own cost(s).

9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge