

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.237 of 2004

Mohit Ram, S/o Sant Ram Patel, Aged about 54 years, Caste Agharia, Occu. Agriculture & Service, R/o Village Kharsia, Distt. Raigarh (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Legal heirs of Late Sadhu Ram, S/o Santram (Dead)

a) Mehettar Ram, S/o Shaduram, Aged about 35 years, Village Phool Balia, Tah. Kharsia, Distt. Raigarh.

b) Ganga Bai, D/o Sadhuram Patel, Aged about 34 years, Village Botalda, Tah. Kharsia, Distt. Raigarh (C.G.)

c) Jamuna Bai (Dead) Through LRs

(i) Radha Bai, W/o Ganpat, aged about 35 years, R/o Village Phoolbandhi, P.S. Kharsia, Civil and Revenue District Raigarh (C.G.)

(ii) Churamani, S/o Nakul Ram, aged about 32 years, R/o Village Botalda, Tah. & P.S. Kharsia, Civil and Revenue District Raigarh (C.G.)

(iii) Smt. Nanki Bai, W/o Khelan Ram, aged about 30 years, R/o Village Jagdala, P.S. Sakti, Civil and Revenue District Janjgir-Champa (C.G.)

(iv) Smt. Punita Bai, W/o Gopal Prasad, aged about 28 years, R/o Village Jagdali, Tah. & P.S. Sakti, Civil and Revenue District Janjgir-Champa (C.G.)

(v) Smt. Sunita Bai, W/o Nilamber, aged about 26 years, R/o Village Dhaskamuda, P.S. Chhal, Tahsil Kharsia, Civil and Revenue District Raigarh (C.G.)

2. State of Chhattisgarh, Through District Collector, Raigarh (C.G.)
(Proforma defendant)

(Defendants)
---- Respondents

For Appellant: Mrs. Hamida Siddiqui, Advocate.

For LRs of Respondent No.1: -

Mr. Awadh Tripathi and Mr. Vivek Tripathi, Advocates.

For Respondent No.2 / State: -

Mr. Vimlesh Bajpai, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

09/01/2019

1. The substantial question of law involved, formulated and to be answered in the plaintiff's second appeal is as under: -

“Whether the court below has committed an error of law in holding late Sadhu Ram perfected his title over land bearing Khasra No. 859/1 area 0.218 Hect. and Khasra No. 606/1 area 0.110 Hect. situated at Village Chapale, Teh. Kharasiya, Distt. Raigarh, by way of adverse possession even without any issue framed in this regard?”

2. The plaintiff and the original defendant No.1 both were brothers. The plaintiff filed suit for declaration of title and permanent injunction that the suit land fell in his share on partition by the order of the Tahsildar dated 13-2-1995 and he was conferred with the title deeds, but defendant No.1 – his brother, is trying to dispossess him forcibly leading to filing of suit for declaration of title and permanent injunction in which defendant No.1 set up a plea that he has purchased the suit land from the plaintiff by unregistered sale deed dated 20-5-1982.
3. The trial Court after appreciating oral and documentary evidence on record, returned the finding that the plaintiff is owner and title holder of the suit land and defendant No.1 has failed to establish his title that he has purchased from the plaintiff and also refuted the fact of possession with effect from 20-5-1982.
4. In first appeal preferred by defendant No.1, the first appellate Court allowed the appeal holding that defendant No.1 has perfected his title by way of adverse possession against which this second appeal under Section 100 of the CPC has been preferred by the

plaintiff and substantial question of law has been framed which has been formulated in the opening paragraph of this judgment.

5. Learned counsel for the appellant / plaintiff submits that there was no plea raised with regard to the plea of adverse possession and consequently, no issue was framed by the trial Court and it was not tried and surprisingly, the first appellate Court allowed the appeal on a ground which is not available to defendant No.1 on the pleadings and evidence let in before the trial Court, therefore, it is liable to be set aside.
6. Learned counsel for the LRs of defendant No.1 would support the impugned judgment & decree and would submit that defendant No.1 is title holder by unregistered sale deed dated 20-5-1982 (Ex.P-1) and that may be permitted to be impounded.
7. I have heard learned counsel for the parties and perused the record with utmost circumspection.
8. In the suit filed by the plaintiff, defendant No.1 basically raised a plea that he came in title pursuant to the unregistered sale deed dated 20-5-1982 which the trial Court did not accept and decreed the suit of the plaintiff that he is the title holder of the suit land which was appealed and in appeal, the plea of adverse possession was projected and it has been found established by the first appellate Court. It is pertinent to mention here that in the entire written statement filed by defendant No.1, there is no whisper raised in the pleading with regard to perfection of his title by adverse possession and it is not the case that the parties have joined the issue on the question of adverse possession except stating that he is in possession since 20-5-1982 and therefore it was not put to trial.

The plaintiff did not have any opportunity to rebut the said plea and did not let in any evidence to prove the said fact.

9. The Supreme Court in the matter of **Bachhaj Nahar v. Nilima Mandal and another**¹ has held that the jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc., and observed as under: -

“23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.”

10. The aforesaid judgment squarely applies to the facts of the present case. There is neither pleading nor evidence on the question of adverse possession and it has been granted by the first appellate Court which is absolutely illegal and bad in law. The first appellate Court even went to the extent of granting decree of permanent injunction in favour of defendant No.1 which was never claimed by way of adverse possession. Even if the case is found to be in favour of defendant No.1, at the most, suit of the plaintiff could have been dismissed, but here, while granting appeal, defendant No.1 has been held entitled for decree of permanent injunction which is also illegal. In sum and substance, the judgment & decree of the

1 (2008) 17 SCC 491

first appellate Court is contrary to the well settled law in this behalf and liable to be set aside. It is ordered accordingly.

11. So far as impounding is concerned, defendant No.1 has not appealed or challenged the finding and therefore no relief can be granted to the LRs of defendant No.1 in this regard.
12. The substantial question of law is answered accordingly and the appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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