

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.246 of 2004

Hari Prasad (dead) through LRs

1. Hemant Kumar Sharma, aged 33 years, S/o Late Hari Prasad Sharma
2. Krishna Kant Dev Sharma, aged 30 years, S/o Late Hari Prasad Sharma,

Both R/o Ward No.7, Bhoghapara, Sheorinarayan, District Janjgir-Champa (C.G.)

3. Smt. Indradevi Sharma (Died and deleted)

(Plaintiffs)
---- Appellants

Versus

1. Sant Ram, aged about 50 years, S/o Budhram, by caste Kahra, R/o Village Bhoghapara, Sheorinarayan, Tehsil Sheorinarayan, District Janjgir-Champa (C.G.)

2. Jawahar (dead) Through LRs

a) Urmila Kahra, aged about 60 years, W/o late Jawahar, R/o Village Bhoghapara, Sheorinarayan, Tehsil Sheorinarayan, District Janjgir-Champa (C.G.)

b) Chitrarekha, aged about 40 years, W/o Hariprakash Kahra

c) Seema, aged about 38 years, W/o Shivprasad Kahra

(b) & (c) R/o Sarangarh, District Raigarh (C.G.)

d) Indu, aged about 35 years, W/o Dhruw Kumar, R/o Village Podi-Shankar, District Janjgir-Champa (C.G.)

3. The State of Chhattisgarh, Through the Collector, Janjgir-Champa, District Janjgir-Champa (C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Ravindra Agrawal, Advocate.

For Respondents No.1 and 2(a) to (d): -

Mr. B.D. Guru, Advocate.

For Respondent No.3 / State: -

Miss Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

14/08/2019

1. The appeal was admitted on the following substantial question of law:-

“Whether learned first appellate Court is justified in interfering with the decree of the trial Court, granting permanent injunction holding that the defendants are in possession of the suit land by recording a finding which is perverse to the record?”

(Parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The plaintiff filed a suit for declaration of title and permanent injunction stating inter alia that he is the title and possession holder of the suit land. The suit land was earlier held by Premlal Halwai who sold the suit land in favour of the plaintiff's father in the year 1940 and delivered peaceful possession and after the death of his father in 1978, the plaintiff became title holder of the suit land and he is in possession on the basis of sale deed dated 19-1-1940 and on the basis of adverse possession, he has perfected his title, therefore, he is entitled for declaration of title and permanent injunction.
3. The defendants opposed the plaint allegations stating inter alia that they got the suit property on partition vide Ex.D-1, as such, the plaintiff has no title over the suit land and is not entitled for declaration of title and permanent injunction.
4. The trial Court after appreciating oral and documentary evidence on record held that the plaintiff has failed to establish his title over the suit land, but granted decree for permanent injunction by holding that the plaintiff is in settled possession of the suit land. In an appeal preferred by the defendants, the first appellate Court interfered with the decree of permanent injunction and dismissed the suit by granting the appeal against which this second appeal has been preferred in which substantial question of law has been framed which has been set-out in

the opening paragraph of this judgment.

5. Mr. Ravindra Agrawal, learned counsel appearing for the plaintiffs / appellants herein, would submit that the first appellate Court is absolutely unjustified in interfering with the decree for possession granted by the trial Court in favour of the plaintiff, as he is in settled possession which is also apparent from the statements of plaintiff's witness Manharan Lal (PW-3) and defendants' witnesses Rathram (DW-3), as such, the judgment & decree of the first appellate Court deserve to be set aside by granting the second appeal.
6. Mr. B.D. Guru, learned counsel appearing for respondents No.1 and 2(a) to (d) herein / defendants would support the impugned judgment & decree and submit that the plaintiff is not the title holder of the suit land and therefore he is not entitled for permanent injunction also.
7. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.
8. The plaintiff's title over the suit land on the basis that his father purchased the suit land by sale deed dated 19-1-1940 was not found established and only decree for permanent injunction was granted in his favour by holding that he is in possession of the suit land which the plaintiff did not challenge by filing cross-appeal or regular appeal and the defendants preferred first appeal only questioning the decree of permanent injunction granted in favour of the plaintiff in which the first appellate Court mainly dealt with the question of title of the plaintiff which has already attained finality in absence of challenge by the plaintiff that he is not the title holder of the suit land. The first appellate Court interfered with the decree for possession holding that since the plaintiff has no title over the suit land, he is not entitled for

any decree and contrary to the record held that the plaintiff is not in possession. The plaintiff (Hari Prasad) has examined himself as PW-1 and in para 30 of his evidence, he has clearly stated that he is suffering from paralysis, therefore, right from 1978, he had given the suit land for harvesting crop and vegetables to Manharan. Khamman (PW-2) has supported the evidence of the plaintiff (PW-1). Manharan Lal has also been examined as PW-3 and he has also supported the stand that he being an agriculturist (*kisan*) is cultivating the suit land of the plaintiff and also growing vegetables on behalf of the plaintiff. Not only this, defendants' witness Rathram (DW-3) in his cross-examination has clearly stated that the suit land is being cultivated for 8-10 years by Manharan Lal (PW-3) that too on behalf of the plaintiff and in that particular year, Manharan Lal has also grown vegetables on behalf of the plaintiff.

9. The aforesaid narration of facts would clearly show that the plaintiff has given the suit land to Manharan Lal (PW-3) on *adhiya* and in that capacity, Manharan Lal (PW-3) has grown vegetables in the suit land that too for last 8-10 years and therefore the plaintiff is in settled possession of the suit land. Thus, the oral evidence available on record has clearly been ignored by the first appellate Court while reaching to a finding as to whether the plaintiff is in possession of the suit land or not, and mainly considered the question of title which is already recorded against the plaintiff and eventually recorded a finding that the plaintiff is not in possession clearly ignoring and overlooking the oral evidence of the plaintiff and the defendants only indicating that the plaintiff is in settled possession of the suit land. Therefore, the finding recorded by the first appellate Court that the plaintiff is not in possession and the defendants are in possession is clearly perverse

and contrary to the record. As such, the judgment & decree of the first appellate Court cannot be sustained and it is held that the plaintiff is in possession of the suit land. Resultantly, the judgment & decree of the first appellate Court is set-aside and that of the trial Court is restored. The substantial question of law is answered accordingly.

10. The second appeal is allowed to the extent indicated herein-above.

No order as to cost(s).

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma