

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 334 of 2006**

Jagat Singh, Aged about 50 years, S/o Hansu, R/o Village Chanadnogari, Tahsil Pendra Road, District Bilaspur, Chhattisgarh.

----- Appellant/Defendant No. 1

Versus

1. Rama, Aged about 42 years.
2. Laxman, Aged about 39 years.
3. Chhotu, Aged about 36 years.

No. 1 to 3 all sons of Barari.

4. Brihaspatiya, Aged about 57 years, Wd/o Pitu Singh.
5. Dhirijiya Bai, Aged about 54 years, W/o Kalyan Singh.
6. Fulmat Bai W/o Ramprasad D/o Barari.
7. Juggai Bai, Aged about 48 years.
8. Mungiya Bai, Aged about 33 years, W/o Bandhu Singh.
9. Kailsiya Bai, Aged about 30 years, W/o Mahesh Singh.
10. Lalli Bai, Aged about 27 years.

No. 4 to 10, all daughters of Barari.

All R/o Village Kachhar, Tahsil Pendra Road, District Bilaspur, Chhattisgarh.

11. State of M.P. (Now C.G.) Through Collector, Bilaspur, Chhattisgarh.

----- Respondents/Plaintiffs

For Appellants : Mr. H.V. Sharma, Advocate
For Respondents No. 1 to 3 : Mr. Saifuddin Rajas,
Advocate
For Respondent No. 11/State : Mr. Akash Pandey, Panel
Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

03/12/2019

1. This second appeal preferred by defendant No. 1 was admitted for hearing on the following substantial questions of law:-

“1. Whether first appellate Court was justified in reversing the judgment & decree of the trial Court holding that plaintiffs are the title holder of the suit land by recording findings, which are perverse and contrary to the record ?

2. Whether first appellate Court was justified in holding that the suit filed by the plaintiffs was within the period of limitation and further justified in directing the rectification of the sale deed in view of the fact that there is no prayer in the plaint for rectification by the plaintiffs ?”

2. Original plaintiff – Barari filed a civil suit stating *inter alia* that he is the title-holder of the suit property and is cultivating the same and his name was also recorded in the revenue records, but defendant No. 1 fraudulently and unauthorizedly got plaintiff's name deleted and instead got Munda's name and thereafter, his own name recorded in the revenue records which raised cloud over plaintiff's title upon the suit property and ultimately, led to the institution of suit for declaration of title and permanent injunction by the plaintiff.
3. Defendant No. 1 denied the plaint allegations and filed his written statement stating *inter alia* that the suit property was originally held by Munda, who sold it to him by registered sale deed dated 28/07/1978 (Ex. D/5) and delivered its peaceful possession to him of which he has been in cultivating possession ever since and it is in the knowledge of all the concerned parties. It was also pleaded that plaintiff and Munda are not brothers. Defendant No. 1 further stated that in revenue proceedings registered between the parties before the Naib Tahsildar, Marwahi, vide order dated 12/02/1981, plaintiff Barari's claims were rejected whereas, defendant No. 1 Jagat Singh's claims were accepted which has become final and moreover, since

the suit is filed after three years from 12/02/1981, it is barred by limitation.

4. Learned trial Court, upon appreciating the oral and documentary evidence available on record, vide its judgment and decree dated 13/10/1997, dismissed the suit of the plaintiff holding that plaintiff is not the title-holder of the suit property as the original title-holder Munda sold the suit property to defendant No. 1 by registered sale deed dated 28/07/1978 (Ex. D/5) and the suit is also barred by limitation.

5. On appeal being preferred by the plaintiff, learned first appellate Court, vide its judgment and decree dated 29/03/2006, allowed the appeal holding that Munda was plaintiff's brother and both of them were in joint ownership and possession of the suit property and Munda alone was not authorized to alienate the suit property in favour of defendant No. 1 therefore, the sale deed dated 28/07/1978 (Ex. D/5) does not evoke the title of plaintiff over the suit property. The appellate Court further directed for rectification of the said sale deed.

6. Being aggrieved by the judgment and decree passed by the first appellate Court, defendant No. 1 has preferred this second appeal under Section 100 of the CPC in which two substantial questions were

formulated and are set out in the opening paragraph of this judgment.

7. Mr. H.V. Sharma, learned counsel for the appellant/defendant No. 1 would submit that the first appellate Court is absolutely unjustified in making out a new case altogether in favour of the plaintiff as it was never the case of the plaintiff that the suit property was jointly held by him and Munda. He further submits that defendant No. 1 is the exclusive owner of the suit property as the sale executed by Munda in favour of defendant No. 1 was never challenged by the plaintiff in the suit by either seeking declaration of the sale deed to be null and void or seeking setting aside of the sale deed, as such, in absence of the challenge made to the sale deed (Ex. D/5) by the plaintiff, it could not have been set aside by the first appellate Court. Defendant No. 1 has seriously been prejudiced by the judgment and decree of the first appellate Court as it was neither claimed nor established that Munda and plaintiff were brothers and therefore, they had joint ownership of the suit property, whereas plaintiff was already well aware of the execution of the sale deed by Munda in favour of defendant No. 1, as such, the judgment and decree of the first appellate Court deserves to be set aside.

8. Mr. Saifuddin Rajas, learned counsel for the respondents/Lrs. Of original plaintiff – Barari would submit that it is well-proved and established that Munda is plaintiff's brother and though plaintiff was entitled for full ownership of the suit property, but since the first appellate Court has directed that he will have joint ownership and possession of the suit property along with Munda and the sale deed (Ex. D/5) is partly valid upto the extent of Munda's share in the suit property, therefore, no exception can be taken to the judgment and decree of the first appellate Court, as such, the second appeal deserves to be dismissed.
9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. It is a case brought by the original plaintiff – Barari that he is the exclusive titleholder of the suit property and has been in possession of the same and his name was wrongly deleted and replaced by Munda's name in the revenue records at the instance of defendant No. 1 and thereafter, by virtue of the sale deed dated 28/07/1978 (Ex. D/5) defendant No. 1 got his own name registered in the revenue records which

clouded plaintiff's title upon the suit property and it necessitated the institution of the suit for declaration of title and permanent injunction by the original plaintiff – Barari wherein defendant No. 1 set up a plea that he purchased the suit property by registered sale deed (Ex. D/5) from Munda and thereby, got his name recorded in the revenue records and is in cultivating possession of the suit property ever since. He further stated that in revenue proceedings, vide order dated 12/02/1981 passed by the Naib Tahsildar, plaintiff's claims have already been rejected.

11. It has never been the case of the plaintiff at any point of time that he and Munda are brothers and they are in joint ownership and joint possession of the suit property and even, the trial Court has not framed any such issue and the parties did not even contest the suit with the understanding that plaintiff and Munda were brothers and being joint owners of the suit property, have been in joint possession of the same.

12. Learned trial Court struck an issue, being issue No. 1, whether the plaintiff is title-holder of the suit property and after going through the oral and documentary evidence on record, answered the said issue in negative holding that plaintiff is not the owner/title-holder of the suit property as

defendant No. 1 purchased the suit property from Munda vide Ex. D/5 and the trial Court refused to admit the evidence which is not based on pleadings and negatived the title of the plaintiff over the suit property.

13. The first appellate Court has made out a totally new case holding that plaintiff along with his brother Munda had joint ownership of the suit property and they have been in joint possession of the same. In this regard, it is pertinent to notice the decision rendered by the Supreme Court in the matter of ***Bachhaj Nahar v. Nilima Mandal and Anr.***¹. Paragraphs 23 and 24 of the report, being relevant, state 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 Rs. one lakh, the court cannot grant a decree for Rs. 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

1 (2008) 17 SCC 491

depends on the pleadings, prayer, court fee paid, evidence let in, etc.

24. In the absence of a claim by plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no easementary right. In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right. The first appellate court had recorded a finding of fact that plaintiffs had not made out title. The High Court in second appeal did not disturb the said finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage."

14. Since, there was no pleading raised with regard to the suit property being in the joint ownership of plaintiff and Munda and it was never the case of the plaintiff that he and Munda have been in joint possession of the said suit property therefore, no evidence could be let in absence of this pleading and the first appellate Court could not have held that the suit property was jointly held by plaintiff and Munda, particularly when there is no pleading of the same and the other side has not

been noticed and both the parties had not even contested the suit in those lines.

15. Likewise, the first appellate Court has held that Munda had no right to alienate the suit property in favour of defendant No. 1. Again, in whole of the plaint, from paragraphs 1 to 7, there is no whisper at all about the sale deed that had been executed way back on 28/07/1978 (Ex. D/5) by Munda in favour of defendant No. 1, neither it has been sought to be set aside or declared void by the plaintiff. Defendant No. 1 was not even noticed that plaintiff has challenged the sale deed (Ex. D/5) and in his knowledge, plaintiff has only challenged that deletion of his name and insertion of defendant No. 1's own name in the revenue records by him is absolutely unauthorized and illegal, but the sale deed was never under challenge. Plaintiff was required to specifically plead that the alienation of the suit property made by Munda in favour of defendant No. 1 vide Ex. D/5 is void and invalid, which he did not challenge for the reasons which are not apparent on the face of the record. The registered instrument executed 11 years prior to the date of filing of civil suit by which defendant No. 1 claimed title over the suit property ought to have been challenged explicitly by the plaintiff so that the other side could have been noticed and an

issue in this regard could have been struck by the trial Court and parties could have led evidence enabling the Court to record a specific finding as to whether alienation of the suit property made by Munda in favour of defendant No. 1 is void or illegal, but that has not been done and yet the first appellate Court proceeded to hold that Munda had no right to alienate the suit property in favour of defendant No. 1 as the suit property was in joint ownership and possession of plaintiff and Munda.

16. The first appellate Court, reading the entire evidence which is not based on the pleadings of the parties, granted the finding of joint ownership of the suit property in favour of plaintiff and Munda and declared the sale deed dated 28/07/1978 (Ex. D/5) to be valid only upto the extent of Munda's share and directed for the rectification of the sale deed which runs contrary to the decision rendered by the Supreme Court in **Bachhaj Nahar** (supra) and is absolutely illegal and bad in law. Consequently, the substantial questions of law are answered in favour of defendant No. 1 and against the plaintiff (now, his Lrs.); the judgment and decree passed by the first appellate Court, being perverse, is hereby set aside and that of the trial Court is restored.

17.The second appeal is allowed to the extent indicated herein-above. No order as to cost(s).

18.Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet