

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.382 of 2006

Tilakram Bani (Dead) through his LR's

1a. Smt. Laxmi Kesharwani, Wd/o. Late Tilakram, aged about 52 years,

1b. Priyanka Kesharwani, D/o Late Tilakram, aged about 23 years,

Both are residence of Gharghoda, Tahsil-Gharghoda, District-Raigarh (CG)

(LR's of defendant No.3)

---- Appellants

Versus

1. Debiram Bani S/o Late Rameshwar Bani Aged about 45 years, Occupation-Former, R/o Village Gharghoda, Teh.- Gharghoda, Distt. Raigarh (CG)

---- Plaintiff

2. Jeetu @ Jitandra Kumar Panda S/o Bhagawatiya Panda Aged about 30 years,

3. Bhagawatiya Panda (died and deleted)

---- Plaintiffs

4. State of C.G. Through Collector, Raigarh

---- Respondents

For Appellant/LR's of	: Mr.Vineet Kumar Pandey,
Defendant No.1	Advocate
For Res.No.1 & 2/Plaintiff	: None present
For Respondent No.4/State	: Mr.Akash Pandey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

06/11/2019

1. This second appeal preferred by the appellant/defendant No.3 was admitted for hearing by formulating the following substantial question of law:-

"Whether both the Courts below are justified in granting permanent injunction without demarcation of the land in question ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status

shown in the suit before the trial Court].

2. The plaintiff and defendant No.3 both are brothers.

The plaintiff filed a simpliciter suit for permanent injunction stating inter-alia that in the suit land owned by him shown in map annexed with the plaint admeasuring 17"x127", the defendants are encroaching by making construction, as such, the defendants be restrained from interfering with his lawful possession, which was opposed by the defendants by filing written statement stating inter-alia that defendant No.3 is in exclusive possession of the suit land and as such, the plaintiff is not entitled for permanent injunction.

3. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 21.7.2005, held that the plaintiff is in lawful possession of the suit land and the defendants are restrained from interfering with his lawful possession, against which, only defendant No.3 preferred first appeal. The first appellate Court affirmed the judgment and decree of the trial Court by dismissing the appeal. Being aggrieved and dissatisfied with the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.3, in which substantial question of law has been formulated and set-out in the

opening paragraph of this judgment. During pendency of the instant second appeal, defendant No.3 died and his legal representatives were brought on record.

4. Mr.Vineet Kumar Pandey, learned counsel for the appellants/legal representatives of defendant No.3, would submit that both the Courts below were absolutely unjustified in granting decree for permanent injunction in favour of the plaintiff without demarcation of the suit land as it is abadi land and not specific land, which is owned by the plaintiff. Therefore, the judgment and decree of both the Courts below deserve to be set aside.
5. None present for respondents No.1/plaintiff though served.
6. I have heard learned counsel for the appellants/legal representatives of defendant No.3, considered his submissions made hereinabove and also went through the records with utmost circumspection.
7. The plaintiff filed a suit for permanent injunction simpliciter stating inter-alia that the defendants particularly defendant No.3 are encroaching over the suit land by digging foundation stone and therefore, the defendants be restrained from interfering with his lawful possession, though defendant No. 3 by filing written statement raised the question of identity of the suit land, but it appears from record that it was

not pressed into service and no issue was framed in this regard. Even in first appeal, no such ground was raised and therefore, no such separate issue was framed and considered by the trial Court as well as by the first appellate Court. The trial Court and the first appellate Court have clearly held that defendants No.1 to 3 particularly defendant No.3 are constructing over the area 17"x127" owned and held by the plaintiff, the plaintiff is in possession of the suit land and therefore the defendants are restrained from interfering with possession of the plaintiff, as such, issue of identity and demarcation of the land was not pressed into service by defendant No.3 before the trial Court as well as before the first appellate Court and for the first time, such a ground cannot be permitted to be raised before this Court. Even otherwise, it cannot be held that identity of the land is in question and no decree could have been passed in favour of the plaintiff, as such, both the Courts below have not committed any illegality in granting decree for permanent injunction in favour of the plaintiff.

8. Learned counsel for the appellants/legal representatives of defendant No.3 submits that defendant No.3 is title-holder of the suit land and therefore, decree for permanent injunction could not have been granted in favour of the plaintiff. The

plaintiff has filed a suit for permanent injunction simpliciter, in which the trial Court by holding that the plaintiff is in possession of the suit land proceeded to consider and granted decree for permanent injunction in his favour, which has been affirmed by the first appellate Court. Finding recorded by both the Courts below that the plaintiff is in possession of the suit land and the defendants are encroaching over the suit land is finding of fact based on evidence available on record, in which I do not find any illegality or perversity. The substantial question of law is answered in favour of the plaintiff and against the defendants. However, defendant No.3 is at liberty to file comprehensive suit for declaration of title, if any and pray for appropriate relief.

9. Accordingly, the second appeal is dismissed reserving the aforesaid liberty in favour of appellants/legal representatives of defendant No.3. No cost(s).

10. A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-