

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.402 of 2006Judgment reserved on: 6-8-2019Judgment delivered on: 19-8-2019

1. Smt. Darshan Kaur (Died and deleted)
2. Jangbahadur, S/o Late Trilochan Singh, aged about 49 years.
3. Preetpal Singh, S/o Late Trilochan Singh, aged about 44 years.

All R/o Nayapara, Geedam Road, Jagdalpur, District Bastar (C.G.)
 (Plaintiffs)
 ---- Appellants

Versus

1. The Collector, Bastar, District Office, Jagdalpur.
2. The Nazul Officer, District Office, Jagdalpur.
3. State of Chhattisgarh, through the Secretary, DKS Bhawan, Raipur.
 (Defendants)
 ---- Respondents

For Appellants: Mr. B.P. Sharma, Advocate.
 For Respondents/State: Mr. Mateen Siddiqui, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Judgment

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the plaintiffs.
2. Mr. B.P. Sharma, learned counsel for the appellants / plaintiffs, would submit that both the Courts below are absolutely unjustified in dismissing the suit holding that the plaintiffs are not entitled for a decree for mandatory injunction by recording a finding which is not only perverse but also contrary to record and that gives rise to substantial question of law for determination. He relied upon a judgment of the Supreme Court in the matter of Gowri v. Shanthi

and another¹.

3. Original plaintiff Trilochan Singh, who died during the pendency of suit, filed a suit for mandatory injunction stating inter alia that he is owner and bhumiswami of the suit land located near Indrawati River at Jagdalpur and on account of flood, water comes to his land and that land is declared as flood affected land by the State Government and in which on the instructions of the defendants, 345 persons have been rehabilitated and they are residing therein by constructing huts on the said suit land. Despite the fact that defendant No.3 had passed an order to defendant No.1 to get the suit land vacated and to deliver peaceful possession to the plaintiff, nothing has been done and as such, the plaintiff is entitled for decree for mandatory injunction directing the defendants to get the suit land vacated and deliver peaceful possession to the plaintiff.
4. The defendants filed their written statement and it was stated that the said persons themselves have encroached upon the suit land, they are encroachers and no order has been passed by the defendants rehabilitating them, as such, the suit deserves to be dismissed.
5. The trial Court after appreciating oral and documentary evidence on record, dismissed the suit holding that the suit land is declared as flood affected area and whenever the flood situation arises, the flood affected persons are given assistance and relief and they have not been rehabilitated or placed in possession by the order of the Government. On appeal being preferred, the first appellate Court has also affirmed the judgment & decree of the trial Court against which this second appeal has been preferred.
6. Both the Courts have concurrently held that 345 persons themselves

¹ (2014) 11 SCC 664

are in possession of the said land as encroachers and it is not the case that the defendants have rehabilitated them in the suit land and merely because some assistance is provided at the time of flood situation, it cannot be held that the defendants have rehabilitated them in the land of the plaintiff which is a finding of fact.

7. Under Section 39 of the Specific Relief Act, 1963, mandatory injunction is granted to prevent the breach of an obligation and it is necessary to compel the performance of certain acts. It aims at restoration of things to status quo ante. A mandatory injunction cannot be granted to create a new state of things.
8. Two elements must be considered for the grant of a mandatory injunction, firstly, what acts are necessary in order to prevent a breach of the obligation; and secondly, whether these acts are such as the court is capable of enforcing. The plaintiff must show that there has been a breach of obligation, i.e., a legal obligation.
9. In the instant case, both the Courts have clearly held that the defendants have not rehabilitated them in the suit land and they are encroachers, if any, on their own, therefore, no mandatory injunction can be granted to evict them from the said suit land. The finding recorded by the two Courts below is a finding of fact based on the evidence available on record, which is neither perverse nor contrary to record. The judgment of the Supreme Court in Gowri (supra) cited by Mr. Sharma, learned counsel, is clearly distinguishable to the facts of the present case. I do not find any merit much less substantial question of law for determination in this second appeal. The appeal is liable to be and is hereby dismissed *in limine*. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge