

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURFA No. 42 of 2014

1. Rakesh chandra Gupta, S/o Chhedilal Gupta Aged About 30 Years,
 2. Vikash chandra Gupta S/o Chhedilal Gupta Aged About 25 Years,
 3. Deepakchandra S/o Chhedilal Gupta Aged About 23 Years,
 4. Chhedilal Gupta S/o Madhav Prasad Aged About 53 Years,
- All are R/o Sarangarh, Tahsil Sarangarh, District Raigarh C.G.

---- Appellants

Versus

1. Executive Officer, Jila Antyavasayi Sahkari Vikas Samiti, Bilaspur C.G.
2. State of Chhattisgarh through The Collector, Bilaspur C.G.
3. State of Chhattisgarh through The Collector, Janjgir-Champa C.G.
4. Executive Officer Jila Antyavasayi Vikas Samiti, Janjgir-Champa C.G.

---- Respondents

For Appellants : Shri Sourabh Sharma, Advocate

For Respondents/State : Shri Aditya Bharadwaj, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****19/08/2019**

This appeal is directed against the impugned judgment and decree dated 30.11.2013 passed by District Judge, Bilaspur in Civil Suit No. 13-B/1996 whereby plaintiff's suit for recovery of Rs.9,24,000/- with mesne profits of Rs.3,60,000/-, total of Rs.12,84,000/- with interest has been dismissed.

2. Original plaintiff Chedilal Gupta filed suit for recovery of Rs.12,84,000/- on the pleadings *inter-alia* that by two sale deeds Ex.P-1 and Ex.P-2 dated 30.03.1991 and 01.04.1991 respectively, plaintiff sold certain lands to State but the mango trees standing on

those lands were excluded from the sale transaction and were not sold to the State. According to the plaintiff, on the land which was subject matter of sale under two registered sale deeds, 120 mango trees were standing. After the sale of the land, the plaintiff was not allowed to use or cut the trees, therefore, the plaintiff gave notices but when his claim was not accepted and payment was not made, suit was filed. Defendant/State denied plaintiff's case and pleaded that the plaintiff has not clearly stated as to how many trees are standing on different Khasra numbers and that without any specific details and pleadings in this regard, plaintiff has filed suit which is liable to be dismissed.

3. Learned trial Court framed as many as six issues. The first issue was whether the consideration paid to the plaintiff in respect of sale of the land was only in respect of the land on which, the learned trial Court recorded a finding in favour of the plaintiff that in the sale transaction, the value of land alone formed part of consideration and not the trees. On the second issue as to whether 120 trees standing on the land were sold to the respondent/State, though learned trial Court recorded a finding that there may be trees standing but the plaintiff has failed to prove the number of trees. In view of this finding on second issue, learned trial Court dismissed the suit.

4. Learned counsel for the appellant argued that the learned trial Court having held that the consideration in the matter of sale of land under two sale transactions dated 30.03.1991 and 01.04.1991 did not include the value of the trees, ought to have granted relief as prayed for by the plaintiff. He argued that the plaintiff has not only specifically pleaded but also led clear oral as well documentary evidence that 120

trees were standing on the land sold by the plaintiff to defendant/State under two sale deeds. Learned counsel for the appellant would argue that the defendant/State having admitted that there were trees standing on the land, it was for the respondent/State to state before the Court about the number of trees because after the sale of the land it was in possession of the State and not the plaintiff. As the State failed to state the number of trees standing on the land, the plaintiff's version as regards standing 120 mango trees deserved to be accepted and believed on preponderance of probability. Reliance has been placed on ***Union of India Vs. Ibrahim Uddin and another, (2012) 8 SCC 148*** and ***Gajraj and others Vs. Ramadhar and other, AIR 1975 Allahabad 406.***

5. On the other hand learned counsel for the State would argue that even though, the plaintiff came out with the case that there were 120 trees standing on the land sold by the plaintiff to the State, the plaintiff utterly failed to prove by leading any clinching evidence with regard to number of trees standing on the land and, therefore, in the absence of proof about the same, learned trial Court has rightly dismissed the suit.

6. As far as finding on the first issue is concerned, we find that the learned trial court after examining oral and documentary evidence on record has recorded a finding that the sale consideration, in the matter of sale of land by two registered sale deeds dated 30.03.1991 and 01.04.1991, in favour of respondent is concerned, did not include the value of the trees, if any, standing on the land. We, however, find that the learned trial Court recorded an adverse finding against the plaintiff on the second issue as to whether there were 120 mango trees

standing on the land which was subject matter of sale deed under two sale deeds.

7. In this regard, the plaintiff, in his plaint, has averred that he sold two lands to State Government under two different sale deeds dated 30.03.1991 and 01.04.1991, and that there is stipulation that the value of mango trees standing on Khasra Nos.1541, 1559, 747 to 758 and 761 to 771 is not included. In Para 8, the plaintiff has pleaded that after sale, he was not allowed to take the fruits of 120 mango trees and various letters were written by him to the State that either he should be permitted to cut those 120 mango trees or compensation should be awarded to him.

The plaintiff's averment with regard to the existence of the trees has not been specifically denied but the defendant has denied the averments regarding the number of trees. Thus, it was for the plaintiff to prove as to how many number of trees were standing on the lands which were actually sold by him to the defendant/State and also to lead evidence regarding valuation of those trees.

8. During trial, plaintiff's evidence was recorded as PW-1 on 03.07.1996 and thereafter, again on 02.04.1998. In Para 6 of his evidence the plaintiff has stated regarding various notices given by him to the State and has come out with computation of compensation to the extent of Rs.12,84,000/- on the basis of there being 120 trees. In the cross-examination it has been admitted by him that at the time of sale, no specific valuation of the trees was agreed to between the two parties nor even the value of the trees at the relevant time was proved.

The appellant/plaintiff Chedilal Gupta was again examined on 31.07.2013 after remand of the case from the Appellate Court. He produced as documentary evidence, a copy of *Misal Bandobast* record in Ex. P-20. He also produced entries made in *Khasra Panchsala* for the period 2001-02 to 2005-06 in Ex.P-21. Ex.P-20 is a very old record of the year 1929-30. An entry of 100 mango trees has been recorded over 21.08 hectares of land situated in Khasra No.738. This land formed subject matter of sale deed dated 30.03.1991. However, whether, after 1929-30, the trees have remained intact and are still producing fruits could not be proved by the plaintiff. In the subsequent documents of *Khasra Panchsala* which is Ex.P-21 in respect of the period from 2001 to 2006, there is no specific mention of the number of trees standing on the subject land. The plaintiff witness PW-4 Bedram has stated regarding cultivation of paddy and has stated that Chhedilal Gupta was possessed of 70 acres more land other than that which was sold to the Government and he cannot say mango trees were situated on which land. He also says that he does not know how many trees were standing per acre. He deposed that about 120 to 125 mango were trees standing on about 5 acres of land and he is unable to state regarding the quantity of production of mango.

9. The plaintiff did not lead any evidence of any revenue authorities particularly that of the Patwari of the concerned village to prove the number of standing trees on the land sold by him to the respondent/State. The plaintiff having claimed that there were 120 trees standing on the land which was sold by him to the State Government, it was his burden to prove the same. Mere existence of

trees was not enough to grant decree in favour of the plaintiff as in the absence of proved number of trees, their condition as to whether they are still fruit bearing or not it is not possible to quantify the amount payable to the plaintiff.

10. Submission of learned counsel for the appellant, based on the judgment in the case of *Union of India Vs. Ibrahim Uddin and another* (supra), is not worth acceptance because in the present case no adverse inference can be drawn against the respondent. It is not that the respondent was in exclusive possession of relevant documentary evidence containing any report prepared by a revenue officer and yet despite notice, it was not produced. It is a case where the plaintiff was the owner of the property before sale of the same to the State Government. The burden was on the plaintiff to prove the number of trees standing and also whether those trees were fruit bearing or being very old they ceased to bear fruits. Therefore, taking into consideration the pleadings of the parties it cannot be said that any particular document or evidence in exclusive possession of the defendant was withheld and not produced requiring an adverse inference to be drawn.

11. The other decision rendered in the case of *Gajraj and others Vs. Ramadhar and other* (supra) would also not come to the aid of the appellant/plaintiff because it was the burden of the plaintiff to prove the number of trees and their value. The plaintiff neither during the trial nor even during the pendency of the case and the Appellate stage in the first round nor even when his evidence was recorded after remand, led any specific evidence nor moved any application under order 26 rule 9 CPC for any local investigation. At this stage, when the

sale deed had taken place way back in the year 1991, no direction can be issued for local investigation and submission of report at this belated stage more particularly because the plaintiff is required to prove as to how many trees were standing on the land sold by him to respondent/State and what was their valuation in the year 1991.

12. In the result we did not find any ground to interfere with the impugned judgment and decree, therefore, the appeal is dismissed. Parties to bear their respective costs. Let appellate decree be drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge