

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 04-07-2019

Judgment delivered on 24-07-2019

FA No. 309 of 2018

- Nagar Palik Nigam Raipur (Chhattisgarh) Through Commissioner, Municipal Corporation, Tahsil And District Raipur, Chhatisgarh.

---- Appellant/defendant

Versus

- Gulam Mohammad Khan S/o Shri Gulab Khan Aged About 58 Years R/o Raja Talab, Nurani Chowk, Tahsil And District Raipur, Chhattisgarh.

---- Respondent/plaintiff

For appellant : Mr. Pankaj Agrawal, Advocate.

For respondent : Mr. Raza Ali and Mr. Sameeroraon,
Advocates

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. Heard on I.A.No. 5 of 2019, which is an application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 by the appellant supported by an affidavit of Arun Kumar Sahu, Zone Commissioner, Zone-III, Municipal Corporation, Raipur.
2. This is an appeal against the judgment/decreed dated 6-12-2017 by the trial Court. As per appellant the order by which name of respondent was mutated in the revenue record is reviewed by

the Tahsildar in Revenue Case No.1530/A-6/2016-2017 and name of the respondent is deleted as he is not the title holder of property in question. That order was passed by the Tahsildar on 26-8-2017 before the judgment of the trial Court but same was not filed before the trial Court that is why judgment of the trial court is based on earlier order of Tahsildar which was reviewed and cancelled, therefore, the review order of Tahsildar is necessary for just decision of the case as an additional evidence.

3. On the other hand, learned counsel for the respondent opposes the said application.
4. It appears from the review order of Tahsildar as mentioned above that all the entries in revenue record in favour of respondent are deleted, therefore, review order is required to pronounce the judgment by this court on the basis of existing records. Accordingly, the application is allowed and review order passed by the Tahsildar as mentioned above is taken on record.
5. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 6-12-2017 passed by 8th Additional District Judge, Raipur (CG) in Civil Suit No. 69-A/2011, wherein the said court decreed the suit filed by the respondent/plaintiff for possession of land measuring 12,000 sq.ft of survey No. 167 area 0.761 hectares situated at

village Pandri Tarai, Patwari Halka No.109, Revenue Circle Raipur-1, Tahsil and District Raipur (CG) and for compensation to the tune of Rs.50,000/-.

6. Respondent/plaintiff filed a suit before the trial Court stating that he is owner of the land bearing survey No. 161/1 area 5.970 hectares and survey No. 167 area 0.761 hectares situated at village Padri Tarai as mentioned above. Appellant/defendant cut the land a bout 1200 sq.ft length and and 10 feet width and constructed road and cement concrete wall in area of bank of tank that is why suit was filed before the trial Court resulted into decree in favour of the respondent.
7. As per appellant, respondent is not owner of the land in question, but his name was wrongly recorded by Tahsildar as per revenue case No.01/A/6/2000-2001 order dated 20-10-2000. The land was earlier recorded in the name of Brijbhushan Agrawal s/o. Ramswaroop, Chandravanshilal Agrawal s/o. Soumitralal Agrawal, Harvanshi Agrawal s/o. Soumitralal Agrawal and one tank is there in the land namely Raja Talab which was used for easement and nistar of the people of the locality. It is further case of the appellant that as per review order under Section 51 of the Chhattisgarh Land Revenue Code 1959 (for short, "Code 1959"), Tahsildar Raipur in Revenue Case No. 1530/A-6/2016-2017 order dated 26-8-2017 deleted

the name of respondent from the record of right and tank is now mutated for nistar of people and as the respondent has no right over the land in question he is not entitled to any relief.

8. On the other hand, learned counsel for respondent would submit that the respondent is recorded owner of the property in question and the trial court has passed decree in his favour after marshaling of documentary and oral evidence adduced by him, therefore, same is not liable to be interfered with while invoking jurisdiction of the appeal.
9. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
10. The first question for consideration of this court is whether the respondent is owner of the land in question.
11. The trial Court recorded finding on the basis of Bhu Adhikar and Rin Pustika and Khasra entries (Annexure P/1 to Annexure P/3). These entries were made as per earlier order of Tahsildar in the year 2000 as mentioned above. It is settled law that revenue record does not confer any title on any one but same is maintained for paying land revenue and other incidental matters. The order of Tahsildar is reviewed by the Tahsildar, Raipur in Revenue Case No. 1530/A-6/2016-2017 vide order dated 26-8-2017 and it is found that in absence of any registered deed of transfer, respondent is not having any right over the property.

Acquisition of any right is mutated in revenue record as per Section 110 of the Code, 1959 after acquisition of right is reported as per Section 109 the Code 1959. Section 109 of the Code 1959 invoked only when any person lawfully acquires any right or interest in the land. As per Section 112 of the Code, 1959, when any document purporting to create, assign or extinguish any title is registered under the Indian Registration Act, 1908, the Registering Officer shall send intimation to the Tahsildar having jurisdiction over the area.

12. In the present case, from the review order of Tahsildar, it is apparent that earlier names of Brijbhushan Agrawal s/o. Ramswaroop, Chandravanshilal Agrawal s/o. Soumitralal Agrawal, Harvanshi Agrawal s/o. Soumitralal Agrawa were recorded in the land in question. No sale deed/gift deed or relinquishment deed was registered in favour of respondent but earlier Tahsildar recorded name of respondent without having any document of transfer that is why name of respondent is deleted from the record. No document of transfer or right was produced before the trial court and as such the name of respondent is deleted on 26-8-2017 and review order of Tahsildar was not produced before the trial Court, who passed the decree after deletion of the name of respondent by suppressing material fact, therefore, finding of the trial court is

not sustainable regarding right of respondent. As the respondent is not title holder of land in question, he cannot claim possession over the said property. The property was earlier recorded for nistar and easementary right of the people and the appellant being Municipal Corporation constructed road and wall for welfare of the people, therefore, appellant is not liable to pay any kind of compensation to respondent. Judgment /decree passed by the trial Court is not sustainable.

13. In the result, the appeal is allowed and judgment/decree passed by the trial Court is set aside. Accordingly, decree is passed in favour of appellant and against the respondent as under:

- (i) The suit filed by thy respondent is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju