

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.404 of 2019

1. Aashu Dewangon, S/o Ramkhilawan Dewangon, aged about 23 years;
2. Aashish Dewangon, S/o Ramkhilawan Dewangon, aged about 19 years;

Both R/o Ward No.15, Nayapara, Bemetara, Distt. Bemetara (C.G.)
 (Defendants)
 ---- Appellants

Versus

1. Smt. Chandramukhi Bai, Wd/o Ramha Prasad Upadhyay, aged about 72 years, R/o Azad Chowk, Raipur, District Raipur (C.G.)
 2. Smt. Krishna Bai, W/o Ram Bishal Tiwari, aged about 70 years, R/o Mungeli / Mungwai, Post Chandanu, Tahsil & Distt. Bemetara (C.G.)
 3. Smt. Ratna Bai, W/o Bhuwneswar Prasad Gauraha, aged about 66 years, R/o Sakarra, District Bilaspur (C.G.)
 4. Jitendra, S/o Bhuwneswar Gauraha, aged about 40 years;
 5. Hitendra, S/o Bhuwneswar Gauraha, aged about 35 years;
- Both R/o Village Sakarra, Tahsil Bilha, District Bilaspur (C.G.)
6. Smt. Bimla Bai, W/o Sunil Chowbey, aged about 64 years, R/o in front of Apsara Talkies, Durg, District Durg (C.G.)
 7. Krishna Kumar Sharma, S/o Late Daya Shankar Sharma, aged about 45 years, R/o Street in front of Parasram Temple, Raipur, Tahsil & District Raipur (C.G.)
 8. Jaishree Diwan, W/o Charu Chand Diwan, aged about 50 years, R/o Quarter No. 12, Krishna Sudama Puri, P.P. Nagar, Raipur, District Raipur (C.G.)
 9. Rekha Diwan, Wd/o Late Bhaskar Diwan, aged about 48 years, R/o Quarter No. 4, in front of Daga School, Civil Line, Raipur, District Raipur (C.G.)
 10. Rajshree Sharma, W/o Vipin Sharma, aged about 46 years, R/o in front of Sarabhai Clinic, Sunder Nagar, Raipur, Distt. Raipur (C.G.)
 11. Seema Pandey, W/o Sameer Pandey, aged about 50 years, R/o Quarter No. 1, Shatabdi Nagar, Near Industry, Raipur, District Raipur (C.G.)

12. Smt. Usha Bai, W/o Nand Kumar Tiwari, aged about 59 years, R/o Sunder Nagar, Raipur, District Raipur (C.G.)
13. Smt. Pramila Shukla, W/o Harnarayan Shukla, aged about 56 years, R/o Vidhya Nagar, Bilaspur, District Bilaspur (C.G.)
14. Smt. Sheela Mishra, W/o Om Prakash Mishra, aged about 50 years, R/o Satya Prem Vihar, Mahadev Ghat, Raipur, District Raipur (C.G.)
15. Smt. Manju Mishra, W/o Kailash Mishra, aged about 48 years, R/o Parsada Wale, Sunder Nagar, Raipur, District Raipur (C.G.)
16. Smt. Mrudula Shukla, W/o Pramod Shukla, aged about 46 years, R/o Chandaniyapara, Janjgir, District Janjgir-Champa (Old Distt. Bilaspur) (C.G.)
17. Smt. Sangeeta Tiwari, W/o Rajesh Tiwari, aged about 44 years, R/o Village & Post Admar, Tahsil Sakti, District Janjgir-Champa (C.G.)
18. Smt. Praneeta Sharma, W/o Akhil Sharma, aged about 42 years, Durga College, Danganiya, Raipur, District Raipur (C.G.)
19. Nilmani Pandey, S/o Ram Narayan Pandey, aged about 54 years, R/o Bawli Gali, Brahmanpara, Raipur, District Raipur (C.G.)
20. Kamlesh Pandey, S/o Ram Narayan Pandey, aged about 52 years, R/o Bemetara, Tahsil & District Bemetara (C.G.)

(Plaintiffs)

21. Krishna Murari Sharma, S/o Rajaram Sharma, aged about 65 years, R/o Near Ayoydhyawasi Dharmshala, Polsai Paragraph, Durg, District Durg (C.G.)
22. Smt. Sindhulata Sharma, W/o Veer Govind Sharma, aged about 52 years, R/o Tikrapara, Behind Keshri Pipe Factory, Bilaspur, District Bilaspur (C.G.)
23. Smt. Vijay Laxmi, W/o Chhedilal Sharma, aged about 49 years, R/o House No. 415, Sunder Nagar, Raipur, District Raipur (C.G.)
24. Dharmaveer, S/o Nandram Jat, aged about 35 years;
25. Nandram, S/o Harnarayan Jat, aged about 63 years;

Both R/o Village Amora, Present R/o Village Mohrenga, Tahsil & District Bemetara (C.G.)

26. State of Chhattisgarh, Through Collector, Bemetara, District Bemetara (C.G.)

(Defendants)

---- Respondents

For Appellants: Mr. Vaibhav A. Goverdhan, Advocate.

For Respondent No.20: -

Mr. Viprasen Agrawal, Advocate, on advance copy.

For Respondent No.26 / State: -

Mr. Shivali Dubey, Panel Lawyer, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/11/2019

1. Heard on admission and formulation of substantial question of law for determination in the second appeal preferred by the appellants / defendants No.3(a) & 3(b).
2. Mr. Vaibhav A. Goverdhan, learned counsel appearing for the appellants / defendants No.3(a) & 3(b), would submit that the first appellate Court is absolutely unjustified in confirming the decree for declaration of title and permanent injunction granted in favour of the plaintiff(s) after having held that the suit filed by the plaintiff was barred by res judicata, as the earlier civil suit filed by Rajaram – original defendant No.1 herein bearing Civil Suit No.202-A/1979 for declaration of title, permanent injunction and damages against Lalita Bai – original plaintiff herein, was dismissed by the trial Court on 3-12-1979, upheld by the first appellate Court on 4-9-1980 and second appeal was also dismissed by the High Court of Madhya Pradesh on 5-8-1986 vide Ex.P-1, therefore, the first appellate Court ought to have set-aside the decree of the trial Court and the suit ought to have been dismissed. As such, this second appeal involves substantial question of law for determination and thus, the appeal be admitted for hearing by formulating substantial question of law.

3. I have considered the submission of learned counsel for the appellants herein / defendants No.3(a) & 3(b) and went through the record with utmost circumspection.
4. Firstly, Civil Suit No.202-A/1979 was filed by Rajaram against Lalita Bai claiming that suit lands bearing Khasra Nos.278/1, 279/1 & 291/1, which were the subject matter of the present suit also, were gifted orally by Lalita Bai to him and Khasra No.167/4 which is also the subject matter of the present suit has been given to him by way of exchange as against Khasra Nos.782/2, 783/1 & 783/2 and the plea of adverse possession was also taken by Rajaram – the plaintiff in that suit. That suit was dismissed by the trial Court on 3-12-1979 vide Ex.P-3 holding that Rajaram has failed to prove oral gift by Lalita Bai in his favour and also failed to prove exchange in his favour and he has also failed to prove the plea of adverse possession which he has taken. The aforesaid judgment & decree was upheld by the first appellate Court on 4-9-1980 and on 5-8-1986, the second appeal preferred by Rajaram being S.A. No.520/1980 was dismissed by the High Court of Madhya Pradesh vide Ex.P-1 on merits after framing substantial questions of law including one of the pleas of adverse possession. Thus, title of Rajaram over the aforesaid suit lands was negatived up to the High Court (second appellate Court) and no adverse finding was recorded in favour of Lalita Bai to whom the property originally belonged.
5. Secondly and after dismissal of suit and second appeal preferred by Rajaram, Lalita Bai, on 5-12-1987 filed a suit with respect to the aforesaid lands against Rajaram claiming declaration of title with

respect to the suit lands, permanent injunction and damages stating that she is the title holder, as the title of Rajaram on the basis of oral gift, exchange and plea of adverse possession, all, have been negatived by the jurisdictional civil court upheld up to the High Court of Madhya Pradesh and she has been held to be the title holder of the suit lands. It was stated that since the defendant has raised a cloud over her title by filing a suit on the basis of alleged oral gift, exchange and adverse possession, therefore, a cloud has been thrown on her title necessitating the filing of instant suit for declaration of title and permanent injunction.

6. During the pendency of suit, original defendant No.1 Rajaram died and his legal representatives were brought on record. During the pendency of suit, grandson of original defendant No.1 Rajaram transferred the suit property in favour of the present appellants who were impleaded as defendants No.3(a) & 3(b) in the suit. They have filed written statement and opposed the plaint allegations and pleaded that the suit is barred by res judicata under Section 11 of the CPC as well as under Order 2 Rule 2 of the CPC.
7. The trial Court upon appreciation of oral and documentary evidence on record, decreed the suit holding that the plaintiff(s) is entitled for declaration of title as well as for injunction, as she is the title holder of the suit land and title of original defendant No.1 has already been negatived, and further held that the finding recorded by the jurisdictional civil court in Civil Suit No.202-A/1979 as affirmed up to second appeal, is binding to the parties.
8. Being aggrieved against the judgment & decree of the trial Court, the present appellants / defendants No.3(a) & 3(b) – subsequent

purchasers from the grandson of original defendant No.1 Rajaram, preferred first appeal and the first appellate Court by the impugned judgment & decree dismissed the appeal finding no merit in the same against which this second appeal has been preferred.

9. The main submission as noticed is that the suit was barred by res judicata under Section 11 of the CPC and the trial Court has also held that the suit is barred by res judicata, yet not dismissed the suit and thereby committed a legal error in law.
10. This argument deserves to be noticed for rejection. The suit filed by original defendant No.1 Rajaram that the suit property was gifted orally by Lalita Bai and also given to him by exchange and he has clear title by adverse possession was tried by the jurisdictional civil court and dismissed by its judgment and decree and affirmed in first appeal and also in second appeal by the High Court vide Ex.P-1 in which it has been held that the present plaintiff Lalita Bai has not gifted the property to Rajaram, in other words, Lalita Bai neither given gift nor exchanged the suit property in favour of Rajaram and Rajaram has also not perfected his title by way of adverse possession specifically. Thereafter, Lalita Bai finding that though the title of Rajaram has been negated, yet there is a cloud thrown on her title, decided to file a suit seeking declaration under Section 34 of the Specific Relief Act, 1963 which the trial Court has considered on merits and granted decree finding her to be the title holder, as the title of original defendant No.1 has already been negated holding that plaintiff Lalita Bai has neither gifted the property to Rajaram nor exchanged the property and he has also not acquired title by adverse possession. As such, in the earlier

suit, there was no adverse finding against the present plaintiff and there is no finding which bars the present suit filed by the plaintiff.

11. In the matter of Firm Kanhaiyalal Mohanlal Somani v. Paramsukh alias Premasukh Jaskaran Kabra Maheshri¹ it has been clearly held that where a decree is one of dismissal in favour of the defendant but there is an adverse finding against him on one point, a plea of res judicata cannot be founded upon that decision because the defendant having succeeded on the other plea had no occasion to go further as to the finding against him, and observed as under: -

(15) ... I have already pointed out that is not known whether the defendant had raised any such plea. Even if it were so, the adverse finding against the successful defendant cannot be res judicata in a subsequent suit between the parties. Thus, where a decree is one of dismissal in favour of the defendant but there is an adverse finding against him on one point, a plea of res judicata cannot be founded upon that decision because the defendant having succeeded on the other plea had no occasion to go further as to the finding against him. 'Midnapur Zamindari Co. Ltd. v. Naresh Narayan Roy', 48 Cal 460 : (AIR 1922 PC 241) (J), 'Narayan v. Syed Bahadur', AIR 1918 Nag 91 (K), 'Govinda v. Laxman', AIR 1923 Nag 139, col. 1 (L). The second contention therefore fails."

12. In the instant case, even though plaintiff Lalita Bai has succeeded in the earlier suit as a defendant and the suit filed by Rajaram was dismissed throughout up to the second appellate Court (High Court) and therefore her subsequent suit for declaration of title under Section 34 of the Specific Relief Act, 1963 cannot be held to be barred.

13. Sir Dinshaw Fardunji Mulla in his Nineteenth Edition of the Code of Civil Procedure (page 314) has observed as under: -

¹ 1956 Nagpur 273 (AIR V 43 C 94 Dec.)

“Rule 1 : Findings on issues against defendant not res judicata where the suit is wholly dismissed.—If the plaintiff's suit is wholly dismissed, no issue decided against the defendant can operate as res judicata against him in a subsequent suit, for the defendant cannot appeal from a finding on any such issue, the decree being wholly in his favour; but, every issue decided against the plaintiff may operate as res judicata against him in a subsequent suit, for the plaintiff can appeal from a finding on such issue, the decree being against him. ...”

14. Thus, in the instant case, the first / earlier suit filed by defendant Rajaram was earlier dismissed and the plaintiff herein was defendant in that case. No finding was recorded against the plaintiff in the earlier suit, therefore, the finding of that suit which was against the defendant herein cannot operate as res judicata against the plaintiff, as the subsequent suit is only for declaration of title on the cloud thrown on the plaintiff's (herein) title on the basis of suit filed by defendant Rajaram, as such, it is a suit for confirmation of title by the plaintiff which cannot be held to be barred by res judicata by any stretch of imagination or any logic. Therefore, this Court is not inclined to admit this appeal on this proposed substantial question of law.
15. The next submission of Mr. Vaibhav A. Goverdhan, learned counsel appearing for the appellants herein / defendants No.3(a) & 3(b), is that the trial Court has already recorded a finding that the suit is barred by res judicata, yet it has not dismissed the suit.
16. Again it is an argument which is not born out from the record. The trial Court while deciding the issue in paragraph 24 of its judgment has clearly recorded a finding that the findings recorded by the civil court in the earlier suit are binding between the parties. The plaintiff herein has not taken any plea contrary to the finding

recorded by the jurisdictional civil Court in the earlier civil suit, as such, it is a complete misreading by the defendants herein while reading the finding of the trial Court, therefore, the first appellate Court is absolutely justified in not holding that the suit is barred by limitation. The trial Court never held that the suit is barred by res judicata, therefore, this subsequent question of law by the appellants herein deserves to be dismissed.

17. Mr. Goverdhan lastly submits that the appellants herein / defendants No.3(a) & 3(b) were bona fide purchasers, therefore, they are protected by Section 41 of the Transfer of Property Act.

18. The appellants herein are purchasers from the grandson of original defendant No.1 Rajaram. In the earlier suit, it was held that Rajaram had no title over the suit property and the suit was decided on 3-12-1979, upheld by the M.P. High Court on 5-8-1986 vide Ex.P-1 and the second suit was filed on 5-12-1987 and the present appellants / defendants No.3(a) & 3(b) purchased the suit property during the pendency of the said suit on 3-11-2006, as such, they cannot be said to have purchased the suit property bona fide, as the title of original defendant No.1 Rajaram has already been negated way back on 3-12-1979 which stood upheld by the High Court and the suit property was purchased on 3-11-2006 during the pendency of suit filed on 5-12-1987, decided on 12-1-2018 by the trial Court. As such, the plea that the appellants herein are bona fide purchasers cannot be entertained and it has rightly been refuted by the two Courts below.

19. In view of the aforesaid analysis, I do not find any substantial question of law for determination of this second appeal. The appeal

deserves to be and is accordingly dismissed, in limine, without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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