

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.728 of 2018

Order reserved on: 4-1-2019

Order delivered on: 8-1-2019

Rishi Janghel, aged about 34 years, S/o Late Kriparam Janghel,
R/o Near Balaji Mandir, Dheshbadi, Near Janghel Diary, Anand
Nagar, Raipur, Distt. Raipur (C.G.)
(Objector before lower appellate Court)
(Appellant)
---- Appellant

Versus

1. Chandrabhan Kriplani, S/o Shri Jiyomal Kriplani, aged about 79
years, R/o Geetanjali Nagar, Tahsil and District Raipur (C.G.)
(Decree Holder)
(Plaintiff before trial Court)
2. Jairamdas Dengwani (Deceased), S/o Danamal Dengwani, R/o Anil
Cloth Agency, Shop No. 41, Cloth Merchant, Pandari, Raipur, Distt.
Raipur (C.G.) through legal heirs :
(Judgment debtor/Tenant)
- 2 (A) Anil Kumar Dengwani, aged about 40 years, S/o Late
Jairamdas Dengwani, R/o Near Sindhu Bhawan, Devendra Nagar,
Raipur, Distt. Raipur (C.G.)
3. Revati Bai Janghel, aged about 50 years, Wd/o late Kriparam
Janghel
4. Ku. Mamta Janghel, aged about 30 years, D/o late Kriparam
Janghel
5. Jagdish Janghel, aged about 26 years,
6. Ku. Manisha Janghel, aged about 22 years,
7. Manish Janghel, aged about 22 years
8. Ashish Janghel, aged about 20 years,

Respondents No.5 to 8 are son / daughter of Late Kriparam
Janghel,

Respondents No.3 to 8 are R/o Near Balaji Mandir, Dheshbadi,
Anand Nagar, Raipur, District Raipur (C.G.)
(Objectors)
---- Respondents

For Appellant: Malay Kumar Bhaduri, Advocate.
For Respondent No.1: Mr. G.D. Vaswani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This appeal is directed against the judgment & decree dated 7-12-2018 whereby the first appellate Court has affirmed the order of the trial Court holding that the appellant herein has no right, title and interest in the suit property, while deciding an application under Order 21 Rule 97 of the CPC.
2. Heard on admission.
3. Mr. Malay Kumar Bhaduri, learned counsel appearing for the appellant / objector, submits that the trial Court has committed gross illegality in holding that he has no right, title and interest in the suit property while deciding the application under Order 21 Rule 97 of the CPC which has illegally been affirmed by the first appellate Court, as the independent title of the appellant has not been enquired into properly despite the order of this Court, as such, the appeal involves substantial question of law for determination.
4. In the suit filed by Chandrabhan Kriplani for eviction and arrears of rent, the trial Court in Civil Suit No.20-A/2002 (Chandrabhan Kriplani v. Jairamdas Dengwani) decreed the suit for eviction and arrears of rent on 20-12-2002 directing the judgment debtor Jairamdas Dengwani to deliver the peaceful possession of the suit land and arrears of rent. When the decree was put to execution, the present appellant along with six others – respondents No. 3 to 8

filed an application under Section 94(5) read with Section 151 of the CPC which was rejected by order dated 12-5-2005 by the trial Court and which was challenged before this Court in W.P.No.2131/2005. This Court by order dated 15-6-2005 dismissed the petition as misconceived, however, directed the executing court to ask the decree holder to move an application under Order 21 Rule 97 of the CPC and to enquire the possession of the appellant and other possession holders (respondents No.3 to 8 herein) in accordance with Order 21 Rule 97 and Order 21 Rule 101 of the CPC. Thereafter, the decree holder filed an application under Order 21 Rule 97 of the CPC and that application was enquired by the trial Court, even the Commissioner was appointed to find out whether the plaintiff is in possession of the land on which the decree has been passed and whether the appellant herein is in possession of the suit land pursuant to the registered sale deed dated 28-12-2002 which he has claimed. The trial Court after detailed enquiry, which continued for more than ten years, held that the present appellant along with other persons is not the sub-tenant protected by Section 15 of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961') and they have failed to prove their independent title over the suit accommodation, as they are in possession of the suit accommodation which is in Khasra Nos.92/6 & 92/7, whereas they have purchased the land bearing Khasra No.292/2 by sale deed dated 28-12-2002 and as such, Section 23 of the Act of 1961 would be applicable and they are bound by the decree of the trial Court granted on 20-12-2002. On appeal preferred, the said

judgment & decree has been affirmed by the first appellate Court.

5. The submission of learned counsel for the appellant is that the title of the appellant including other possession holders was not enquired properly by the trial Court. The appellant claimed that they are in possession pursuant to the registered sale deed dated 28-12-2002 by which they have purchased the land bearing Khasra No.292/2. But the Commissioner's report dated 10-1-2017 which has been considered by the trial Court shows that by sale deed dated 28-12-2002, the appellant and other possession holders have purchased the land bearing Khasra No.292/2, whereas the suit house is situated at land bearing Khasra Nos.92/6 & 92/7, as such they have no title over the suit land. Likewise, the plea of adverse possession has been repelled finding that no such plea appears to have been taken by the appellant and in evidence led, they have not said anything about the plea of adverse possession. As such, the appellant has failed to establish the independent title over the suit land and detailed enquiry into the title of the appellant / objector has been made by the trial Court and thus, it cannot be held that the title of the objector / appellant has not been enquired into.

6. Now, the question is, whether in view of Section 23 of the Act of 1961, decree is binding on the objector / appellant?

7. Section 23 of the Act of 1961 provides as under: -

“23. Vacant possession to landlord.—Notwithstanding anything contained in any other law, where the interest of a tenant in any accommodation is determined for any reason whatsoever and any decree or order is passed by a Court under this Act for the recovery of possession of

such accommodation, the decree or order shall, subject to the provision of Section 16, be binding on all persons, who may be in occupation of the accommodation and vacant possession thereof, shall be given to the landlord by evicting all such persons therefrom :

Provided that nothing in this section shall apply to any person who has an independent title to such accommodation.”

8. It has already been held in the foregoing paragraphs that the objector / appellant has failed to establish the independent title to the said accommodation. Therefore, Section 23 of the Act of 1961 would squarely attract and decree will bind the objector as he and respondents No.3 to 8 are in possession.

9. In the matter of Bhikobai Kanhaiyalal and others v. Dhannalal Chintaman and others¹, while considering the provisions of Section 23 of the Act of 1961, the M.P. High Court held as under: -

“9. ... The main enacting part of the section provides that the landlord is entitled to recover vacant possession of the accommodation on eviction of all persons, who may be in occupation of the same. Thereafter the proviso indicates the exception to this general rule. The proviso must be construed to mean that any person who is found to have an independent title to the accommodation shall not be evicted for the purpose of giving vacant possession to the landlord. The expression "independent title" must mean a title independent of the judgment-debtor. But then the important fact is that such person claiming an independent title must be found to have that title in order to avail the protection given by the proviso. A mere claim to an independent title is not sufficient to get the benefit of the proviso. When a person claims an independent title, it must be found on an enquiry that he possesses the title claimed by him. Unless it is so found, benefit of the proviso is not available. Use of the word "has" in the proviso must necessarily lead to this conclusion. If the intention of the Legislature was to give benefit of the proviso even to a person who makes such a claim even though he is unable to prove the same to the satisfaction of the Court, then instead of using the word "has", the word used

1 1975 M.P.L.J. 616

would have been "claims". The use of the word "has" in the context must mean that the claim to an independent title has been substantiated in an enquiry. The net result is that the benefit of the proviso is available only to a person whose claim to an independent title has been substantiated to the satisfaction of the Court on an enquiry being held for the purpose. In my opinion, a plain construction of the proviso leads necessarily to this conclusion. "

10. In view of the aforesaid finding, I do not find any perversity or illegality in the finding of the two Courts below much less substantial question of law. The second appeal deserves to be and is accordingly dismissed in limine, leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge