

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment reserved on :17.02.2020****Judgment delivered on:24.02.2020****Second Appeal No.69 of 2008**

1. Anil Vyapari, S/o. Kanak Vyapari, Aged about 50 years,

2. Sunil Vyapari, S/o Kanak Vyapari, Aged about 45 years,

Both above R/o. Village Chathrima, Police Station & Tahsil Ambikapur, District Surguja (CG)

**----- Appellants/Defendants****Versus**

1. Poornalaxmi Wd/o. Panch Kaudi Das, Aged about 55 years, R/o. Village Chathirma, Police Station & Tahsil Ambikapur, District Surguja (CG)

**----- Plaintiff**

2. State of Chhattisgarh, Through: Collector, Ambikapur, District Surguja (CG)

**----- Respondents**


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For Appellants/Defendants : Mr. Manoj Paranjape, Advocate  
 For Res.No.1/Plaintiff : Mr. Sunil Tripathi, Advocate  
 For Respondent No.2/State : Mr. Ravi Bhagat, Dy.G.A.

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**Hon'ble Shri Justice Sanjay K. Agrawal****C.A.V. Judgment**

1. This second appeal preferred by the appellants/defendants was admitted for hearing by formulating the following substantial question of law:-

“Whether the the first appellate Court was justified in reversing the finding arrived at by the trial Court and passing the decree of permanent injunction against the

defendant particularly when the description in respect of the 50 decimals of land alleged to have been tried to encroach by the defendant was not specified either in the plaint or in the course of evidence ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. The plaintiff filed a suit for permanent injunction simpliciter stating inter-alia that she is titleholder of the land bearing Khasra NO.398 area 1.78 hectares and is cultivating the suit land in which some part of the land i.e. 50 decimals defendants No.1 and 2 started interfering in the month of August, 2002 leading to filing of the suit for claiming permanent injunction over the suit land bearing Khasra No.398 area 1.78 hectares restraining defendants No.1 and 2 from her peaceful possession.

3. Defendants NO.1 and 2 filed their written statement and denied the averments made in the plaint stating inter-alia that they are title holder of the land bearing Khasra NO.395 area 4 acres and took the defence of denial and they are title holder of the land bearing Khasra No.395 area 4 acres in which they are in possession, as such, the suit deserves to be dismissed.

4. The trial Court upon evaluation and appreciation of oral and documentary evidence available on record, by its judgment and decree dated 23.4.2007, held that the plaintiff is title-holder of the suit land bearing Khasra NO.398 area 1.78 hectares, but she has failed to prove interference, therefore, the suit was dismissed. On appeal being preferred by the plaintiff, the first appellate Court reversed the judgment and decree of the trial Court and restrained the defendants from interfering with peaceful possession of the plaintiff. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been formulated by this Court, which has been set-out in opening paragraph of this judgment.

5. Mr. Manoj Paranjape, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court dismissing the suit particularly when the plaintiff has not specified the description in respect of 50 decimals of the suit land alleged to have been tried to be encroached by the defendants and the first appellate Court relying upon demarcation report which

was neither exhibited nor proved as evidence and on the basis of such demarcation report concluded that the suit land is in possession of the plaintiff and granted permanent injunction in favour of the plaintiff, which deserves to be set aside.

6. On the other hand, Mr. Sunil Tripathi, learned counsel for respondent No.1/plaintiff, would submit that bare suit for permanent injunction filed by the plaintiff, and she is in possession of the suit land and her title is undisputed as held by the trial Court and not reversed by the first appellate Court, therefore, the first appellate Court is justified in granting permanent injunction in favour of the plaintiff and even defendants No.1 and 2 have not asserted that the plaintiff is not in possession of the suit land bearing Khasra No.398 area 1.78 hectares and even not stated anywhere that the plaintiff is not in possession of the suit land.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

8. Admittedly, the plaintiff is title-holder of the suit land bearing Khasra No.398 area 1.78 hectares. The trial Court has also recorded a finding to this effect, whereas the defendants are title-holders of

the land bearing Khasra No.395 area 4 acres. It is their case (defendants') that area of their land had reduced to some extent and it had remained only 1.2 hectares. They moved an application for correction of records. The Naib-Tahsildar, Ambikapur by order dated 8.11.2002 (Ex.D-2) directed that they hold the land bearing Khasra No.395 area 1.616 hectares (not 1.2 hectares) and directed for correction of records overlooking the objection of the plaintiff, which the plaintiff appealed unsuccessfully vide Ex.D-3. It appears thereafter the dispute arose between the parties and the defendants started claiming that 50 decimals of land is possessed by the plaintiff leading to the institution of the suit by the plaintiff for permanent injunction, in which the trial Court declined to grant decree in favour of the plaintiff after having held that the plaintiff is title-holder of the land bearing Khasra No.398 area 1.78 hectares. However, the first appellate Court granted permanent injunction in favour of the plaintiff. The plaintiff and her witnesses have clearly stated in statements that she is in possession of the suit land and the defendants are trying to dispossess her from 50 decimals of the suit land taking advantage of correction of records directed by the Naib-Tahsildar, Ambikapur. In her

cross-examination, her statement remained uncontroverted. Her witness Rasmay Vaidya (PW-2) has also made the similar statement. The first appellate Court has relied upon the demarcation report to hold that the plaintiff is in possession of the suit land. The fact of demarcation is admitted position on record. The defendants after correction of records in their favour were required to take legal recourse to get the possession of their land (approximately 50 decimals), if they are not in possession of that part of land, record of which was corrected by the Naib-Tahsildar, but they cannot resort to the authorized means of interfering with the land of the plaintiff assuming that the plaintiff is in possession of her land (50 decimals), as such, the first appellate Court is absolutely justified in decreeing the suit for permanent injunction filed by the plaintiff. I do not find any perversity or illegality in the judgment and decree of the first appellate Court. The substantial question of law is answered accordingly.

9. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

10. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-