

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on :29.09.2020****Judgment delivered on :26.11.2020****Second Appeal No.292 of 2010**

Rajendra Prasad Jain, S/o Late Roopchand Jain, aged about 80 years, R/o Village Pendra, Police Station Pendra, Tahsil Pendraroad, District Bilaspur (CG)

----- Appellant/Plaintiff**Versus**

1. Sureshchand Jain, S/o Late Roopchand Jain, aged about 80 years, R/o Village Pendra, Police Station Pendra, Tahsil Pendraroad, District Bilaspur (CG)
2. State of Chhattisgarh, Through: the Collector, Bilaspur (CG)

----- Respondents/Defendants**And****Second Appeal No.260 of 2010**

Sureshchand Jain S/o Late Roopchand Jain, aged about 80 years, R/o village Pendra, Police Station Pendra, Tahsil-Pendraroad, District Bilaspur (CG)

----- Appellant/Defendant**Versus**

1. Rajendra Prasad Jain, S/o late Roopchand Jain, aged about 80 years, R/o village Pendra, Police Station Pendra, Tahsil Pendraroad, District Bilaspur (CG)

----- Plaintiff

2. State of Chhattisgarh, through Collector, Bilaspur (CG)

----- Respondents

Mr.Ashok Soni, Advocate for the Appellant/Plaintiff in SA No.292/2010 and Advocate for Respondent No.1/Plaintiff in SA NO.260/2010

Dr.N.K.Shukla, Senior Advocate with Mr.Achyut Tiwari, Advocate for the Appellant/Defendant in SA No.260/2010 and Advocate for Respondent No.1/Defendant in SA No.292/2010
Dr.Veena Nair, Dy.A.G.for respondent No.2/State

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Second Appeal No.292 of 2010 preferred by the appellant/plaintiff was admitted for hearing on 27.8.2020 by formulating the following substantial question of law:-

“Whether the first appellate Court is justified in setting aside the decree for permanent injunction granted in favour of the plaintiff by holding that the plaintiff is not in possession of the suit property, by recording a finding which is perverse and contrary to the record ?”

2. Second Appeal No.260 of 2010 preferred by the appellant/defendant was admitted for hearing on 30.8.2010 by formulating the following substantial question of law:-

“Whether the lower appellate Court has committed illegality in decreeing the suit for declaration of the title of suit property without consequential relief of possession ?”

[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].

3. Since both the second appeals have arisen from common/impugned judgment and decree passed by the

first appellate Court, therefore, they are clubbed and heard together and being disposed of by this common judgment.

4. The suit property situated at village Pendra, Tahsil Pendra road bearing Khasra No.13 area 4.735 hectares is the subject-matter of dispute between the parties. It is the case of the plaintiff that his father late Shri Roopchand Jain purchased the suit land in his name as he was minor at that time and in family partition in the year 1954, it was allotted to him and since then, he is in possession of the suit land being title-holder, but the defendant tried to take forcible possession over the suit land necessitated him to seek declaration of title and permanent injunction restraining the defendant from interfering with his peaceful possession.

5. Resisting the suit, the defendant filed his written statement and denied the averments made in the plaint stating inter-alia that the suit property was the property allotted to him on partition in the year 1954 and since then, he is in possession over the suit land, he has also installed electricity connection on the suit land. Apart from opposing the suit, he also filed counter-claim stating inter-alia that he is in exclusive possession over the suit land

as it was given to him on oral partition and as such, he is entitled for declaration of title and permanent injunction.

6. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 16.3.2010, decreed the suit of the plaintiff holding that he is title-holder and also in possession of the suit land and thereby restrained the defendant from interfering with his peaceful possession. On appeal being preferred by the defendant, the first appellate Court maintained the decree for declaration of title, but set-aside the decree for permanent injunction holding that the defendant is in possession over the suit land, against which, the plaintiff as well as the defendant both have preferred two second appeals as stated hereinabove, in which separate substantial questions of law have been formulated, which have been set-out in the opening paragraph of this judgment for sake of completeness.

7. Mr. Ashok Soni, learned counsel for the appellant/plaintiff in Second Appeal No.292 of 2010, would submit that the first appellate Court went wrong in holding that the plaintiff is not in possession of the suit land, therefore, he is not

entitled for decree of permanent injunction, by recording a finding which is perverse to the record, as such, the judgment and decree of the first appellate Court deserves to be set aside and that of the trial Court be restored and thereby the defendant's second appeal be also dismissed.

8. Dr. N. K. Shukla, learned Senior Counsel with Mr. Achyut Tiwari, learned counsel for appellant/defendant in Second Appeal No. 260 of 2010, would submit that there is overwhelming evidence available on record to conclude that only and only the defendant is in exclusive possession of the suit land and it is not the plaintiff who is in possession of the suit land, therefore, if the plaintiff is not in possession of the suit land, he ought to have sought consequential relief of recovery of possession, which he has admittedly not sought, therefore, by virtue of proviso to Section 34 of the Specific Relief Act, 1963 (hereinafter called as "Act of 1963"), bare suit for declaration of title would not be maintainable and therefore, the judgment and decree of the trial Court only granting decree for declaration of title be set-aside by granting this second appeal and consequently, decree for declaration of title granted in favour of the plaintiff be also set aside.

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

10. The suit filed by plaintiff-Rajendra Prasad Jain was decreed by the trial Court holding that he is title-holder of the suit land and also in possession of the suit land restraining the defendant from interfering with his peaceful possession. On appeal being preferred by defendant-Sureshchand Jain, the first appellate Court maintained the decree for declaration of title, but set-aside the decree for permanent injunction holding that the defendant is in possession over the suit land, as such, in order to answer two second appeals, the outcome of the appeals are dependent upon the fact as to who is in possession of the suit land on the date of institution of the suit. If the plaintiff is not found in possession of the suit land, then the plaintiff's appeal has to be dismissed and the defendant's appeal has to be allowed in view of proviso to Section 34 of the Act of 1963.

11. It is undisputed rather admitted fact on record that the suit property was purchased by father of the plaintiff and defendant No.1 late Shri Roopchand Jain

in the name of Rajendra Prasad and whose name continued to be recorded in revenue records. Document Ex.D-16 copy of rin pustika clearly shows that name of the plaintiff has been recorded in revenue records as Bhumiswami of the suit land as the said document is issued under the provisions of the Chhattisgarh Land Revenue Code. Likewise, the fact of partition between them has also been admitted by the parties. Rajendra Prasad (PW-1) was cross-examined on behalf of the defendant. In para-9 of his cross-examination, plaintiff-Rajendra Prasad has clearly stated that he is cultivating the suit land from the year 1952-63 either by himself or through adhiyadar. He has also stated that in cross-examination that the suit land and other properties were subjected to partition and 3-4 years after the partition he is cultivating the suit land. He has also stated that in his cross-examination that though for sake of convenience the electricity meter in his land has been installed in the name of his brother i.e. defendant Sureshchand Jain, but electricity bill of that meter is paid by him regularly and he has also stated that property tax in Nagar Panchayat is paid by him. Ex.D-15 is the detailed complaint made by the defendant to the Sub-Divisional Officer, Pendra Road on 18.7.2006, in

which he has stated that on 1.7.2006 the plaintiff and his persons tried to dispossess him from the suit land and he was also requisitioned in the police station at the instance of the plaintiff and he is in possession over the suit land for last 53 years, but he only prayed for entering his name in revenue records with regard to the suit land in complaint (Ex.D-15).

12. The instant suit was filed by the plaintiff on 5.7.2006 and the defendant filed his written statement and counter-claim on 30.7.2007. It is quite unnatural that if a person who has been threatened to be dispossessed from such a huge landed property will not make either FIR nor file a suit and only in a suit filed by his opponent/plaintiff, would file counter-claim after a period of one year. Likewise, the defendant claimed to be in possession over the suit land for last 53 years, though number of exhibits from Exs.D-1 to D-44 have been filed, but no document particularly khasra entry showing his possession over the suit land has been filed, whereas the plaintiff has filed the documents Exs.P-1 and P-2 copy of khasra panchashala in which he has been shown to be possession-holder of the suit land, as such, the trial Court has rightly held that the plaintiff's

name has been recorded in revenue records vide Exs. P-1 and P-2 and rin pustika has also been issued in his name, which has been filed by the defendant vide Ex.D-16 and despite report dated 18.7.2006 the defendant did not take any step either to get his name corrected in revenue records or to take any step to file suit despite averring that his possession was tried to be interfered with by the plaintiff and in a suit filed by the plaintiff, he has filed counter-claim for declaration of title and permanent injunction, as such, the trial Court has taken a reasonable view of the matter. However, merely on the basis of electricity connection and payment of property tax which the plaintiff has refuted by saying that though the name of the defendant is recorded, yet he is paying electricity bill and property tax to Nagar Panchayat as in Exs.D-20 to D-33 name of the plaintiff has been recorded. The plaintiff has stated that on being deposited he used to pay the amount of electricity bill to the defendant.

13. As such, there is overwhelming evidence on record to hold that the plaintiff is in possession of the suit land and the defendant is not in possession of the suit land, which has rightly been held so by the

trial Court, but the first appellate Court without meeting with detailed reasonings recorded by the trial Court holding to be in possession of the suit land merely on the basis of electricity meter having been installed in the name of the defendant and property tax said to be paid by the defendant in the name of the plaintiff, proceeded to hold that the plaintiff is not in possession of the suit land. Such a finding recorded by the first appellate Court is contrary to oral and documentary evidence available on record, as such, the first appellate Court went wrong in holding that the plaintiff is not in possession of the suit land and further committed illegality in setting aside the decree of permanent injunction granted in favour of the plaintiff.

14. Consequently, it is held that the plaintiff is in possession of the suit land and the defendant has no right and authority to interfere with his peaceful possession. Therefore, the judgment and decree of the first appellate Court to the extent of holding that the plaintiff is not in possession of the suit land and thereby setting aside the judgment and decree of permanent injunction is set-aside and that of the trial Court is hereby restored by answering the substantial question of law in favour of the

plaintiff and against the defendant.

15. Consequently, Second Appeal No.292/2010 preferred by plaintiff-Rajendra Prasad Jain is hereby allowed and Second Appeal No.260/2010 preferred by defendant Sureshchand Jain is hereby dismissed leaving the parties to bear their own cost(s).

16. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-