

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 342 of 2008**

Prem Kumar, Son of Fauda, Caste Uraon, Aged about 45 years, Occupation Head Mason, R/o Village Pidi, Tahsil and District Jashpur, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Philip (died) through LRs. :-

(a). Santosh Kumar S/o Philip, R/o Village Girang, Tahsil Jashpur, District Jashpur, Chhattisgarh, at present R/o Village Jurgum, Tahsil and District Jashpur, Chhattisgarh.

2. Ajay Kumar, S/o Late Alber Uraon, Aged about 25 years, Profession Service R/o Village Girang, Tahsil Jashpur, District Jashpur, Chhattisgarh.

3. State of Chhattisgarh, through Collector, Jashpur, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:-	Mr. J.K. Saxena, Advocate
For Respondent 1	:-	None
For Respondent 2	:-	Mr. A.K. Prasad, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/05/2020

1. This second appeal filed by the appellant/plaintiff was admitted for hearing on the following substantial question of law :-

"Whether the trial Court was justified in closing opportunity of the plaintiff to adduce evidence of attesting witnesses namely Lorence (PW-1) & Sudhir (PW-2) on 9.10.2006 ignoring the fact that plaintiff himself was examined on 5.9.2006, by recording a finding, which is perverse to the record ?"

(For the sake of convenience, the parties will herein-after be referred as per their status before the trial Court.)

2. Plaintiff filed a suit for declaration of title, recovery of possession and permanent injunction stating *inter alia* that the suit land admeasuring 4.357 acres in total situated at Village Girang, Jashpurnagar shown in Schedule 'A' annexed with the plaint was originally held by Alber who was issuess and plaintiff was looking after him. Alber died on 16/01/1993 leaving behind a Will (Ex. P/1) executed by him on 20/03/1990 through which plaintiff acquired title over the said suit land, to which defendants opposed by filing their written statement stating *inter alia* that since

Alber was issueless, he had adopted defendant No. 2, therefore, defendants are title-holders of the suit land and plaintiff is not entitled for decree as claimed by him.

3. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit vide judgment and decree dated 24/09/2007 holding that legality and validity of the Will (Ex. P/1) executed by Alber in plaintiff's favour has been proved in accordance with law against which defendants preferred an appeal under Section 96 of the CPC wherein learned first appellate Court, vide its judgment and decree dated 11/08/2008, allowed the appeal by setting aside the judgment and decree of the trial Court holding that attesting witnesses of the Will (Ex. P/1) namely Lorence (PW-1) and Sudhir (PW-2) could not be cross-examined by the defendants as plaintiff's opportunity to lead evidence was closed by the trial Court on 09/10/2006, therefore, plaintiff is not entitled for decree as claimed against which this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff in which substantial question

of law has been framed and set out in the opening paragraph of this judgment.

4. Mr. J.K. Saxena, learned counsel for appellant/plaintiff would submit that the first appellate Court ought to have seen that though on 09/10/2006 plaintiff filed an application for grant of adjournment as his attesting witness namely Lorence (PW-1) was suffering from malaria fever and could not be present in the Court, but the trial Court closed his opportunity to lead evidence. Closure of plaintiff's opportunity to lead evidence was absolutely bad in law and therefore, the judgment and decree of the first appellate Court deserves to be set aside.

5. None appeared for respondent/defendant No. 1, though served.

6. Mr. A.K. Prasad, learned counsel for respondent/defendant No. 2 would support the impugned judgment and decree passed by the first appellate Court and submit that several opportunities were given to the plaintiff to get his attesting witnesses examined but the said witnesses were not kept present before the trial Court and ultimately, his opportunity to lead

evidence was closed on 09/10/2006, as such, that cannot be a valid ground to set aside the impugned judgment and decree passed by the first appellate Court.

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

8. It is correct to say that plaintiff was granted enough opportunities to lead evidence and examine his attesting witnesses namely Lorence (PW-1) and Sudhir (PW-2) on 14/06/2005, 27/07/2005, 03/07/2006 and 05/09/2006 and ultimately, last opportunity to lead evidence was granted to him on 09/10/2006, but on that very day, plaintiff filed an application under Section 148 of CPC for grant of further time as one of his attesting witnesses i.e. Lorence (PW-1) was suffering from malaria fever and he could not be present before the Court. The said application filed by the plaintiff under Section 148 of the CPC states as under :-

न्यायलय श्रीमान व्यवहार न्यायाधीश प्रथम वर्ग, जशपुर

प्रेम कुमार

वादी

बनाम

फिलीप एवं अन्य

प्रतिवादीगण

आवेदन पत्र अंतर्गत आदेश 17 नियम 1 व्य.प्र.संहिता

वादी कि ओर से निम्न निवेदन है।

- (१) यह कि उपर्युक्त प्रकरण आज श्रीमान के समक्ष सुनवाई हेतु नियत है।
- (२) यह कि प्राप्त जानकारी के अनुसार वादी आज बुखार से पीड़ित होने के कारण अपने गवाहों को न्यायालय में उपस्थित करने में असमर्थ है।
- (३) यह कि वादी ने जान बूझकर ऐसा नहीं किया है बल्कि अपरिहार्य कारणों से ही ऐसा हुआ है।
- (४) यह कि आवेदन पत्र पूर्व है।

अतः श्रीमान से निवेदन है कि न्यायहित में वादी
साक्ष्य हेतु एक अवसर प्रदान करने की दया हो।

दिनांक 10.5.06

अधि. वास्ते वादी

9. The above-stated application filed by the plaintiff was considered by the trial Court on 09/10/2006 and it was rejected merely on the ground that earlier, time had already been granted to the plaintiff to lead evidence on various different occasions and on 09/10/2006,

last and final opportunity was granted to him to get his witnesses examined but he failed to do so.

10. The question for consideration would be whether the trial Court was justified in closing the opportunity of the plaintiff to lead evidence mainly relying upon the ground that earlier enough adjournments had already been granted to the plaintiff to lead evidence ?
11. In this regard, the pertinent decision of the Supreme Court in the matter of State Bank of India v. Chandra Govindji (KM.)¹ can be noticed wherein Their Lordships, in paragraph 7 of the report, have held as under :-

"In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournments, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter."

1 (2000) 8 SCC 532

12. Thus, having ascertained the principle of law laid down by the Supreme Court in the above-stated case, it is quite vivid that earlier adjournments granted, if any, would certainly have been for reasonable grounds and that aspect need not be examined if on the date of adjournment, party has a reasonable ground. Hence, the trial Court was absolutely unjustified in rejecting plaintiff's application for grant of adjournment without considering the cause shown by him for seeking adjournment as one of the attesting witnesses namely Lorence (PW-1) was suffering from malaria fever and he could not be present before the Court for examination. As such, sufficient cause was shown by the plaintiff while seeking adjournment but the trial Court did not consider it and rejected his application, though decreed the suit on different ground and thus, the first appellate Court is also absolutely unjustified in setting aside the judgment and decree of the trial Court.

13. Consequently, the impugned judgment and decree of the first appellate Court is set aside and instead of restoring the judgment and decree of the trial Court, matter is remitted to the trial

Court permitting the plaintiff to adduce evidence by examining his witnesses within 30 days from the date of appearance and thereafter, the trial Court would consider the case of the parties and proceed in accordance with law. Defendants would be at liberty to lead evidence in rebuttal (if any).

14. The second appeal is allowed to the extent indicated herein-above. No cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet