

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.352 of 2008

Rukhmani Bai, W/o Pancham Singh, aged about 42 years,
Occupation House wife, R/o Hamalpara, Rajnandgaon, Tahsil and
District Rajnandgaon (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Kishore, S/o Baliram Yadav, Caste Thetwar, aged about 37 years,
R/o Shanti Nagar Ward No.4, Rajnandgaon, Tahsil and District
Rajnandgaon (C.G.)
2. The State of Chhattisgarh, Through the Collector, Rajnandgaon,
District Rajnandgaon (C.G.)
3. Nirasha Bai, W/o Brijlal Thethwar, Occupation House wife, aged
about 47 years, R/o Shanti Nagar, Ward No.4, Rajnandgaon, Tahsil
and District Rajnandgoan (C.G.)

(Defendants)
---- Respondents

For Appellant/Plaintiff: -

Mr. Goutam Khetrapal, Advocate.

For Respondent No.1 / Defendant No.1: -

None present though served.

For Respondent No.2 / State: -

Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

For Respondent No.3 / Defendant No.3: -

Mr. Sunil Otvani and Mr. Amit Soni, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

04/02/2020

1. This second appeal under Section 100 of the CPC filed by the
plaintiff was admitted for hearing by formulating the following
substantial question of law: -

“Whether both the Courts below erred in declining to grant declaration of title over the suit land in favour of the appellant/plaintiff after recording a finding that the plaintiff had exclusive title over the house in suit land?”

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The plaintiff filed suit for declaration of title and also thereafter amended the suit seeking relief of possession that defendants No.1 & 2 have encroached and constructed house on his land, therefore, he be granted vacant possession of the suit land after demolishing the construction which defendant No.1 disputed by filing written statement and held that the plaintiff's land is at Khasra No.116/135, whereas defendant No.1's land is at Khasra No.116/72 which defendant No.1 has purchased by registered sale deed. Defendant No.3 has also filed written statement stating that he has not encroached upon the land of the plaintiff.
3. The trial Court upon evaluation of oral and documentary evidence on record reached to the conclusion that the plaintiff is title holder of Khasra No.116/135, but he has failed to prove that defendants No.1 & 3 have encroached upon the suit land and accordingly dismissed the suit in toto. The judgment and decree of the trial Court was affirmed by the first appellate Court which has been questioned in this second appeal preferred by the plaintiff in which substantial question of law only with regard to the title of the plaintiff over the suit land has been formulated, no question of law was either proposed or formulated by this Court on 22-10-2008 with regard to the relief

of possession which the plaintiff sought by amending the plaint before the trial Court.

4. Mr. Goutam Khetrapal, learned counsel appearing for the appellant herein / plaintiff, would submit that both the Courts below were absolutely unjustified even in not granting decree for declaration of title after having held that the plaintiff is entitled for declaration, as such, the appeal deserves to be allowed.
5. Mr. Amit Soni, learned counsel appearing for respondent No.3 herein / defendant No.3, would oppose the submission of learned counsel for the plaintiff and support the impugned judgment & decree.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. Admittedly, the trial Court after full-fledged trial has held that the plaintiff is title holder of Khasra No.116/135, but held that the plaintiff has failed to prove encroachment over the suit land, however, dismissed the suit in toto. The first appellate Court also did not dispute the finding as to the title of the plaintiff recorded by the trial Court, as no challenge was laid by the defendants either by filing regular appeal or cross-objection or cross-appeal as such, the finding of the trial Court with regard to the title of the plaintiff over the suit land holding him to be the title holder has become final and he is the title holder, as such, he is entitled for decree for declaration of title. Therefore, the trial Court as well as the first appellate Court even

have committed illegality in not granting decree for title in favour of the plaintiff, though he was held not entitled for possession. As such, the appeal is partly allowed. It is held that the plaintiff is title holder of the suit land bearing Khasra No.116/135, area 2 decimal, situated at Village Chikhli (Shanti Nagar), Rajnandgaon. Parties shall bear their own cost(s).

8. No other point was argued.
9. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma