

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 228 of 2009**

Kangaloo, Aged about 60 years S/o Ashwa Sahu, R/o Village Bhuring, Tahsil and District Mahasamund, Chhattisgarh.

---Appellant/Defendant No. 1

Versus

1. Nirmala Bai W/o Shri Jairam R/o Village Bhuring, Tahsil and District Mahasamund, Chhattisgarh.

2. Neera Bai W/o Bhojram, Aged about 21 years, R/o M.K. Bahara, Tahsil and District Mahasamund, Chhattisgarh.

--- Plaintiffs

3. Kamla Bai W/o Late Bhoj Ram Sahu R/o Village Bhuring, Tahsil and District Mahasamund, Chhattisgarh.

---Defendant No. 2

4. State of Chhattisgarh, Through the Collector, Mahasamund, Chhattisgarh.

--- Respondents

For Appellant :- Mr. Manoj Paranjpe, Advocate

For Respondents:- None

For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

18/06/2020

1. Proceedings of this matter have been taken up through video conferencing.

2.This second appeal was admitted for hearing on the following substantial question of law :-

“Whether the first appellate Court was unjustified in making observation as contained in paragraph 13 of its judgment and reserving liberty in favour of defendant No. 1, after setting aside the judgment and decree of the trial Court and thereby, granting him the relief which has not been claimed by him by way of filing counter-claim ?”

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

3.The two plaintiffs filed a suit for permanent injunction simpliciter against the defendants seeking the relief that defendant No. 1 be restrained from interfering with the possession of the plaintiffs and alienating the suit property shown in Schedule 'A' annexed with the plaint.

4.Learned trial Court, vide its judgment and decree dated 05/10/2007, decreed the suit of the plaintiff against which defendant No. 1 preferred an appeal under Section 96 of the CPC wherein learned first appellate Court, vide its judgment and decree dated 28/01/2009, set aside the

judgment and decree of the trial Court and allowed the appeal, however, while granting the appeal, in paragraph 13 of its judgment, the first appellate Court made an observation that appellant/defendant No. 1 is at liberty to alienate his share in the suit property shown in Schedule 'A' of the plaint against which this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No. 1 in which substantial question of law has been framed and set out in the opening paragraph of this judgment.

5. Mr. Manoj Paranjpe, learned counsel for the appellant/defendant No. 1, would submit that the first appellate Court is absolutely unjustified in granting the appeal after setting aside the judgment and decree of the trial Court by making an observation that defendant No. 1 can alienate his share of the suit property shown in Schedule 'A' of the plaint, as the first appellate Court had no business to restrict the right of defendant No. 1 after granting the appeal and dismissing the suit. He would further rely upon the decision passed by this Court in Munni Bai @

Bisahin Bai v. Sahulal and Ors.¹ decided on 06/12/2019.

6. None appeared for the respondents, though served.

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 plaintiffs' suit for permanent injunction simpliciter was decreed by the trial Court, but the first appellate Court set aside the judgment and decree of the trial Court which had the effect of dismissing plaintiffs' suit *in toto*.

9. At this stage, it would be relevant to notice paragraph 13 of the judgment passed the first appellate Court, which reads as under :-

“13/ अपीलार्थी वादग्रस्त भूमि अनुसूची 'अ' ग्राम भोरिंग में स्थित भूमि में अपने हिस्से तक विक्रय करने के लिए स्वतंत्र है।”

10. A careful perusal of the judgment and decree passed by the first appellate Court would show that the first appellate Court has allowed the appeal of defendant No. 1 and set aside the judgment and decree of the trial Court decreeing

¹ Second Appeal No. 435 of 2006

the suit of the plaintiffs, which had the effect of dismissing their suit *in toto*. But the first appellate Court has made the aforesaid observation in paragraph 13 of the judgment and also granted decree with regard to the same, which is apparent from paragraph 1 of the decree. It states as under :-

“1) अपीलार्थी वादग्रस्त भूमि अनुसूची 'अ' ग्राम बोरिंग में अपने हिस्से तक विक्रय करने के लिए स्वतंत्र है।”

11. The Supreme Court, in the matter of **Bachhaj Nahar v. Nilima Mandal and Ors.**² highlighted the object and purpose of pleadings and held as under :-

“9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at

issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take."

Their Lordships further held that relief can be granted only with reference to prayers made in the pleadings and held as under :-

"16...It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit."

12. Similarly, in the subsequent decision rendered in Ratanlal alias Babulal Chunilal Samsuka v. Sundarabai Govardhandas Samsuka (D.) Th. Lrs. And Ors.³, their Lordships of the Supreme Court have clearly held that the parties to a suit are always governed by their pleadings and any amount

of evidence or proof adduced without there being proper pleading is of no consequence and will not come to the rescue of the parties.

13. The Supreme Court, in the matter of **Om Prakash and Ors. v. Ram Kumar and Ors.**⁴, has clearly held that a party cannot be granted a relief, which is not claimed, if the circumstances are such that granting such relief would result in serious prejudice to the interested party and deprive him of valuable rights under the statute. In reference to Order 7 Rule 7 of the CPC, it has further been held that plaintiff cannot base new cause of action on plea of defendant unless he amends the plaint or files separate proceedings.

14. In the matter of **Satish Chand Makhan and Ors. v. Govardhan Das Byas and Ors.**⁵, the Supreme Court has held that ordinarily a suit is tried in all its stages on the cause of action as it existed on the date of the institution, but the Court can look to subsequent events, when the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate, or (2) where it is necessary to

4 (1991) 1 SCC 441

5 (1984) 1 SCC 369

take notice of the changed circumstances to shorten litigation, or (3) to do complete justice between the parties.

15. Furthermore, in the matter of Ganesh Shet v. Dr. C.S.G.K. Setty and Ors.⁶, their Lordships of the Supreme Court have held that under Order 7 Rule 7 of the CPC, the general or other relief, the Court may deem fit, sought by plaintiff can be granted only when it is consistent with the pleading as well as proof.

16. In Om Prakash Gupta v. Ranbir B. Goyal⁷, the Supreme Court has clearly held that subsequent events can be taken cognizance can be taken cognizance of only if Court's attention is invited towards them according to established rules of procedure so that the prerequisites of affording the opposite party an opportunity of meeting the new case and of determining the real questions in controversy are fulfilled by holding the following :-

"11. The ordinary rule of civil law is that the rights of the parties stand crystalised on the date of the institution of the suit and, therefore, the decree in a suit should

⁶ (1998) 5 SCC 381

⁷ (2002) 2 SCC 256

accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied : (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu Vs. The Motor & General Traders* - AIR 1975 SC 1409 this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provision of law or rule of fairplay is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The court speaking through Krishna Iyer, J. affirmed the proposition that court can, so long as the litigation

pend, take note of updated facts to promote substantial justice. However, the court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fairplay is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

12. Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of facts not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties. In Messrs. Trojan & Co. Vs. RM.

N.N. Nagappa Chettiar - AIR 1953 SC 235 this Court has held that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found; without the amendment of the pleadings the Court would not be entitled to modify or alter the relief. In Sri Mahant Govind Rao Vs. Sita Ram Kesho & Ors. - (1898) 25 Indian Appeals 195 (PC), their Lordships observed that, as a rule, relief not founded on the pleadings should not be granted.

13. Power of the Court to take note of subsequent events, specially at the appellate stage, came up for the consideration of a Full Bench of Nagpur High Court presided over by Justice Sinha (as His Lordship then was) in Chhote Khan Vs. Mohammad Obedulla Khan, AIR 1953 Nag 361. Hidayatullah, J. (as His Lordship then was) held, on a review of judicial opinion, that an action must be tried in all its stages on the cause of action as it existed at the commencement of the action. No doubt, Courts 'can' and sometimes 'must' take notice of subsequent events, but that is done merely 'inter partes' to shorten litigation but not to give to a defendant an advantage because a third party has acquired the right and title of the plaintiff. The doctrine itself is of an exceptional character only to be used in very special circumstances. It is all the more strictly applied in those cases

where there is a judgment under appeal. His Lordship quoted the statement of law made by Sir Asutosh Mookerjee, J. in a series of cases that merely because the plaintiff loses his title 'pendente lite' is no reason for allowing his adversary to win if the corresponding right has not vested in the adversary but in a third party. "

17. The legal principle laid down in Om Prakash Gupta (supra) has consistently been followed by the Supreme Court in Ram Nibas Gagar (dead) by Lrs. v. Debojyoti Das and Ors.⁸, Ram Kumar Barnwal v. Ram Lakhan (dead)⁹, and Nidhi v. Ramkripal Sharma (dead) through Lrs.¹⁰
18. Reverting to the facts of the present case in light of the principle of law laid down by the Supreme Court in the above-stated cases, it is quite vivid that the suit filed by the plaintiffs was for permanent injunction simpliciter which was granted by the trial Court, but the first appellate Court set aside the judgment and decree of the trial Court and dismissed the suit *in toto*, thereafter, such a finding restricting the right of defendant No. 1 to alienate his share of the suit property could not have been recorded by

8 (2003) 1 SCC 472

9 (2007) 5 SCC 660

10 (2017) 5 SCC 640

the first appellate Court especially when no such relief was claimed by the plaintiffs or defendant No. 1 anywhere. Once the judgment and decree of the trial Court is set aside, the first appellate Court has become *functus officio* and therefore, no such decree could have been granted by the first appellate Court restricting the right of defendant No. 1. Hence, the first appellate Court has gravely erred in restricting the right of defendant No. 1 to alienate his share of the suit property only by making an observation in paragraph 13 of its judgment.

19. Consequently, paragraph 13 of the judgment passed by the first appellate Court restricting the right of defendant No. 1 to alienate his share of the suit property only is hereby set aside and the rest of the decree would remain intact.

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

21. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge