

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.423 of 2009

Kunjbihari, S/o Maniram Sahu, Aged about 47 years, R/o
Village Thelka, Tahsil Saaja, Distt. Durg (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Kunwariya Bai, Wd/o Jagannath, aged about 50 years,

2. Ishwar, S/o Jagannath, Aged about 30 years,

Both are R/o Village Thelka, Tahsil Saaja, Distt. Durg (C.G.)

3. Ratna, W/o Ganeshram Sahu, Aged about 31 years, R/o Banranka, Sub
Tahsil Khamariya, District Durg (C.G.)

4. Nirmala Bai, W/o Tekuram, aged about 29 years, R/o Village Darri, Sub
Tah. Khamariya, District Durg (C.G.)

5. Balibai, W/o Mahendra, aged about 28 years, R/o Village Nawapara
(Danganiyan), Tah. Berla, District Durg (C.G.)

6. State of Chhattisgarh, Through the Collector, Durg, District Durg (C.G.)
(Defendants)
---- Respondents

For Appellant: Mr. Rishi Rahul Soni, Advocate.

For Respondents No.1 to 5: -

Mr. Amit Kumar Sahu, Advocate.

For Respondent No.6 / State: -

Miss Shivali Dubey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

25/02/2020

1. The substantial question of law involved, formulated and to be answered
in this plaintiff's second appeal is as under: -

"Whether by reversing the finding of ownership of the
property by the lower appellate Court the lower appellate

Court has committed illegality?"

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

2. The plaintiff filed suit for declaration of title, possession and permanent injunction stating inter alia that he is owner and title holder of Khasra No.848, area 0.05 hectare / 12.5 decimal out of which the original defendant has encroached upon 2.5 decimal of land. The defendants filed written statement and set up the defence that the plaintiff is the title-holder of only Khasra No.848, area 10 decimal, and area of 2.5 decimal is the land held by them in which the plaintiff is not entitled for declaration of title and possession.
3. The trial Court upon appreciation of oral and documentary evidence available on record decreed the suit holding that the plaintiff is the title-holder of 12.5 decimal of land and the defendants have encroached upon 2.5 decimal of land and granted decree for declaration of title, possession and permanent injunction which the first appellate Court interfered with by holding that the plaintiff has failed to prove demarcation in his favour that the defendants have encroached over the plaintiff's land and set aside the entire decree granted by the trial Court resulting into filing of second appeal by the plaintiff in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.
4. Mr. Rishi Rahul Soni, learned counsel for the appellant herein / plaintiff, would submit that the first appellate Court could not have interfered with decree of trial Court as the defendant has admitted that the plaintiff

is title-holder of Khasra No.848, area 10 decimal and as such, at-least decree of declaration of title to that extent could have been granted in favour of the plaintiff.

5. Mr. Amit Kumar Sahu, learned counsel appearing for respondents No.1 to 5 herein / defendants, would submit that the plaintiff is owner and title-holder as well as possession holder of Khasra No.848, area 10 decimal, therefore, the first appellate Court has rightly set aside the decree of the trial Court.
6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
7. The plaintiff is confining his case i.e. the second appeal only to the question of title of suit land and not pressing the relief of injunction and possession which has been set aside by the trial Court and question of law has only been framed with regard to title and ownership of the plaintiff.
8. The question is, whether the plaintiff is entitled for decree of title of Khasra No.848?
9. Admittedly, according to the defendants, they are owners and possession holders of Khasra No.848, but the area of only 2.5 decimal is held by them. The trial Court has held the plaintiff to be entitled for Khasra No.848, area 12.5 decimal and disbelieved the statements of the defendants. But the first appellate Court has only addressed on the issue, whether encroachment by the defendants on the land of the plaintiff has not been made and thereby reversed the judgment & decree

of the trial Court. The plaintiff has claimed Khasra No.848, area 12.5 decimal which the defendants have admitted that he is owner and title-holder of 10 decimal land. The plaintiff has also not filed any document demonstrating that he is the title-holder of remaining 2.5 decimal as undisputedly, he is owner and title-holder of 10 decimal of land which the defendant has also admitted. As such, judgment & decree of the first appellate Court is partly set aside by holding that the plaintiff is title holder of Khasra No.848, area 10 decimal. Judgment & decree of the first appellate Court is modified accordingly and it is held that the plaintiff is owner and title holder of Khasra No.848, area 10 decimal. The substantial question of law is answered accordingly.

10. The appeal is partly allowed to the extent indicated herein-above modifying the judgment & decree of the trial Court. Parties shall bear their own cost(s).

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge