

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 412 of 2009**

Municipal Corporation Bilaspur, Through its
Commissioner, Municipal Corporation Bilaspur,
District Bilaspur, Chhattisgarh.

---Appellant/Defendant

Versus

Rajendra Kumar Nagdev, Aged about 42 years, S/o
Shri Laxman Das Nagdev, R/o Shanichari Padav,
Bilaspur, Tahsil and District Bilaspur,
Chhattisgarh.

--- Respondent/Plaintiff

For Appellant	:- Mr. A.S. Kachhwaha, Advocate
For Respondent	:- Mr. Ashish Shukla, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

15/10/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. This second appeal preferred by the appellant/defendant under Section 100 of the CPC was admitted for hearing by this Court on 06/08/2020 by formulating the following two substantial questions of law :-

"1. Whether the trial Court is justified in closing the opportunity of the defendant to lead evidence by recording a finding which is perverse to the record ?

2. Whether both the Courts below are justified in granting decree for permanent injunction in favour of the plaintiff by recording a finding and also for want of notice under Section 401 of the Chhattisgarh Municipal Corporation Act, 1956 ?"

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

3. The plaintiff herein filed a suit for permanent injunction simpliciter stating *inter alia* that the suit land i.e. plot No. 20 admeasuring 11.5 x 14 total 161 sq. ft. was allotted to him by the defendant Municipal Corporation on 22/07/1987 (Ex. P/2) and it was sanctioned to him for construction on a premium @ ₹ 90/- per sq. ft. which amounts to ₹ 14,490/- in total and out of that ₹ 3,000/- was paid by the plaintiff to the defendant Municipal Corporation on 18/07/1987. It has further been stated that the suit land was allotted by the defendant Municipal Corporation in favour of the plaintiff after depositing a partial premium amount of ₹ 3,000/- and the State Government refused to grant sanction for allotment of the suit land on account of which notice was served to the plaintiff for staying construction on the said suit land and later on, the defendant Municipal Corporation issued a notice to remove the super structure

constructed on the suit land by the plaintiff which ultimately led to the filing of the suit for bare permanent injunction.

4. The defendant Municipal Corporation filed its written statement opposing the plaintiff's allegations stating that though the plaintiff was allotted the suit land for a premium @ ₹ 90/- per sq. ft. amounting to ₹ 14,490/- in total, but out of that only ₹ 3,000/- were deposited by him and the remaining amount has not been deposited by him and even the yearly rent has also not been deposited by him, therefore, the State Government issued notice to the plaintiff and directed for staying construction and consequently, notice was issued to him by the Municipal Corporation for staying construction and for vacating the suit land, as such, plaintiff is not entitled for permanent injunction.

5. During the course of the trial, plaintiff examined himself as well as his witnesses to prove his case, but on behalf of the defendant, though an application under Order 18 Rule 4 of the CPC, but since defendant's witnesses were not produced for cross-examination, the trial Court closed their opportunity to lead evidence.

6. Learned trial Court, after evaluation of oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 15/12/2008 and held that plaintiff is entitled for decree for declaration of allotment over the suit land and directed that the balance amount of premium which the plaintiff has not deposited, be deposited to the defendant Municipal Corporation and also granted decree for permanent injunction in his favour.

7. On appeal being preferred by the defendant, learned first appellate Court, vide its impugned judgment and decree dated 20/04/2009, set aside the judgment and decree of the trial Court with regard to the declaration of allotment over the suit land in favour of the plaintiff and modified the decree by holding that plaintiff is entitled for permanent injunction and he should not be dispossessed from the suit land except in accordance with law.

8. Being aggrieved, the defendant Municipal Corporation has preferred this second appeal wherein two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

9. Mr. A.S. Kachhwaha, learned counsel appearing for the appellant/defendant, would submit that both the

Courts below have erred in granting decree for permanent injunction in favour of the plaintiff as the suit land is public property and the plaintiff has not even fully paid the due premium amount of ₹ 14,490/- and as admitted by himself, he has only paid ₹ 3,000/-. Even otherwise, he was making pakka construction on the suit land which is contrary to the permission granted to him by the Municipal Corporation, as such, no legal right has accrued in favour of the plaintiff to get the decree for permanent injunction. Moreover, notice under Section 401 of the Municipal Corporations Act, 1956 was also not served by the plaintiff to the defendant. He would also submit that defendant's opportunity to lead evidence was abruptly closed by the trial Court without assigning any justifiable reason, therefore, the judgment and decree passed by both the Courts below deserves to be set aside.

10. Mr. Ashish Shukla, learned counsel appearing for the respondent/plaintiff, would support the judgment and decree passed by both the Courts below and submit that the first appellate Court has rightly modified the judgment and decree of the trial Court and held that plaintiff should not be dispossessed from the suit land except in accordance with law and further granted decree that

plaintiff is only entitled to use the suit land as per the terms of allotment, as such, no interference is called for in the judgment and decree of the first appellate Court and the second appeal deserves to be dismissed.

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

Answer to Substantial Question of Law No. 1 :-

12. It is correct to say that on 21/11/2008, defendant's opportunity to lead evidence was closed on the ground that he was granted adjournment on the earlier date of hearing. True it is that defendant was earlier granted adjournment, but in the prayer made by the defendant for seeking adjournment on 21/11/2008, sufficient and justifiable reason has been shown by him, as such, the trial Court has committed illegality in refusing to grant further adjournment to the defendant on 21/11/2008 and ultimately, closing his opportunity to lead evidence on the ground that he had already been granted adjournment since 05/07/2008.

13. The trial Court ought to have considered the question that, whether on 21/11/2008 defendant was

entitled for adjournment for cross-examination of his witnesses or not, as serious prejudice has been caused to the defendant in not permitting to cross-examine his witnesses and closing his opportunity to lead evidence. As such, the order dated 21/11/2008 passed by the trial Court refusing to adjourn the matter and ultimately, closing the opportunity of the defendant to lead evidence is hereby set aside.

Answer to Substantial Question of Law No. 2 :-

14. The question for consideration herein is whether the plaintiff is entitled for decree for permanent injunction and thereby, restraining the defendant Municipal Corporation from dispossessing the plaintiff from the suit land ?
15. Admittedly and undisputedly, the suit land i.e. plot No. 20 admeasuring 11.5 x 14 total 161 sq. ft. was allotted to the plaintiff vide order dated 22/07/1987 (Ex. P/2) and he was required to deposit a premium amount of ₹ 14,490/- to the defendant Municipal Corporation out of which plaintiff only deposited ₹ 3,000/- before allotment.
16. The plaintiff, in his cross-examination, has clearly admitted that he has only deposited ₹ 3,000/- out of the total premium amount and has not deposited the remaining amount till date. As

such, the plaintiff has no right over the suit land as allotment of the suit land in his favour was subject to payment of premium which amounts to ₹ 14,490/- and plaintiff has admittedly not deposited the full premium amount till this date and that is the reason why the trial Court, while granting decree in his favour, directed him to deposit the remaining premium amount.

17. Plaintiff was granted allotment over the suit land on 22/07/1987 vide Exhibit P/2, but thereafter, vide Exhibit P/3, he was directed by the State Government to suspend the construction work on the said suit land. The fact remains that pursuant to the order of the State Government, construction work on the suit land allotted to the plaintiff was stayed by the Municipal Corporation as the plaintiff never deposited the balance premium amount of ₹ 11,490/-. Though the plaintiff was allotted the suit land and was permitted to raise construction therein, but there is no evidence on record to hold that at any point of time, he was given possession of the suit land as his allotment over the suit land is not complete on account of non-payment of the remaining premium amount to the defendant Municipal Corporation. As such, plaintiff has no legal right over the suit land and at no

point of time he was handed over the possession of the suit land. Moreover, the suit land is a public property and the two Courts below should be circumspect in granting permanent injunction particularly when the dispute pertains to a public property. As such, the first appellate Court, though modified the decree passed by the trial Court, yet committed illegality in granting decree for permanent injunction in favour of the plaintiff and restraining the defendant Municipal Corporation from dispossessing the plaintiff from the suit land. However, the notice under Section 401 of the Act of 1956 was served to the Municipal Corporation defendant before instituting the suit.

18. Consequently, the judgment and decree passed by the first appellate Court partly affirming the judgment and decree of the trial Court is hereby set aside and plaintiff's suit stands dismissed.

19. The second appeal is allowed leaving the parties to bear their own cost(s).

20. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge