

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.49 of 2007

1. Gokul son of Jharan Halba, aged 37 years, resident of Lattipara Kanker P.S. and Tahsil Kanker, District Kanker (CG)
2. Smt.Jayanti Bai (omitted)
3. Smt.Sheetal Bai widow of Pardeshi Halba aged 47 years. Nos. 2 and 3 residents of Khutapara Kanker, District Kanker (CG)
4. Nootan Das S/o Jadiyamal Sindhi aged 56 years, resident of village Manjhapara Kanker, District Kanker (CG)
5. Thavarmal S/o Narayan Fabyani Sindhi aged 48 years resident of Manjhapara Kanker District Kanker (CG)

----- Appellants/Defendants

Versus

1. Smt. Suraj Bai daughter of Sunder caste Halba aged 34 years, resident of village Lattipara Kanker, Distt. Kanker (CG)

----- Plaintiff

2. Chairman Nagar Palika Parishad Kanker Tahsil and Distt. Kanker (CG)

----- Respondents

For Appellants/Defendants	: Mr.Anurag Singh, Advocate
For Res.No.1/Plaintiff	: Mr.Malay Jain, Advocate
For Respondent No.2	: Mr.D.N.Prajapati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

07/01/2020

1. This second appeal preferred by the appellants/defendants was admitted for hearing by formulating the following substantial question of law:-

"Whether both the courts below have committed an error of law in not properly appreciating the evidence of the plaintiffs in respect of the disputed property and decided the plaint as well as the first appeal in favour of respondent/plaintiff No.1 ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. The plaintiff herein filed a suit for declaration of title and for declaring resolution Nos.373 and 257 passed by defendant NO.4 directing entering into the names of defendants No.1 to 3 by deleting her name as null & void and also sought possession from them stating inter-alia that the suit land bearing Khasra No.454 area 0.17 decimal was inherited from her father and constructed house & badi and staying therein, which was illegally mutated by defendants No.1 to 3 in their names and therefore, it be declared null & void and decree for possession be granted in his favour.
3. Defendants No.1 to 3 have filed their written statement and denied the averments made in the plaint stating inter-alia that the plaintiff is not owner of the suit house and land. The suit land is government land and the Government has not granted any patta in favour of the plaintiff, as such, the suit be dismissed.
4. The trial Court after framing as many 16 issues, by its judgment and decree dated 20.07.98, recorded a finding in para-16 that the plaintiff has failed to prove her title over the suit land while answering issue Nos. 1 & 4 and also recorded a finding that deletion of name of the plaintiff in demand register

by resolution No.373 dated 1.6.81 and resolution No.257 dated 7.6.86 directing entry of names of the defendants are null & void and thereafter proceeded to grant decree for possession in favour of the plaintiff. On appeal being preferred by the defendants before the first appellate Court, the said appeal Court upheld the judgment and decree of the trial Court and dismissed the appeal, against which, this second appeal under Section 100 of the CPC has been preferred by the appellants/defendants, in which substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

5. Mr.Anurag Singh, learned counsel for the appellants/defendants, would raise the similar contention that the trial Court while deciding issue Nos.1 and 4 has held that the plaintiff is neither title-holder nor possession holder of the suit land and the suit land being abadi land, decree for possession ought not to have granted in favour of the plaintiff, as such, decree for possession deserves to be set aside being perverse and contrary to record.

6. Mr.Malay Jain, learned counsel for respondent No.1/plaintiff, would support the impugned judgment & decree and submit that the plaintiff came in possession over the suit land after death of her father and as such, decree for possession has rightly been granted in her favour by the trial Court and

affirmed by the first appellate Court.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
8. In para-7 the trial Court has clearly held that the suit land bearing Khasra No.454 area 0.17 decimal is government land (abadi land) in which the suit house is situated. The trial Court while answering issue Nos.1 and 4 has further recorded a finding that the plaintiff is not title-holder of the suit land and no patta has been granted in her favour holding her or to her father to be bhumiswami, but while deciding issue Nos.10 and 11 the trial Court has held that deletion of name of the plaintiff by resolution No.373 dated 1.8.81 and addition of names of defendants No. 2 and 3 by resolution No.257 dated 7.6.86 are null & void and thereafter granted decree for possession in favour of the plaintiff.
9. Grant of decree in favour of the plaintiff to the extent of deletion of her name from demand register in addition of names of defendants No.1 to 3 is justified being violative of principles of natural justice, but thereafter granting decree for possession from defendants No.2, 3 , 4 and 5 cannot be supported in law or in fact because while answering issue No.16

read with issue Nos.1 & 4 the trial Court has clearly recorded a finding that the plaintiff was neither bhumiswami/title holder of the suit land nor she is in possession over the suit land/house at present and therefore, she has no title over the suit land and against that finding, the plaintiff did not file any appeal or cross-objection before the first appellate Court and as such, that finding has attained finality.

10. Once the finding that the plaintiff has no title over the suit land has been recorded and it has attained finality or once it has been recorded that the plaintiff has no title over the suit land/house, decree for possession cannot be granted in her favour. The plaintiff has failed to prove her title over the suit land, therefore, she is not entitled for decree of possession particularly when the suit land is admittedly as held by the trial Court is government land. The trial Court erred in granting decree for possession, which the first appellate Court has affirmed by dismissing the appeal.

11. For the foregoing reasons, the judgment and decree of both the Courts below to the extent of granting decree for possession as contained in para-17.3 of the trial Court is set aside. However, other part of the judgment and decree as contained in para-17.1 & 17.2 of the trial Court is affirmed and maintained.

12. Since, the suit land is government land (abadi land) and the plaintiff was in possession over the suit land for a fairly long time, she is at liberty to make an application for allotment of that land in accordance with law as defendants No.1 to 3 were also not found title-holder of the suit land by two Courts below.

13. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

14. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-