

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.314 of 2009Judgment reserved on: 17-2-2020Judgment delivered on: 20-2-2020

1. Shyama Bai, W/o Shankar Lal Sahu, aged about 55 years.
2. Shankar Lal Sahu, S/o Data Ram Sahu, aged about 60 years.
3. Bhagirathi, S/o Shankar Lal Sahu, aged about 32 years.
4. Gyanprabha, W/o Bhagirathi Sahu, aged about 30 years.

All R/o Village Dongri, Tehsil Janjgir (Baloda), District Janjgir-Champa
(C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Dhanmat Bai (Died and deleted)
2. Ramadhar, S/o Bisahu, aged about 44 years.
3. Kumar, S/o Budhwar, aged about 44 years.
4. Anar Bai, W/o Ramadhar, aged about 39 years.

All R/o Village Dongri, Tehsil Janjgir (Baloda), District Janjgir-Champa
(C.G.)

5. State of Chhattisgarh, through Collector, Janjgir-Champa (C.G.)
(Defendants)
---- Respondents

For Appellants/Plaintiffs: Mr. Ashok Kumar Shukla, Advocate.

For Respondents No.2 to 4/Defendants: -

None present though served.

For Respondent No.5/State: -

Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the plaintiffs / appellants herein was

admitted for hearing on the following substantial question of law: -

"Whether the lower appellate Court erred in holding that the present appellants are not in possession of the 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. Four plaintiffs – Smt. Shyama Bai, Shankarlal, Bhagirathi & Smt. Gyan Prabha filed bare suit for permanent injunction simplicitor stating inter alia that they are title-holders of Khasra No.1962/1, area 3.13 acres; Khasra No.1962/2, area 0.50 acre; Khasra No.1957/2, area 3 acres; and Khasra No.1957/1, area 3.23 acres, total 9.86 acres, which they have purchased by registered sale deeds Exs.P-1 to P-4 and came in possession and pursuant to Exs.P-1 to P-4, their names have also been recorded in Exs.P-5 to P-10 which is being interfered with by the defendants as they have no right, title over the suit property, therefore, they be restrained from interfering with their possession which the defendants disputed by filing written statement stating inter alia that the plaintiffs are not title-holders, husband of defendant No.1 & father of defendant No.2 namely Bisahu and Bhoku were title-holders and the property was the joint family property of Ram Sarkar and Bhoku, therefore, Ram Sarkar has no right to transfer the suit land in favour of the plaintiffs and the suit deserves to be dismissed.
3. The trial Court upon evaluation of oral and documentary evidence on record decreed the suit which the first appellate Court reversed holding that the plaintiffs are not in actual possession of the suit land against which this second appeal has been preferred in which substantial question of law has been formulated which has been set-out in the

opening paragraph of this judgment.

4. Mr. Ashok Kumar Shukla, learned counsel appearing for the appellants herein / plaintiffs, would vehemently submit that the first appellate Court is absolutely unjustified in holding that the plaintiffs are not in possession of the suit land, whereas they are in possession of suit land pursuant to the sale deeds Exs.P-1 to P-4 and the evidence is uncontroverted, as except Ramadhar (DW-1) – defendant No.2 no other witness has been examined to prove the possession of the defendants, as such, the plaintiffs being in lawful possession were granted decree for permanent injunction by the trial Court which the first appellate Court reversed by recording a finding which is perverse to the record. Therefore, the judgment & decree of the first appellate Court be set aside and that of the trial Court be restored. He relied upon the following decisions to buttress his submission: -

1. Daulatsingh s/o Khuba Kirar and another v., Tulsiram and another¹.
2. Shavaram alias Seva v. Dhapubai and others².
3. Walter Louis Franklin (Dead) Through LRs. v. George Singh (Dead) Through LRs.³.
4. Ramlal v. State of M.P.⁴.
5. Panchram v. Mst. Aghaniyebai⁵.

5. None appears on behalf of respondents No.2 to 4 / defendants, though served.

6. I have heard learned counsel for the appellants herein / plaintiffs and

1 1990 M.P.L.J. 429

2 AIR 2006 MP 142

3 (1997) 3 SCC 503

4 1994 (II) MPWN (186)

5 1985 MPWN (335)

considered his submissions and also went through the records of both the Courts below with utmost circumspection.

7. It is admitted fact on record that the plaintiffs are purchasers from Ram Sarkar. It is apparent from a careful perusal of the plaint that there was some dispute between Ram Sarkar and Bhoku which went up to the M.P. High Court and it is the case of the plaintiffs that the said case was decided in favour of Ram Sarkar and accordingly, on 10-5-1964 and 12-5-1964, Ram Sarkar received possession of the suit land and in the year 1975, again a proceeding under Section 145 of the Code of Criminal Procedure, 1973 was initiated against Ram Sarkar which was also decided by the M.P. High Court in favour of Ram Sarkar and in the year 1984, legal representatives of Ram Sarkar sown crops which were tried to be harvested by Bhoku and others and Civil Suit No.124-A/1985 (Civil Suit No.208A/1989) was registered against Bhoku which ended in compromise on 6-3-1990 and Khasra Nos.1957 & 1962, total area 9.36 acres, fell in the share of legal representatives of Ram Sarkar which the legal representatives of Ram Sarkar sold to the plaintiffs herein and since then the plaintiffs are in possession from the date of purchase and which is being interfered with by Bisahu – husband of defendant No.1 & father of defendant No.2 and others.
8. The plaintiffs filed suit claiming permanent injunction which the trial Court granted, but the first appellate Court reversed the finding and dismissed the suit, though the plaintiffs have claimed permanent injunction by way of sale deeds Exs.P-1 to P-4 and have examined five witnesses. Shanti Lal (PW-3) in his cross-examination in para 19 has stated that the suit land was being cultivated by the defendants, but from

the date of purchase, dispute has arisen between the parties. Likewise, Bahoran (PW-4) has clearly stated in para 4 of his statement that before purchase of the suit land it was being cultivated by the defendants and since the defendants harvested the crop, dispute arose between the parties. Likewise, Vyas Narayan (PW-5) has also stated that before the date of purchase, it was being cultivated by the defendants. Similarly, Ramadhar (DW-1), one of the defendants, has clearly stated that it was the land held by the defendants and after death of Bisahu, defendants No.1 & 2 are in possession of the suit land. In the cross-examination made by the plaintiffs, Ramadhar (DW-1) in para 9, has clearly stated that despite the order of the court granting temporary injunction, defendant No.2 is in possession of the suit land. In para 16, he has refuted the fact that he (defendant No.2) is not in possession.

9. As such, the statements of the aforesaid witnesses would clearly show that the defendants are in possession of the suit land though the plaintiffs have purchased the suit land and thereafter, they have filed suit for permanent injunction. Therefore, it is quite established that the plaintiffs are not in possession of the suit land though they have purchased by way of sale deeds. Since the plaintiffs are not in possession of the suit land, the first appellate Court is absolutely justified in dismissing the suit by setting aside the judgment & decree of the trial Court. The judgments cited by learned counsel for the plaintiffs - Daulatsingh (supra), Shavaram alias Seva (supra), Walter Louis Franklin (supra), Ramlal (supra) and Panchram (supra) are clearly inapplicable to the facts of the present case, as the plaintiffs are not in possession of the suit land. The substantial question of law is answered accordingly. I do not find any

merit in this second appeal. It deserves to be and is accordingly dismissed. No order as to cost(s).

10. In view of the above, I do not find any merit in the application under Order 41 Rule 27 of the CPC. It is accordingly rejected.

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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