

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 84 of 2008**

1. Sundarlal, Aged about 60 years, S/o Ratan Singh.
2. Suresh Kumar, Aged about 42 years, S/o Ratan Singh, Caste Adhariya.
3. Sunaina, Aged about 57 years, S/o Ratan Singh.

Appellants No. 1 to 3 are R/o Village Kaapan, Tahsli Janjgir, District Janjgir-Champa, Chhattisgarh.

4. (a) Shail Bai D/o Govardhan (died and deleted).
- (b) Devi Singh, S/o Govardhan, Aged about 33 years.
- (c) Raju S/o Govardhan, Aged about 30 years.
- (d) Shashi Bai D/o Govardhan, Aged about 28 years.

Appellants No. 4(a) to 4(d) all caste Adhariya, R/o Village and Tahsil Janjgir, Distt. Janjgir-Champa, Chhattisgarh.

5. Sumitra, Aged about 47 years, D/o Ratan Singh, R/o Dalha, Tahsil Janjgir, Distt. Janjgir-Champa, Chhattisgarh.

--Appellants/LRs. Of Plaintiff

Versus

1. Ranbir Singh (died) through LRs. :-

(I) Chandra Rekha W/o Gama Gautam, D/o Ranbir Singh, R/o Villag Kapan, Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh.

(ii) Moni W/o Ajay Kashyap, D/o Late Ranbir Singh, R/o Village Jarve (Baloda), District Janjgir-Champa, Chhattisgarh.

(iii) Budeshwari W/o Kranti Kumar D/o Late Ranbir Singh, R/o Village Khond, Tahsil Janjgir, Distt. Janjgir-Champa, Chhattisgarh.

(iv) Gillard, S/o Late Ranbir Singh, R/o Village Khond, Tahsil Janjgir, Distt. Janjgir-Champa, Chhattisgarh.

--- Respondents/Lrs. Of Defendant

For Appellants :- Mr. Malay Shrivastava and
Mr. Sourabh Sahu, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

20/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/LRs. Of original plaintiff - Ratan Singh under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court reversing the judgment and decree of the trial Court decreeing the suit of the plaintiff for permanent injunction.

2. The dispute herein relates to the suit gali shown in the map (Schedule 'A') annexed with the plaint which is marked as 'क' 'ग' 'घ' 'अ' which was previously owned by plaintiff Ratan Singh and one Radha Bai jointly. Radha Bai

sold her house along with her share in the suit gali to the defendant Ranbir Singh by registered sale deed dated 20/08/1959 (Ex. D/1) pursuant to which defendant started using the said suit gali for his entry and exit into the house which he purchased from Radha Bai, the erstwhile owner of the suit gali and the house.

3. Plaintiff brought a suit on 12/10/2000 stating *inter alia* that defendant has no right to use the suit gali shown in the map (Schedule 'A') annexed with the plaint and therefore, he be restrained from interfering with his possession as he is entitled to use the suit gali exclusively, in exclusion of the defendant to which defendant filed his written statement and set up a plea that the suit gali is possessed jointly by himself and the plaintiff jointly and he is using the suit gali for the purpose of entry and exit into the suit which he purchased from Radha Bai, therefore, plaintiff is not entitled for decree as claimed by him as he has no other alternative way except the said suit gali to make entry and exit into the house.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, decreed the suit holding that plaintiff is entitled to use the suit gali exclusively, in exclusion of defendant and defendant has an alternative way which he can use to make entry and exit into his house. On appeal being preferred by the defendant, learned first appellate Court reversed the finding recorded by the trial Court and allowed the appeal of the defendant holding that defendant has purchased the house as well as suit gali earlier owned jointly by Radha Bai and the plaintiff Ratan Singh vide Ex. D/1 and having acquired the right of Radha Bai, defendant is entitled to use the suit gali for his nistar rights, therefore, plaintiff's suit cannot be decreed and accordingly, judgment and decree of the trial Court was set aside against which this second appeal has been preferred by the defendant.

5. Mr. Malay Shrivastava and Mr. Sourabh Sahu, learned counsel for the appellants/LRs. of the plaintiff would submit that the first appellate Court has committed grave legal error in holding that defendant is also

entitled to use the suit gali for his nistar rights as the said suit gali was exclusively held by the plaintiff Ratan Singh and now, his legal heirs can use the suit gali. The first appellate Court has reversed the judgment and decree of the trial Court by recording a finding which is perverse and contrary to the record, as such, the appeal deserves to be admitted by formulating substantial question of law in this regard.

6. It is not in dispute that the suit gali was originally owned by plaintiff Ratan Singh and one Radha Bai jointly and Radha Bai sold her house along with her share in the suit gali to the defendant Ranbir Singh by registered sale deed dated 20/08/1959 (Ex. D/1) and it is the case of the defendant that since then, plaintiff and defendant both are using the suit gali jointly and it is also shown in the sale deed (Ex. D/1) executed by Radha Bai in his favour.

7. The finding recorded by the first appellate Court, based on the sale deed (Ex. D/1) and other oral evidence on record, that defendant is also entitled to use the suit gali for the

purpose of entry and exit into his house is a finding of fact based on material available on record which is neither perverse nor contrary to the record and does not involve any substantial question of law for determination.

8. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet