

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.158 of 2009Judgment reserved on: 26-6-2020Judgment delivered via video conferencing on: 1-7-2020

Asharam (Dead) Through Legal Representatives

(Plaintiff)

1. Smt. Dilbas, Wd/o Late Asharam, aged about 79 years
2. Jagarsai, S/o Late Asharam, aged about 60 years
3. Agarsai, S/o Late Asharam, aged about 55 years
4. Gorelal, S/o Late Asharam, aged about 50 years
5. Manmati, D/o Late Asharam, aged about 52 years

All are R/o Village Darripara, P.S. Bhaiyathan, Tahsil and District Surajpur (C.G.)

---- Appellants

Versus

1. Budha, D/o Ranglal, Aged about 40 years, W/o Somaru Panika, R/o Village Ghosa, P.S. & Tahsil Surajpur, District Surguja (C.G.)
2. Govind, D/o Ranglal, Aged about 36 years, R/o Village Darripara, P.S. Bhaiyathan, Tahsil Surajpur, District Surguja (C.G.)
3. Ramnarayan, S/o Bagar, Caste Panika, Aged about 45 years, R/o Village Darripara, P.S. Bhaiyathan, Tahsil Surajpur, District Surguja (C.G.)
4. Khelsay, S/o Ramnarayan, Caste Panika, Aged about 10 years, Minor through guardian father Ramnarayan, S/o Bagar, R/o Village Darripara, P.S. Bhaiyathan, Tahsil Surajpur, District Surguja (C.G.)
5. Phoolkunwar (Died and deleted)
6. State of Chhattisgarh, Through the Collector, Surguja, District Surguja (C.G.)

(Defendants)

---- Respondents

 For Appellants/LRs of the original Plaintiff: -

Mr. Ashok Kumar Shukla, Advocate.

For Respondents No.1 to 4/Defendants: -

Mrs. Meena Shastri, Advocate.

For Respondent No.6/State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Proceedings of this matter were taken-up for final hearing through video conferencing.
2. This second appeal preferred by the plaintiff has been admitted for final hearing on the following substantial questions of law: -

"(1) Whether the judgment and compromise decree dated 29/07/1983 (Ex. D/1) passed in Civil Suit No. 49-A/1982 between Ranglal (the predecessor) in interest of defendant No.1(a) to 1(d) and Bheekham (Appellant/defendant's vendor), is binding on the plaintiff?

(2) Whether the said Bheekham, having executed sale-deed in favour of appellant/plaintiff in relation to the suit land on 15/05/1972 was competent to enter into a compromise with Ranglal admitting the title of Ranglal and agreeing for allotment of the suit land in the share of Ranglal?"

3. Additional substantial question of law was formulated on 28-2-2020 which reads as under: -

"Whether both the Courts below are justified in dismissing the suit by holding that the plaintiff is not entitled for permanent injunction?"

[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.]

4. The respondents were noticed on the additional substantial question of law and thereafter the matter was again heard.

5. The sole plaintiff filed suit only for permanent injunction stating inter alia that the suit property shown in Schedule A of the plaint was purchased from Bheekham – his father-in-law by registered sale deed dated 15-5-1972 (Ex.P-1) and he came in possession, but on 30-9-1983, the defendants started interfering with his peaceful possession claiming title with them and proclaimed that decree has been granted in their favour by the jurisdictional civil court. The defendants filed their written statement and controverted the allegations made in the plaint and setup the defence of compromise decree in Civil Suit No.49-A/1982 between Bheekham and Ranglal, decreed on 29-7-1983 in which suit land bearing Khasra Nos.767, 768 & 772 was given to Ranglal and the plaintiff having purchased the suit land from Bheekham is not entitled to the relief of permanent injunction in view of the compromise decree.
6. The trial Court on appreciation of oral and documentary evidence available on record dismissed the suit holding that the plaintiff has no right over the suit property because Bheekham had no right to sell the property and also recorded a finding that as per Ex.D-2, the defendants are not in possession over the property which the first appellate Court on appeal preferred by the plaintiff concurred with and declined to interfere. Feeling aggrieved against the judgment and decree of the first appellate Court, this second appeal has been preferred in which two substantial questions of law have been framed which have been set-out in the opening paragraph of this judgment.
7. Mr. Ashok Kumar Shukla, learned counsel appearing for the appellant

herein / plaintiff, would submit that the plaintiff having purchased the suit property by registered sale deed dated 15-5-1972 and continuing in possession by recording his name in the revenue records and is in settled possession thereof, is entitled for decree of permanent injunction and his possession, particularly title followed by possession cannot be interfered with by collusive decree obtained by Ranglal and Bheekham vide Ex.D-1, as such, the decree is not binding on the plaintiff and he cannot be non-suited on account of collusive decree obtained by them. Therefore, both the Courts below have committed legal error in holding that the plaintiff has no right and title over the property and therefore not entitled for possession which is perverse to the record and is liable to be set aside.

8. Mrs. Meena Shastri, learned counsel appearing for respondents No.1 to 4 herein / defendants, would support the judgments and decrees of both the Courts below and submit that the compromise decree was not under challenge and the plaintiff ought to have sought relief of declaration of title in view of the fact that his title is under serious cloud in view of the decision of the Supreme Court in the matter of Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. and others¹. She would further submit that the suit was barred by Section 41(h) of the Specific Relief Act, 1963 and concurrent finding recorded by both the Courts below are not liable to be interfered with and would rely upon the judgment of the Supreme Court in the matter of The Municipal Corporation of Delhi v. Shri Suresh Chandra Jaipuria and another²

1 (2008) 4 SCC 594

2 (1976) 4 SCC 719

followed by this Court in the matter of Ramlal v. Trilochan and others³.

9. I have heard learned counsel for the parties and considered their rival submissions made herein above and also went through the record with utmost circumspection.

Answer to substantial question of law No.2: -

10. The case of the plaintiff is that he purchased the suit land vide registered sale deed dated 15-5-1972 and came in possession of the suit land by mutating his name in the revenue record and being in possession by cultivating the same, but on the basis of compromise decree dated 29-7-1983, the defendants started interfering with his possession. But the fact remains that the plaintiff has not questioned legality, validity or correctness of the compromise decree dated 29-7-1983 (Ex.D-1), therefore, the question as to whether Bheekham having executed sale deed in favour of the plaintiff was competent to enter into compromise with Ranglal admitting the title of Ranglal and agreeing for allotment of the suit land in favour of Ranglal does not arise for consideration at all, as in absence of challenge to the compromise decree, the said fact was not in issue either before the trial Court or before the appellate Court. Therefore, the said question does not arise for consideration. Accordingly, substantial question of law No.2 is answered.

Answer to substantial question of law No.1 and substantial question of law No.3 formulated on 28-2-2020 : -

11. Ex.D-1 dated 29-7-1983 was admittedly entered into between

Bheekham and Ranglal after alienating the suit property long back on 29-7-1983 in which, admittedly, plaintiff Aasharam was not party and the compromise decree is against his interest, as the suit lands bearing Khasra Nos.767, 768 & 772 have been allotted to Ranglal – father of defendants No.1 & 2. As such, the compromise decree in which the plaintiff not being party in such compromise is not bound by such decree. (See Arjan Singh v. Punit Ahluwalia and others⁴.)

12. Now, the question would be, since the compromise decree is not binding on the plaintiff, whether both the Courts below are justified in refusing to grant permanent injunction in favour of the plaintiff?

13. In this regard, though the plaintiff and his witnesses maintained that he is in possession of the suit land from the date of purchase, it would be appropriate to examine the defendants and their testimony as to whether the plaintiff is in lawful possession of the suit land.

14. Ramnarayan (DW-1) in para 3 of his cross-examination has clearly stated that he and his father-in-law wanted to see that the plaintiff would leave the possession of the suit land and they attempted to ensure that the possession of the suit land is vacated by the plaintiff. Not only this, witness of defendant – Budha (DW-2), who is daughter of Ranglal, has also reiterated the same statement that the plaintiff is in possession and they have tried to impress Aasharam to vacate the possession of the suit land and dispute arose between the parties on the possession of the suit land. Other witness Dular Sai (DW-3) has clearly admitted that the suit land is being possessed by the plaintiff and the

defendants have tried their level best to vacate the possession, but it did not materialise, though it led to criminal case and dispute between the parties. Sonuram (DW-4) has clearly admitted in para 2 of his statement that the suit land is being cultivated by the plaintiff.

15. As such, there is an overwhelming evidence available on record that the plaintiff is in possession of the suit land and after alleged compromise deed Ex.D-1 which is not binding on the plaintiff, the defendants are trying and impressing upon the plaintiff to vacate the suit land, but he has not vacated and filed the instant suit for permanent injunction which has been dismissed by both the Courts below on the ground that the compromise decree has not been challenged. It has been held that since the compromise decree was entered into after alienation of the suit property by Bheekham in favour of the plaintiff vide Ex.P-1, the compromise decree was entered into on 29-7-1983 and the said compromise decree is not binding on the plaintiff, as he (plaintiff) is not party to the said compromise decree and once it is found that the plaintiff is in lawful possession of the suit land which has been admitted by almost all the witnesses of the defendants as noticed herein-above, the plaintiff being in lawful and settled possession over the suit land, is entitled for permanent injunction.

16. The Supreme Court in the matter of Sunkamma (Dead) by Legal Representatives v. S. Pushparaj (Dead) by Legal Representatives⁵ has held that in a suit for permanent injunction under Section 38 of the Specific Relief Act, 1963, the plaintiff is only required to prove that he

is in lawful possession of the suit property, and the touchstone upon which such suit has to be decided is “lawful possession” and not “ownership”.

17. Since, in the present case, the plaintiff's possession over the suit land is cultivating possession which has been found established and the compromise decree is not binding on the plaintiff, in the considered opinion of this Court, both the Courts below are totally unjustified in dismissing the suit filed by the plaintiff for permanent injunction. The judgments and decrees of both the Courts below are liable to be set aside. Substantial question of law No.1 is answered accordingly.

18. However, the judgment of the Supreme Court in Shri Suresh Chandra Jaipuria's case (supra) cited by Mrs. Meena Shastri, learned counsel appearing for respondents No.1 to 4 herein / defendants, that alternative remedy in terms of another mode of proceeding is available, therefore, suit is not maintainable, followed by this Court in Ramlal (supra), is not applicable to the facts of the present case, as it is the case of the plaintiff that he is title-holder of the suit land pursuant to the sale made by Bheekham vide Ex.P-1 and compromise decree has been sought and granted to frustrate his legal right which he has acquired by way of sale deed Ex.P-1. Therefore, the aforesaid decision is not in any way helping the defendants.

19. As a fallout and consequence of the aforesaid discussion, the second appeal is allowed. The judgments & decrees of both the Courts below are hereby set-aside and the defendants are restrained from interfering with the possession of the plaintiff over the suit land bearing Khasra

Nos.767, 768 & 772 by themselves or by any agent whatsoever. No order as to cost(s).

20. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma