

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 529 of 2007**

Jai Ram, S/o Amarsai Rajwar, Aged about 60 years,
Occupation – Agricultre, R/o Village Kudeli, Post
Sarbhoka, Tahsil Baikunthpur, Distt. Korla (C.G.)

----Appellant/Defendant

Versus

Birbal, S/o Kashiram Rajwar, aged about 52 years, R/o
Village Kudeli, Post Sarbhoka, Tahsil Baikunthpur,
Distt. Korla (C.G.)

----Respondent/Plaintiff

For Appellant	:	Mr. D.N. Prajapati, Advocate.
For Respondent	:	Mr. Mahendra Dubey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/01/2020

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the defendant under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 05.09.2007 passed by the District Judge, Korla (Baikunthpur) in Civil Appeal No. 49-A/2006 reversing the judgment and decree dated 22.06.2006 passed by the Chief Judicial Magistrate, Baikthpur, Distt. Korla, in Civil Suit No. 29-A/1998, decreeing the suit.

2. Learned counsel appearing for the appellant/defendant would submit that the first appellate Court is absolutely

unjustified in decreeing the suit of the plaintiff holding that he is entitled for decree of declaration of title and recovery of possession by recording a finding, which is perverse to the record and, therefore, the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

3. Plaintiff – Birbal filed a suit for declaration of title and permanent injunction, in which the defendant set up a plea that plaintiff is not entitled for decree of declaration of title and permanent injunction.

4. The trial Court, by its judgment and decree dated 22.06.2006, though found title in favour of the plaintiff, but dismissed the suit holding that he is not in possession of the suit land.

5. In first appeal preferred by plaintiff, the first appellate Court by its order dated 16.01.2007 made a limited remand granting liberty to the plaintiff to amend the plaint seeking relief of recovery of possession and thereafter trying the issue and finding was called by the first appellate Court. Thereafter, the first appellate Court, by the impugned judgment & decree dated 05.09.2007, allowed the appeal and decreed the suit of the plaintiff for declaration of title and recovery of possession, against which, instant second appeal under Section 100 of the CPC has been preferred.

6. In the first round, trial Court, in its initial order dated 16.01.2007, has clearly held that plaintiff is title holder of the suit land but dismissed the suit on the ground that he is not in possession over the suit land, which the first appellate Court has made limited remand and allowed him to claim relief of recovery of possession by amending the plaint, which he did and thereafter it was tried and finding was sent by the trial Court to the first appellate Court. This time, the first appellate Court by its impugned judgment and decree has granted decree for declaration of title and recovery of possession in favour of the plaintiff.

7. Argument advanced on behalf of the counsel for the appellant/defendant that the defendant has perfected his title by way of adverse possession cannot be accepted for the reason that when the trial Court has already recorded a finding while deciding issue No. 1 that plaintiff is title holder of the suit land, the same was not challenged by the defendant by filing first appeal, and it is only the plaintiff, who had preferred appeal thereagainst, which was remitted to the trial Court, thereafter decree for declaration of title and recovery of possession has been granted by the first appellate Court. Therefore, the argument of counsel for the defendant that the defendant has perfected his title by way of adverse possession over the suit land has rightly been turned down by the first

appellate Court, which is finding of fact based on material available on record; Likewise, the first appellate Court has clearly recorded a finding that plaintiff is title holder of the suit land and defendant is in unauthorized possession over the suit land and, therefore, the plaintiff is entitled for decree of declaration of title and recovery of possession, is also a finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

8. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.
No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

1.

D/-

