

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 240 of 2008****Judgment reserved on 30/01/2020****Judgment delivered on 03/02/2020**

1. Ramlal @ Babai S/o Shivnath (died) through LR's :-

(A) Karmato Wd/o Late Ramlal @ Babai, Aged about 60 years. R/o Village Rampur, Police Station Patna, Tahsil Baikunthpur, District Koriya, Chhattisgarh.

2. Bharat S/o Ramlal @ Babai, Aged about 36 years.

Both are Caste Koir R/o Village Rampur, P.S. Patna, Tahsil Baikunthpur, Distt. Koriya, Chhattisgarh.

--- Appellants/Defendants No. 1 and 2

Versus

1. Ramkumar S/o Jagdev, Caste Koir, Aged about 65 years. **--- Plaintiff**

2. Sudama S/o Bole, Aged about 42 years, Occupation Cultivator.

3. Radhe S/o Bole, Aged about 38 years, Occupation Cultivator.

All R/o Village Chhindiya, P.S. Patna, Tahsil Baikunthpur, District Koriya, Chhattisgarh.

--- Defendants No. 3 and 4

4.State of Chhattisgarh, through the Collector,
Koriya Baikunthpur, Distt. Koriya, Chhattisgarh.

--- Respondents

For Appellants/Defendants No. 1 and 2 :-

Mr. Ashok Kumar Shukla, Advocate

For Respondent No. 1/Plaintiff :-

Mr. D.N. Prajapati, Advocate

For Respondents No. 2 & 3/Defendants No. 3 & 4 :-

Mr. Prakash Tiwari, Advocate

For Respondent No. 4/State :-

Mr. Sanjeev Kumar Agrawal, P.L.

Second Appeal No. 343 of 2008

Ramkumar S/o Jagdev Koir, Aged about 70 years,
R/o Village Chhindiya, Tahsil Baikunthpur,
District Korea, Chhattisgarh.

--- Appellant/Plaintiff

Versus

1.Sudama S/o Bole, Aged about 47 years, Occupation
Agriculturist.

2.Radhe S/o Bole, Aged about 43 years, Occupation
Agriculturist.

Both are R/o Village Rampur, Tahsil Baikunthpur,
District Korea, Chhattisgarh.

--- Defendants No. 3 and 4

3.Ramlal @ Babai S/o Shivnath, Aged about 60 years,
R/o Village Rampur, Tahsil Baikunthpur, District
Korea, Chhattisgarh.

4. Bharat S/o Shivrath, Aged about 38 years, R/o Village Rampur, Tahsil Baikunthpur, District Korea, Chhattisgarh. --- **Defendants No. 1 and 2**

5. State of Chhattisgarh, through Collector, Korea (Baikunthpur) District Korea, Chhattisgarh.

--- **Respondents**

For Appellant/Plaintiff :-

Mr. D.N. Prajapati, Advocate

For Respondents No. 1 & 2/Defendants No. 3 & 4:-

Mr. Prakash Tiwari, Advocate

For Respondents No. 3 & 4/Defendants No. 1 & 2:-

Mr. Ashok Kumar Shukla, Advocate

For Respondent No. 4/State :-

Mr. Sanjeev Kumar Agrawal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Since, both of these above-stated second appeals have arisen out of the common judgment and decree dated 30/04/2008 passed by the first appellate Court whereby civil appeal No. 38A/2006 preferred by defendants No. 3 and 4 has been allowed and civil appeal No. 63A/2006 preferred by defendants No. 1 and 2 has been dismissed, therefore, they have been heard together and are decided by this common judgment.

2. Second Appeal No. 240/2008 preferred by the appellants/defendants No. 1 and 2 was admitted for hearing on the following two substantial questions of law:-

"1. Whether the lower appellate Court was justified in holding that the suit as framed is not barred by jurisdiction ?

2. Whether the lower appellate Court has erred in decreeing the Plaintiff's claim without considering the report dated 28.11.2002 (Ex. P-18) of Nayab Tahsildar, Baikunthpur ?"

3. Second Appeal No. 343/2008 preferred by the appellant/plaintiff was admitted for hearing on the following substantial question of law :-

"Whether the lower appellate Court was right in holding that the trial Court has not passed a decree against Defendants No. 3 & 4 ?"

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

4. Sole plaintiff — Ramkumar filed a suit for declaration of title, recovery of possession and

permanent injunction stating *inter alia* that he is the owner of land bearing old Khasra No. 119/1 admeasuring 1.214 hectares and land bearing old Khasra No. 150 admeasuring 1.368 hectares total area 2.587 hectares; both situated at Village Rampur, P.S. Patna, Tahsil Baikunthpur, District Koriya. During the new settlement, these lands were changed into Khasra No. 287 admeasuring 0.75 hectare and Khasra No. 350 admeasuring 1.65 hectares total area 2.40 and out of his total land, 0.09 hectare was acquired for Government canal. It was pleaded by the plaintiff that during the new settlement, 0.10 hectare of his land has been included in the adjoining land held by defendants No. 1 to 4 for which plaintiff moved an application before the competent authority for correction with regard to the said error made during the new settlement which was ultimately, sent for hearing before the Naib Tahsildar, Baikunthpur, therefore, he is entitled for declaration of title, recovery of 0.10 hectare of his land from defendants No. 1 to 4 and also for permanent injunction to which defendants opposed by filing their written statement and controverted the averments made in

the plaint by stating that plaintiff is not entitled for any relief claimed by him.

5. Learned trial Court, upon appreciation of oral and documentary evidence on record, held that defendants No. 1 to 4 have encroached upon 0.10 hectare of plaintiff's land which got included in defendants' land during the new settlement and plaintiff is entitled for recovery of possession of the said land from the defendants and ultimately, decreed the suit vide its judgment and decree dated 02/01/2003.

6. Assailing the judgment and decree of the trial Court, one appeal was preferred by defendants No. 1 and 2 and another appeal was preferred by defendants No. 3 and 4. The appeal of defendants No. 1 and 2 was dismissed whereas the appeal of defendants No. 3 and 4 was allowed by the first appellate Court vide its common judgment and decree dated 30/04/2008, holding that decree of the trial Court be executed only against defendants No. 1 and 2.

7. Questioning the impugned judgment and decree of the first appellate Court, these two second appeals have been preferred and they have been

clubbed together for the sake of convenience; second appeal No. 240/2008 by defendants No. 1 and 2 and second appeal No. 343/2008 by the plaintiff wherein substantial questions of law have been framed in both of these appeals and are set out at the beginning of the judgment.

8. Mr. Ashok Kumar Shukla, learned counsel appearing for the appellants/defendants No. 1 and 2 in second appeal No. 240/2008 would submit that both the Courts below have gravely erred in holding that the Court has jurisdiction to entertain the dispute ignoring the provisions contained under Section 89 read with Sections 107 and 257(g) of the Chhattisgarh Land Revenue Code, 1959. He would further submit that both the Courts below have also legally erred in ignoring the report dated 28/11/2002 (Ex. P/18) of Naib Tahsildar, Baikunthpur, as such, the judgment and decree of the trial Court affirmed by the first appellate Court directing delivery of possession of the suit land to the plaintiff by defendants No. 1 and 2, being perverse, is liable to be set aside and second appeal No. 240/2008 deserves to be allowed which has been seriously opposed by Mr. D.N. Prajapati, learned counsel appearing for

respondent No. 1/plaintiff in second appeal No. 240/2008 stating that both the Courts below have concurrently and rightly granted decree in favour of the plaintiff and against the defendants as there is a clear-cut finding recorded by both the Courts below that defendants are in possession of the 0.10 hectare of land held by the plaintiff. He would further submit that the Naib Tahsildar, Baikunthpur has already decided the application moved by the plaintiff under Section 89 of the Land Revenue Code which has also been brought on record, though not exhibited, but it is an admitted document, therefore, the jurisdiction of the civil Court in the instant suit is not at all barred as only relief for declaration of title and permanent injunction has been sought and no relief with regard to correction of the revenue records has been sought by the plaintiff in the civil suit preferred before the trial Court, therefore, second appeal No. 240/2008, being devoid of merits, deserves to be dismissed.

9. Mr. D.N. Prajapati, learned counsel appearing for the appellant/plaintiff in second appeal No. 343/2008 would submit that the first appellate Court has committed legal error of law in holding

that only defendants No. 1 and 2 are in possession of 0.10 hectare of plaintiff's land and thereby, modifying the rightly granted decree of the trial Court in favour of the plaintiff against defendants No. 1 to 4, as such, the second appeal No. 343/2008 deserves to be allowed.

10. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

Second Appeal No. 240/2008 preferred by defendants No. 1 and 2 :-

11. It has been argued by Mr. Ashok Kumar Shukla, learned counsel for the appellants/defendants No. 1 and 2 that the civil suit filed by the plaintiff is barred and the jurisdiction for correction of survey number, if any, lies with the revenue Court.

12. It appears from the record that no express plea of bar of jurisdiction has been raised before the trial court and therefore, the trial Court has not framed any issue with regard to the jurisdiction of the Court. This plea was raised

before the first appellate Court for the very first time and learned first appellate Court negatived the said plea of civil suit being barred by jurisdiction holding that plaintiff's suit is not for correction of revenue records or correction in the map which falls under Section 89 read with Section 107(5) of the Land Revenue Code, and further holding that the aforesaid plea ought to have been raised before the trial Court and thereafter, the first appellate Court recorded a finding that plaintiff's 0.10 hectare of the land has been included in the land of defendants No. 1 and 2 and partly affirmed the judgment and decree of the trial Court.

13. It is true that the express plea of bar of jurisdiction was not raised before the trial Court as the written statement filed by the defendants is conspicuously silent and there is no whisper with regard to the bar of jurisdiction of the civil Court under Section 257(g) of the Land Revenue Code. The first appellate Court has negatived the said plea by holding that the suit filed by the plaintiff was not for correction of revenue records.

14. The fact remains that the first appellate Court has noticed plaintiff's application under Section 89 of the Land Revenue Code for correction of revenue record which was entertained by the Naib Tahsildar, Baikunthpur and by its order dated 16/03/2004, revenue records were directed to be corrected holding that 0.10 hectare of plaintiff's land has been included in Khasra No. 87, which the defendants have not challenged though it has been brought on record but not marked as an exhibit, as such, the first appellate Court has rightly held that defendants No. 1 and 2 have failed to take the express plea of bar of jurisdiction and even otherwise, plaintiff's suit was only for declaration of title, recovery of possession and permanent injunction, and it was not for correction of revenue records. Moreover, the order of correction of revenue records has already been passed by the Naib Tahsildar, Baikunthpur vide order dated 16/03/2004 which has also been acted upon by the trial Court while deciding issue No. 2 in paragraph 12 of its judgment, as such, it cannot be held that plaintiff's suit was barred by jurisdiction in view of the provisions

contained under Section 89 read with Section 105 and 257(g) of the Land Revenue Code. Consequently, the substantial question of law No. 1 framed in this appeal is answered in affirmative.

15. Now, coming to the 2nd substantial question of law that the report dated 28/11/2002 (Ex. P/18) was not considered by the first appellate Court.

16. The report dated 28/11/2002 (Ex. P/18) is only the recommendation made by the Naib Tahsildar, Baikunthpur to the Sub-divisional Officer, as such, it cannot confer any right to defendants No. 1 and 2 to rely upon the said document and on that basis, the concurrent finding recorded by both the Courts below that plaintiff is entitled for possession of 0.10 hectare of his land cannot be set aside. It is hereby re-affirmed and the substantial question of law No. 2 is answered in negative.

Second Appeal No. 343/2008 preferred by the plaintiff :-

17. It is the case of the plaintiff that defendants No. 3 and 4 are also jointly in possession of 0.10 hectare of his land along with defendants No. 1 and 2 and so, the first appellate Court

could not have set aside the decree of the trial Court against defendants No. 3 and 4.

18. A careful perusal of the statement of P.W. 1 Subhash Chandra Kushwaha would show that in paragraph 2, he has clearly stated that defendants No. 1 and 2 have taken possession of 0.10 hectare of land owned by the plaintiff. Likewise, similar statement has been made by P.W. 2 Prahlad Kumar in paragraph 2 of his statement before the trial Court. In that view of the matter, learned first appellate Court is absolutely justified in modifying the decree of the trial Court holding that plaintiff is entitled to get possession of 0.10 hectare of his land from defendants No. 1 and 2. Consequently, the substantial question of law in this appeal is answered against the plaintiff.

19. As a fallout and consequence of the aforesaid legal analysis, both the appeals i.e. second appeal No. 240/2008 preferred by defendants No. 1 and 2 as well as second appeal No. 343 of 2008, being devoid of merits, deserve to be and are hereby dismissed leaving the parties to bear their own cost(s).

20. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet