

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.210 of 2009

1. Mangal Chand, aged about 50 years, S/o Late Laxmilal Jain,
2. Ramesh Chand, aged about 40 years, S/o Late Laxmilal Jain

Both R/o Churiya, Tahsil and Distt. Rajnandgaon.

(Defendants)
---- Appellants

Versus

Johan, aged about 65 years, S/o Ratnu Sahu, R/o Village Churiya,
Tahsil and Distt. Rajnandgaon

(Plaintiff)
---- Respondent

For Appellants / Defendants: Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/07/2020

[Proceedings through video conferencing]

1. Heard on admission and formulation of substantial question of law for determination in this second appeal preferred by the defendants.
2. By the impugned judgment & decree, the first appellate Court has dismissed the appeal preferred by the defendants affirming the judgment & decree of the trial Court granting decree in favour of the plaintiff.
3. Mr. Parag Kotecha, learned counsel appearing for the appellants herein / defendants, would submit that both the Courts below were absolutely unjustified in granting decree in favour of the plaintiff. He would further submit that the suit as framed and filed for declaration of title and

recovery of possession was barred by limitation and the finding regarding title is also perverse, therefore, the appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

4. The plaintiff filed suit against the original defendant Laxmilal Jain who died during the pendency of suit, only for permanent injunction on 4-1-1994, later-on, on 13-10-2003, he amended the plaint seeking relief of declaration of title and recovery of possession and claimed that the suit land bearing Khasra No.491/3, area 0.09 decimal, is owned by him and he had already constructed a house on 0.05 decimal of land and on 0.04 decimal of land, he started fencing for construction, then the original defendant Laxmilal Jain started interfering led to demarcation in which over 0.04 decimal of land, his title was found, therefore, he is entitled for declaration of title, possession and permanent injunction which the defendants opposed by stating that the suit for declaration of title is barred by limitation and the plaintiff has no title.
5. The trial Court rejected the plea that the suit for declaration of title is within limitation and the plaintiff is registered owner duly recorded in the revenue records and he is entitled for decree for recovery of possession which the first appellate Court also affirmed.
6. The plea regarding the suit to be barred by limitation has rightly been negated by both the Courts below as it is not only the suit for declaration, it is also for recovery of possession covered by Article 65 of the Limitation Act. Likewise, the two Courts below have concurrently held that the name of the plaintiff is duly registered in the revenue records as owner of the suit accommodation which has illegally been encroached by the defendants, therefore, he is entitled for decree of

possession. The said finding recorded by the two Courts below is a finding of fact based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any merit in the second appeal, it deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

(Sanjay K. Agrawal)
Judge

Soma