

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.192 of 2004**

Suresh Singh, S/o Chitrabhan Singh, Aged about 48 years, R/o Village: Dumarpara, Dhaneli, Tehsil: Sakti, Distt.Janjgir-Champa (CG)

----- Appellant/Defendant No.1

Versus

1. Kaushalya Devi (died and deleted)
2. Sarla Singh, Wife of Mithilesh Singh, D/o Ramashankar Singh, Aged about 35 years, R/o. Village: Naya Baradwar, Tehsil: Sakti, Distt. Janjgir-Champa (CG)

----- Plaintiffs

3. Sumer Singh, S/o Chitrabhan Singh, Aged about 46 years,
 4. Suryasen Singh (died) through LR's
 - 4.1 Ganesh, aged about 45 years, son of late Suryasen Singh
 - 4.2 Smt.Laxmi, aged about 42 years, wife of Mangal Singh @ Manglu, daughter of Late Suryasen Singh
 - 4.3 Sanjay, aged about 40 years, son of Late Suryasen Singh
 - 4.4 Smt.Lata, aged about 41 years, wife of Shri Shyam Sunder Singh, daughter of Late Suryasen Singh
 - 4.5 Ajay, aged about 38 years, son of late Suryasen Singh
 - 4.6 Kundan, aged about 35 years, son of Late Suryasen Singh
- All are resident of Village – Dhanelibhata, Village Panchayat – Dumarpara, Tahsil Sakti, Distt.Janjgir-Champa (CG)
- 4.7 Smt.Rinki, aged about 40 years, daughter of Late Suryasen Singh
 - 4.8 Smt.Pinki, aged about 36 years, daughter of Late Suryasen Singh, wife of Shri Dhiraj Chauhan.

Both are resident of Sonmudapara Raigarh,
Distt.Raigarh (CG)

5. Balbhadra alias Balram Singh, S/o Chitrabhan Singh,
Aged about 42 years.

6. Krishna Kumar Singh alias Maldev Singh S/o
Chitrabhan Singh, Aged about 40 years.

7. Amar Singh, S/o Chitrabhan Singh, Aged about 38
years.

8. Ranjit Singh, S/o Chitrabhan Singh, Aged about 35
years.

Respondents No.3 & 5 to 8 are residents of Village:
Dumarpara (Dhaneli), Tehsil: Sakti, District:Janjgir-
Champa (CG)

Respondents 3 to 8 all are ex-parte before the trial
Court and appellate Court.

-----Respondents

For Appellant/Defendant No.1 :

Mr.A.N.Bhakta, Advocate

For Respondent No.2/Plaintiff No.2:

Mr.Ravindra Agrawal, Advocate

For other Respondents: None present

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

14/06/2021

1. Proceedings of this matter have been taken-up through
video conferencing.

2. This second appeal preferred by defendant No.1 was
admitted for hearing on 7.7.2015 by formulating the
following substantial question of law:-

“Whether the findings of the first appellate
court regarding the admissibility of Ex.-P/8

is perverse"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

3. The suit land bearing Khasra No.310/1 area 0.06 acre was earlier held by one Chitrabhan Singh. It is the case of the plaintiffs that Chitrabhan Singh, father of defendants No.1 to 7, sold the suit property to original plaintiff-Ramashankar Singh (who died during pendency of the suit in the year 1956) on payment of ₹50 by delivering the possession and he thereupon constructed the house and residing therein. Thereafter, defendant No.1 on his behalf and on behalf of others executed the document (Ex.P-8) on 18.4.62 acknowledging the sale made by his father, but thereafter vide Ex.P-1 defendant No.1 got his name mutated on 11.4.89 necessitating for filing the suit for permanent injunction restraining the defendants from interfering with his possession.
4. Resisting the suit, defendant No.1 filed his written statement disputing the plaint averments and also claimed possession of the suit land from the plaintiff in counter-claim filed by him stating inter-alia that his father has not transferred any land in favour of the plaintiff, therefore, he being title-holder is entitled for decree of possession.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 5.3.2002, dismissed the suit as well as counter-claim of defendant No.1 and held that the plaintiff has established his possession over the suit land, but defendant No.1 is title-holder of the suit land. Feeling aggrieved against the judgment and decree of the trial Court, only the plaintiff preferred first appeal against dismissal of the suit, however, defendant No.1 did not question the part of decree by which his counter-claim has been dismissed, as such, dismissal of counter-claim and finding of the trial Court that the plaintiff is in possession of the suit land has become final. In first appeal preferred by the plaintiff, the first appellate Court clearly come to the conclusion that the plaintiff is in settled possession of the suit land and document (Ex.P-8) has been impounded pursuant to the order of the trial Court dated 15.4.2000 and requisite stamp duty has been paid by treating it as conveyance. The first appellate Court further held that even if Ex.P-8 is not taken to be sale deed, it can be read for collateral purpose looking to the possession of the plaintiff. Questioning the judgment and decree of the

first appellate Court, this second appeal under Section 100 of the CPC has been filed by defendant No.1, in which one substantial question of law has been formulated which has been set-out in opening paragraph of this judgment for sake of completeness.

6. Mr.A.N.Bhakta, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in granting decree for permanent injunction in favour of the plaintiff. He would further submit that since question of title is involved, the plaintiff ought to have file a comprehensive suit for declaration of title and could have claimed consequential relief of permanent injunction, but his suit for permanent injunction simpliciter was not maintainable in light of judgment rendered by the Supreme Court in the matter of Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar and others¹. He would also submit that document (Ex.P-8) is absolutely inadmissible in evidence and therefore, the judgment and decree of the first appellate Court deserves to be set aside.

7. On the other hand, Mr.Ravindra Agrawal, learned counsel for respondent No.2/plaintiff No.2, would submit that since the trial Court found the plaintiff

¹ (2020) 7 SCC 275

in legal and valid possession and that finding has attained finality, the first appellate Court is absolutely justified in granting decree for permanent injunction in his favour. He would further submit that defendant No.1 did not take any plea that bare suit for permanent injunction filed by the plaintiff is not maintainable, otherwise, the plaintiffs could have amended the suit, if any. However, the counter-claim of defendant No.1 has already been dismissed though incidentally, title of defendant No.1 was found in his favour, as such, the appeal deserves to be dismissed.

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

9. Admittedly and undisputedly, the plaintiff only brought a suit for permanent injunction simpliciter on the basis of his settled possession purchased by his father stating that vide Ex.P-8 defendant No.1 has acknowledged earlier sale and the plaintiff's possession over the suit land, as such, in a suit filed by the plaintiff, defendant No.1 not only contested the suit of the plaintiff, but also laid counter-claim claiming decree for possession over the

suit land. The trial Court while adjudicating the issue of plaintiff's possession and title of defendant No.1 held that the plaintiff is in settled possession over the suit land vide para-29 and dismissed the suit of the plaintiff and dismissed counter-claim of defendant No.1 also. In appeal preferred by the plaintiff, the first appellate Court also affirmed the finding of the trial Court that the plaintiff is in possession over the suit land pursuant to purchase made by his father and said fact has been acknowledged vide Ex.P-8. Since both the Courts below have found that the plaintiff is in possession over the suit land on the date of institution of the suit, therefore, the first appellate Court is justified in holding that the plaintiff is entitled for decree of permanent injunction.

10. So far as Ex.P-8 is concerned, the first appellate Court has clearly held that it has been impounded vide Court's order dated 15.4.2000 and necessary stamp duty has been paid treating it as conveyance and it can be used for collateral purpose of looking into the possession of original plaintiff-Ramashankar Singh stating that from the date of institution of the suit he continued in possession of

the suit land for last 30 years and further relied upon the statement of defendant No.1-Suresh Singh that the plaintiff has not entered into suit premises forcibly and it has been permitted by his father and kachha & pakka house has been constructed by the plaintiff himself and the plaintiff has purchased the suit house from Chitrabhan Singh, father of defendant No.1 and accepted the fact of sale between parties as they are closely related to each other.

11. Submission of learned counsel for the appellant/defendant No.1 that the plaintiff ought to have filed a suit for declaration of title also relying upon the judgment of the Supreme Court in the matter of **Ratnagiri Nagar Parishad** (supra) is also not helpful to defendant No.1 as both the Courts below have recorded a finding that that the plaintiff is in legal and valid possession over the suit land since 1959 and even the plaintiff is in possession over the suit land since the date of institution of the suit and therefore, simpliciter suit for permanent injunction was maintainable and he was not required to file a suit for declaration of title also particularly when defendant No.1 did not take any specific objection in written statement filed by before the trial Court, as such, this argument is not

available to defendant No.1.

12. Finding recorded by the first appellate Court holding Ex.P-8 to be admissible and can be used for collateral purpose of looking into the possession of the plaintiff and further held the plaintiff to be legal possession holder of the suit land are findings of fact based on evidence available on record. It is neither perverse nor contrary to record, as such, the first appellate Court is absolutely justified in granting decree for permanent injunction in favour of the plaintiff, which is neither perverse nor contrary to record. The substantial question of law is answered in favour of the plaintiff and against defendant No.1.

13. I do not find any merit in this second appeal. The second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

14. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-