

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 13.09.2021

Judgment Delivered on : 09/11/2021

S.A. No. 397 of 2009

Sameer, S/o. Bhavranjan, aged about 47 years, R/o. Kanchan Nagar, Post Aragahi, Tahsil and District – Ramanujganj, District – Surguja (C.G.)

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Versus

1. Gauri Dasi, Wd/o. Late Anand Mandal, aged about 60 years,
 2. Thakurshil, S/o. Haripadshil, aged about 45 years,
 3. Vijayshil, S/o. Thakurshil, aged about 23 years
- All are R/o. Village – Kanchan Nagar, Tahsil – Pal, District – Surguja (C.G.).
4. Tahsildar, Pal, District- Surguja (C.G.).
 5. The State of Chhattisgarh, Through : Collector, Surguja (C.G.)

---- Respondents

For Appellant	: Mr. S.N. Nande & Mr. B.N. Nande, Advocates
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For Respondents/State	: Mr. Sameer Uraon, Govt. Advocate
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This second appeal has been filed being aggrieved by the impugned judgment and decree dated 25.08.2009, passed by the Additional District Judge (F.T.C.), passed in Civil Appeal No.13-A/2006 by which, the appeal was allowed and the judgment and decree of the trial Court dated 28.03.2006, in Civil Suit No.2-A/1992 was set-aside.
2. The second appeal was admitted for hearing on the following substantial questions of law :-

- “1. Whether after conferring bhoomiswami rights on the appellant, the lease granted to the plaintiff/appellant could have been cancelled by the Additional Collector?”
2. Whether lease granted to a beneficiary under the rehabilitation scheme by the rehabilitation officer can be cancelled by Additional Collector acting as revenue officer and not as an officer under the rehabilitation scheme?”
3. Facts of the case are this that the appellant came to India as refugee from East Pakistan and was rehabilitated in village – Kanchan Nagar, District – Surguja and he was granted lease of government land bearing Kh. No.37/2, 37/3, 44 and 52 measuring area 0.544, 0.647, 0.090, 0.580 hectares in total 1.861 hectares in the year 1964-65. The lease was granted by the Rehabilitation Officer, since then the appellant was earning his livelihood from the land granted to him on lease. The Additional Collector, Surguja at Ambikapur under respondent No.1, initiated a Revenue Case No.73A-19/89-90 and by order dated 09.10.1991 has cancelled the lease granted in favour of the appellant. The appellant then filed a civil suit No.2-A/1992 against the respondents pleading that the appellant had acquired title over the suit land and that the lease was granted to the appellant by Rehabilitation Officer. That the Collector had no authority to cancel the lease granted to the appellant. Prayer was made for relief of declaration of title over the suit property and permanent injunction along with possession in case the appellant is dispossessed in between.
4. The learned trial Court by the judgment and decree dated 28.03.2006 decreed the suit in favour of the appellant and granted relief of declaration and permanent injunction. Respondent No.1 preferred Civil Appeal No.13A/06, which was allowed and the judgment and decree of the trial Court was set-aside.

5. It is submitted by the learned counsel for the appellant that the appellant was rehabilitated under the scheme of Government of India, under which, he was granted lease of the suit land. The lease that was granted by the District Rehabilitation Officer could not have been cancelled by the Collector. Name of the appellant was recorded in the records of rights, which is Ex.P-11 present in the record of the trial Court. It is submitted that there is specific provision provided under Section 182 of the C.G. Land Revenue Code, 1959, which was not followed by the respondent No.5, in passing the order cancelling the lease in favour of the appellant. It is also submitted that Bhumiswami rights are also vested with the appellant. Clause-14 of the lease agreement (Ex.P-20) provides that grant of bhumiswami rights shall be considered after completion of five years. Subsequent to which lease granted may be terminated or may be extended. Since from the date of grant of lease neither there was any order for termination of the lease or extension of lease, therefore, it can be deemed that Bhumiswami rights have been vested with the appellant. Rights once vested can not be divested, hence, the impugned judgment and the decree of the appellant Court is not sustainable, therefore, it is prayed that the second appeal be allowed.
6. The private respondents are not represented.
7. The State counsel appearing for respondents No.4 and 5 opposes the submissions and submits that no error has been committed by the appellate Court, in passing the impugned judgment and decree, therefore, there is no ground for interference present in the impugned judgment and decree, therefore, the second appeal be dismissed.
8. I have heard the learned counsel for both the parties and perused the documents placed on record.

The first substantial question of law is dealt with.

9. It was the burden upon the appellant to prove that the Bhumiswami right was accorded to him. It was pleaded in the plaint that in the process of rehabilitation, lease was granted for the suit property and as the revenue records were mutated in favour of the appellant, therefore, he has acquired title over the suit property, regarding which relief was prayed for declaration of title and permanent injunction. There was no such pleading made by the appellant in the plaint that Bhumiswami rights were ever conferred upon him by the State Government, therefore, the answer to the first substantial question of law is given in negative.
10. While dealing with the second substantial question of law, this fact cannot be ignored that the appellant was granted lease of the suit property, but the issue that such lease was granted under the rehabilitation scheme is again required to be proved. It was pleaded in the plaint that lease was granted under rehabilitation scheme. Grant of lease to the appellant and his possession along with the mutation entries in the revenue records is not under dispute. The only issue for consideration is that whether the grant of lease was made under any rehabilitation scheme under refugee.
11. The lease deed (Ex.P-20) is in the name of father of the appellant granted on 22.06.1982. On perusal of the terms of the lease (Ex.P-20), it is found that lease was granted under the provisions of Land Revenue Code, 1959 for a term of five years, which was subject to termination after five years if not extended. Clearly the year 1982 was not the year, in which, the migrants from East Pakistan now Bangladesh came as refugee in the territories of India. It was the burden of the appellant for proving that lease was granted under the scheme of rehabilitation of the refugees, but there is no evidence present nor any documentary

evidence was brought or is present in the record of the trial Court, therefore, without there being such proof that the appellant was beneficiary of any refugee rehabilitation scheme, hence allotment of suit land in any such scheme has not been proved.

12. The status of the appellant would then be only the government lessee as defined under Section 181 of the C.G.Land Revenue Code, 1959. The lease granted was terminable in case not extended by the authority granting lease. The lease in favour of the appellant has been cancelled by order dated 09.10.1991, passed by the Additional Collector, Sarguja in Revenue Case No. 173-A-19/89-90 by exercising of power under Section 182 of the Land Revenue Code, 1959. Therefore, the second substantial question of law is also answered in negative as the appellant has failed to prove that the lease of the land was granted under any rehabilitation scheme.
13. Hence, on this basis, after negative finding on both the substantial question of law framed in the second appeal, this appeal is found to be without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge