

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.462 of 2012

Chhedilal, S/o Putlu Gond, aged about 59 years, R/o Village Kadanara, P.O. Gadgodhi, P.S. & Tahsil Sakti, District Janjgir-Champa (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Jhangli Bai, W/o Babulal, aged about 38 years.
2. Babulal, S/o Firturam, aged about 45 years.

Both are caste Sidar, R/o Village Kadanara, P.O. Gadgodhi, P.S. & Tahsil Sakti, District Janjgir-Champa (C.G.)

(Defendants)
---- Respondents

ANDSecond Appeal No.394 of 2012

Chhedilal, S/o Putlu Gond, aged about 59 years, R/o Village Kadanara, Tahsil & P.S. Sakti, District Janjgir-Champa (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Jhangli Bai, W/o Babulal, aged about 38 years.
2. Babulal, S/o Firturam, aged about 45 years.

Both are caste Sidar, R/o Village Kadanara, Tahsil & P.S. Sakti, District Janjgir-Champa (C.G.)

3. State of Chhattisgarh, through Collector, District Janjgir-Champa (C.G.)
- (Defendants)
---- Respondents

For Appellant / Plaintiff: Mr. H.B. Agrawal, Senior Advocate with Ms. Swati Agrawal, Advocate.
For Respondent No.3 / State in S.A.No.394/2012: -
Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/07/2021

1. Proceedings of these matters have been taken-up through video conferencing.

2. Since both the second appeals have arisen from two civil appeals namely Civil Appeal No.62A/2011 and Civil Appeal No.61A/2011, parties are common and the dispute arises from one civil suit filed by plaintiff Chhedilal, therefore, these two second appeals were clubbed together and heard together and are being disposed of by this common order. This order will govern both the second appeals.
3. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant herein / plaintiff by which he has questioned the judgment & decree passed by the first appellate Court dismissing Civil Appeal No.61A/2011 filed by him and granting Civil Appeal No.62A/2011 filed by the defendants.
4. Mr. H.B. Agrawal, learned Senior Counsel appearing on behalf of the appellant herein / plaintiff in both the second appeals, would submit that the first appellate Court has erred in dismissing the appeal preferred by the plaintiff and further erred in granting the first appeal preferred by the defendants by recording a finding perverse to the record, as the earlier civil suit filed by the plaintiff namely, Civil Suit No.137A/2002 with respect to 15 decimal of land, has already been decreed in the first round of litigation and as such, the second appeals involve substantial question of law and they be admitted accordingly.
5. Plaintiff Chhedilal preferred a civil suit stating inter alia that he is the title holder of Khasra No.547/3, area 1 acre, out of which 15 decimal has already been encroached by the defendants for which he has filed Civil Suit No.137A/2002 which has already been decreed on 28-2-2005 and out of the remaining 85 decimal of land, 3 decimal has also now been encroached by the defendants by constructing a house, therefore, he is entitled for eviction after demolition of the construction made by the defendants and also entitled for damages and permanent injunction against the defendants.
6. The defendants while filing written statement opposed the prayer made by the plaintiff stating inter alia that the appeal against the judgment & decree

passed in Civil Suit No.137A/2002 is pending consideration before the appellate Court, the suit land is Government land and the defendants are in possession of the said land, therefore, the plaintiff is not entitled for decree as claimed.

7. The trial Court after appreciation of oral and documentary evidence on record held that though the plaintiff is not title holder, but he is entitled for possession after demolishing the construction made on the suit land and partly decreed the suit. Feeling aggrieved against the judgment & decree of the trial Court partly dismissing the suit, the plaintiff filed first appeal i.e. Civil Appeal No.61A/2011 and feeling aggrieved against the judgment & decree partly granting decree in favour of the plaintiff, the defendants preferred first appeal i.e. Civil Appeal No.62A/2011 before the first appellate Court. Both the first appeals were decided by the first appellate Court by a common judgment & decree and the first appellate Court dismissed the appeal preferred by the plaintiff, thus, the plaintiff's suit stood dismissed finally in toto, whereas the first appeal filed by the defendants was allowed and the decree for eviction granted against the defendants was set aside.
8. The first appellate Court has clearly recorded a finding that the plaintiff has no title over the suit land. The first appellate Court has also clearly recorded a finding in paragraph 14 of its judgment relying upon the admission of the plaintiff in paragraphs 7, 9, 10 and 12 of his evidence that the patta already granted to him has been revoked at the instance of the defendants and the plaintiff has also admitted the fact that the suit land was earlier gochar bhumi and he has not filed any document of title and thereby the first appellate Court has dismissed the suit of the plaintiff in toto. The finding recorded by the first appellate Court that the plaintiff has no title over the suit land being Governmental land and has failed to file any document demonstrating his title over the suit land and therefore he is not entitled for decree for possession and injunction, is based on the evidence available on record, it is neither perverse nor contrary to the record. I do not find any

substantial question of law for admission of the second appeals.

9. Accordingly, both the second appeals are dismissed in limine without notice to the other side, as no substantial question of law is involved for admission of appeals. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma