

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 363 of 2007**

Tiharu S/o Rupsai, Aged about 62 years, R/o Village Patparpali, P.H. No. 107/54, Revenue Inspector Circle Komakhan, Tahsil and Distt. Mahasamund, Chhattisgarh.

---Appellant/Defendant

Versus

1. Udairam, Aged about 38 years, S/o Late Laxmichand.

2. Shivkumar, Aged about 36 years, S/o Late Laxmichand.

Both R/o Village Patparpali, Tahsil and Distt. Mahasamund, Chhattisgarh.

3. Smt. Bhukhai Bai, Wd/o Late Tarachand Sahu, Aged about 70 years.

4. Jeevanlal, S/o Late Tarachand Sahu, Aged about 50 years.

5. Shyamlal, S/o Late Tarachand Sahu, Aged about 46 years.

6. Shamilal, S/o Late Tarachand Sahu, Aged about 42 years.

No. 3 to 6 are the legal heirs of deceased respondent No. 4 Tarachand Sahu.

(Plaintiff No. 1 Premim Bai and No. 4 Tarachand Sahu died during the pendency of the matter in the courts below itself; therefore, they are not impleaded as party/respondent and their legal heirs, as above, are brought on record.)

--- Respondents/Plaintiffs

For Appellant :- Mr. B.P. Sharma, Advocate

For Respondent No. 1 :- Mr. Vivek Tripathi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board (Through Video Conferencing)

07/07/2021

1. This second appeal preferred by the appellant/defendant was admitted for hearing on 11/10/2007 by formulating the following substantial question of law :-

“Whether the lower appellate Court was justified in reversing the judgment and decree passed by the trial Court in Civil Suit No. 157-A/2002 and granting the relief of injunction in favour of the respondents/plaintiffs herein ?”

Thereafter, on 06/02/2020, the following additional substantial question of law was formulated :-

“Whether the impugned judgment and decree passed by the learned Lower Appellate Court is nullity as after death of plaintiff No. 1/Premim Bai and Plaintiff No. 4/Tarachand Sahu, their legal representatives were not brought on record and the appeal was decided on merits ?”

[For the sake of convenience, the parties will hereinafter be referred to as per their status and ranking given in the plaint before the trial Court.]

2. The two plaintiffs namely Laxmichand Sahu and Tarachand Sahu filed a suit for possession and permanent injunction stating inter alia that suit land is part of Khasra No. 38/1 in which defendants have forcibly entered into possession and sown crops therein, as such, relief of injunction be granted and defendants be restrained from interfering with the possession of plaintiffs over the suit land and if defendants are found in possession of the suit land then decree for recovery of possession be also granted in favour of the plaintiffs, which was opposed by the defendant by filing written statement stating that suit land is part of Khasra No. 28/2 and plaintiffs are neither title-holders of the suit land nor they are in possession of the suit land, as such, they are not entitled for decree as claimed.
3. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit vide judgment and decree dated 23/12/2003 holding that plaintiffs are neither title-holders nor they are in possession of the suit land and also answered issue No. 4 by holding that suit land is part of Khasra No.

28/2 and defendant is in possession of the said land which is apparent from Commissioner's report dated 23/01/2002. On appeal being preferred by the plaintiffs, learned first appellate Court reversed the judgment and decree of the trial Court and decreed the suit of the plaintiffs by granting the appeal vide impugned judgment and decree dated 12/09/2006 against which this second appeal has been preferred by the appellant/defendant under Section 100 of CPC in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

4. Mr. B.P. Sharma, learned counsel for the appellant/defendant, would submit that the first appellate Court has fell into error and misread the findings of the trial Court. After misreading and misunderstanding that plaintiffs are title-holders and they are in possession of the suit land, the first appellate Court held that since plaintiffs are title-holders of the suit land and they are in possession of the said suit land, the trial Court ought to have granted decree for permanent injunction in favour of the plaintiffs, therefore, the findings recorded by

the first appellate Court, being perverse and contrary to the record, deserves to be set aside. He would also submit that he is not pressing the second substantial question of law framed by this Court on 06/02/2020.

5. Mr. Vivek Tripathi, learned counsel for respondent No. 1/LRs. of plaintiff No. 1, would support the impugned judgment and decree and submit that the first appellate Court has rightly granted decree in favour of plaintiffs.
6. I have heard learned counsel for the parties, considered their rival submissions and went through the records with utmost circumspection.
7. It is quite apparent from record that trial Court, while answering issue No. 1, has clearly recorded that plaintiffs are not the title-holders of the suit land and neither are they in possession of the said suit land and further while answering issue No. 4 has recorded that suit land is part of Khasra No. 28/2 and defendant is in possession of the suit land by relying upon Commissioner's report dated 23/01/2002 whereas the first appellate Court misread the findings recorded by the trial Court and misunderstood that plaintiffs are in

possession of the suit land and their title has also been proved by the trial Court, but the trial Court has rather clearly recorded that plaintiffs are neither title-holders of the suit land nor they are in possession of the same. As such, the first appellate Court has gravely erred and misread the findings recorded by the trial Court and granted the appeal in favour of the plaintiffs by not taking into account the Commissioner's report.

8. In the matter of **Santosh Hazari v. Purushottam Tiwari (deceased) by Lrs.**¹, the Supreme Court has laid down the duty and responsibility of the first appellate Court while deciding the first appeal and held as under :-

"15. ... The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by

1 (2001) 3 SCC 179

the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi v. Bijendra Narain Choudhary*²). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it."

9. Reverting to the facts of the instant case, it is quite vivid that the first appellate Court has failed to discharge its duty in accordance with the principle of law laid down by the Supreme Court in Santosh Hazari (supra). The first appellate Court ought to have looked into the oral and documentary evidence on record to reach to the conclusion, but he has simply misread the findings recorded by the trial Court and held that plaintiffs are title-holders and they are in possession of the suit land whereas the trial Court recorded otherwise. The non-consideration of oral and documentary evidence on record by the first appellate Court and recording a finding particularly after misreading the findings of the trial Court qua title and possession of the plaintiffs has resulted into failure of justice. As such, the finding recorded by the first appellate Court is

absolutely perverse and contrary to the record and it is liable to be set aside. The first substantial question of law is accordingly decided and the second substantial question of law is not answered in view of the submission made by learned counsel for the parties.

10. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is hereby set aside and the second appeal is allowed to the extent indicated herein-above. The matter is remitted to the first appellate Court for hearing and disposal in accordance with law after hearing the parties. The parties will appear before the Court and the appeal will be decided within 30 days from the date of receipt of record by that Court. The record be sent back to the first appellate Court forthwith. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge