

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.107 of 2010****Judgment reserved on: 4-1-2021****Judgment delivered on: 12-1-2021****Puran Singh, aged 58 years, S/o Shri Deendayal Baghel, R/o Village Sakri, Tahsil Simga, District Raipur (C.G.)****(Defendant/Respondent)****---- Appellant****Versus****1. Mahesh Kumar Baghel, aged 33 years, S/o Shri Hanuman Singh Baghel, R/o Village Sakri, Tahsil Simga, District Raipur (C.G.)****(Plaintiff/Appellant)****2. State of Chhattisgarh, through the District Collector, Raipur, District Raipur (C.G.)****(Defendant/Respondent/Formal party)****---- Respondents**

For Appellant / Defendant No.1: -**Mr. Somnath Verma, Advocate.****For Respondent No.1 / Plaintiff: -****Mr. Anil Singh Rajput, Advocate.****For Respondent No.2 / State: -****Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.**

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. This second appeal preferred under Section 100 of the CPC by the appellant herein / defendant No.1 was admitted for hearing on 1-2-2012 by formulating the following two substantial questions of law: -

“a) Whether the finding of first appellate Court regarding plaintiff's possession over the suit property is perverse?

b) Whether the suit is barred under proviso to

Section 34 of the Specific Relief Act, 1963?”

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

- 2. The plaintiff filed suit for bare declaration i.e. he is the title holder of the suit house shown in the map appended with the plaint and it was owned by his father and after death of his father, he has inherited the property, therefore, he is the absolute owner of the said property. Defendant No.1 filed written statement pleading that he has purchased the suit property vide Exs.D-1 & D-2 and Patta was also granted by the competent authority and the plaintiff is not in possession of the suit property and therefore the plaintiff's suit for declaration of title simpliciter is not maintainable in view of the proviso to Section 34 of the Specific Relief Act, 1963.**
- 3. The trial Court after appreciation of oral and documentary evidence available on record held that the plaintiff is not the possession holder of the suit land and therefore proviso to Section 34 of the Specific Relief Act, 1963 is attracted and accordingly dismissed the suit which the first appellate Court has reversed in the appeal filed by the plaintiff holding that the plaintiff is in possession of the suit property and proceeded to grant decree in his favour which has been called in question in this second appeal preferred by defendant No.1 in which substantial questions of law have been formulated by this Court and which have been set-out in the opening paragraph of this judgment for the sake of**

completeness.

4. Mr. Somnath Verma, learned counsel appearing for the appellant herein / defendant No.1, would submit that the first appellate Court is absolutely unjustified in granting decree of declaration of title in favour of the plaintiff ignoring the fact that the plaintiff is not in possession of the suit property. He would further submit that the plaintiff and his witness, both, have clearly admitted that defendant No.1 is in possession of the suit property by keeping his animals on the suit premises and vide Ex.P-4, which is copy of abadi survey register of the year 2001, it is apparent that defendant No.1 is the occupier of the suit land. He would also submit that in para 8 of the cross-examination made on behalf of the plaintiff, defendant No.1 has clearly stated that he is in possession on the basis of Exs.D-1 & D-2. As such, the finding of the first appellate Court that the plaintiff is in possession of the suit property, is erroneous finding and contrary to the evidence available on record.
5. Mr. Anil Singh Rajput, learned counsel appearing for the plaintiff / respondent No.1 herein, would submit that admittedly, the plaintiff is the absolute owner of the suit property and by Exs.D1 & D-2, no title is conferred to defendant No.1 as they are unregistered documents and Exs.D-1 & D-2 have also been refuted by the first appellate Court. As such, the plaintiff being in possession of the suit property, decree for declaration of title has rightly been granted in his favour which calls for no interference and this

appeal deserves to be dismissed with cost.

6. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
7. In the plaintiff's suit for declaration of title simpliciter, the trial Court recorded a finding that the plaintiff is not in possession of the suit property and the suit is hit by proviso to Section 34 of the Specific Relief Act, 1963 and proceeded to dismiss the suit and also recorded a finding that the plaintiff is not title holder and on appeal preferred by the plaintiff, the first appellate Court appreciating the statements of Mahesh (PW-1) and Prahlad (PW-2), clearly recorded a finding that the defendant is in possession of the suit property by keeping his animals over the suit property and as such, he is in possession of the suit property. Likewise, in paragraph 14 of the judgment, the first appellate Court recorded a finding that on the question put to defendant Puran Singh Baghel (DW-1) in his cross-examination, he has clearly admitted that he is in possession of the suit property on the basis of sale deeds Exs.D-1 & D-2, but thereafter, the first appellate Court further held that since Exs.D-1 & D-2 are unregistered sale deeds and Exs.D-3 & D-4 do not confer any title to the defendant, therefore, his possession cannot be said to be valid possession and by recording that finding, the first appellate Court reversed the decree of the trial Court.
8. The first appellate Court, on the basis of evidence available on record, that too taking into account the admission made by

the plaintiff, clearly recorded a finding that the defendant is in possession of the suit property, but held that since the defendant has no title, on the basis of Exs.D-1 to D-4, the possession is not valid and therefore reversed that finding. Once it is held that the plaintiff is not in possession of the suit property, the suit has rightly been held by the trial Court to be hit by proviso to Section 34 of the Specific Relief Act, 1963. As such, the first appellate Court could not have reversed the judgment & decree of the trial Court merely on the basis of holding that possession of the defendant is not legal particularly for two reasons. Firstly, the trial Court while dismissing the suit of the plaintiff to be hit by proviso to Section 34 of the Specific Relief Act, 1963, simultaneously also recorded a finding that the plaintiff is not the title holder, as such, the first appellate Court could not have decreed the suit of the plaintiff by holding that possession of the plaintiff is not legal, as it has not been held by the first appellate Court that the plaintiff is title holder of the suit property. Secondly, the documents of the defendant particularly, Exs.D-3 & D-4 – patta granted in favour of the defendant, have not been assailed by the plaintiff in his suit, yet the first appellate Court held that these documents cannot be relied upon and decreed the suit.

9. The first appellate Court could not have reversed the decree of the trial Court and could not have granted decree for declaration of title without determining the title of the plaintiff, even if it is held that the plaintiff is in possession of the suit

property, though it was held against the plaintiff. As such, the first appellate Court is absolutely unjustified in granting decree by reversing the judgment & decree of the trial Court.

10. Accordingly, judgment and decree of the first appellate Court are set aside and that of the trial Court are restored. The substantial questions of law are answered accordingly and the second appeal is allowed leaving the parties to bear their own cost(s).

11. Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

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