

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 198 of 2007****Judgment reserved on 23/06/2021****Judgment delivered on 29/06/2021**

1. Aamla Bai, Aged about 70 years, W/o Chhaga Rathore, R/o Village Bhadaura, Tahsil Pendra Road, Distt. Bilaspur, Chhattisgarh.

2. Kali Bai (died) through LRs. :-

(a). Gore Lal, Aged about 52 years, S/o Sukhram Rathore, Cultivator, R/o Village Bhadaura, Tahsil Pendra Road, Distt. Bilaspur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Kirtan (died and deleted).

2. Kanwar Singh (died and deleted).

3. Gaya, Aged about 30 years, S/o Late Mote Rathore.

4. Gangu, Aged about 22 years, S/o Late Mote Rathore.

5. Sheela, Aged about 37 years, D/o Late Mote Rathore.

6. Jamuni Bai, Aged about 21 years, D/o Late Mote Rathore.

All R/o Village Bhadaura, Tahsil Pendra Road, Distt. Bilaspur, Chhattisgarh.

7. State of Chhattisgarh, Through Collector, Bilaspur, Chhattisgarh.

--- Respondents/Defendants

For Appellants :- Mr. S.D. Rajas, Advocate
For Respondents :- Mr. Om Kukreja, Advocate
For State :- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. This second appeal preferred by the appellants/plaintiffs was admitted for hearing on 17/11/2007 by formulating the following substantial questions of law :-

"Whether the lower appellate Court was justified in reversing the judgment and decree passed by the trial Court on the following grounds :-

(A) that the appellants/plaintiff had failed to prove that Mst. Sunderbai had obtained possession of the suit lands in execution of the judgment and decree dated 14-12-1961 passed by the 2nd Civil Judge Class I, Bilaspur in Civil Suit No. 267-A/1959;

(B) that there was non-joinder of necessary parties and;

(C) that the appellants/plaintiff had failed to prove that they were in possession of the suit lands."

[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 filed a suit for permanent injunction stating inter alia that with respect

to the suit land situated at Village Bhadaura, Tahsil Pendra Road, District Bilaspur admeasuring 3.62 acres in total, their mother Sunderbai had filed Civil Suit No. 267-A/59 against the father of defendants No. 1 to 6 namely Mote Rathore and one Mohan in which plaintiffs' mother was declared to be the title-holder of the suit land and she was also held entitled for decree for possession by judgment and decree dated 14/12/1961 (Exhibit P/7) and since no appeal or revision was preferred against that, it has attained finality. After the death of plaintiffs' mother, the names of the plaintiffs were recorded in the revenue records on 11/10/1985. It was further pleaded that on 25/04/1940, plaintiffs sold some part of the suit land to Dhela Bai, Natthu, Narayan Das, and Purushottam and thereafter, purchasers from plaintiffs have been in continuous possession of the said suit land and only 1.65 acres out of the total suit land remained with the plaintiffs, which got mutated by the defendants in their names after the decision of the civil suit in collusion with the Revenue Officer. On appeal being preferred, the

matter was remanded by the Commissioner to the lower Revenue Officer which led the plaintiffs to file the suit for permanent injunction restraining the defendants from interfering with their possession.

3. Defendants No. 1 to 4, 6 and 8 filed their written statement and opposed the plaint averments stating inter alia that plaintiffs' suit is bad for non-joinder of necessary party as Dhela Bai and Natthu, being purchasers from the plaintiffs, ought to have been impleaded as a party/defendant in the suit. It was also pleaded that instead of plaintiffs, defendants are in possession of the suit land, as such, plaintiffs are not entitled to get decree for permanent injunction in their favour.
4. Learned trial Court, after appreciation of oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 12/02/2004 holding that plaintiffs are title-holders of the suit land and their suit is within limitation and it is not bad for non-joinder of necessary party. On appeal being preferred by the defendants, learned first appellate Court allowed the appeal by reversing

the judgment and decree of the trial Court vide its impugned judgment and decree dated 22/02/2007 against which this second appeal under Section 100 of CPC has been preferred by the appellants/plaintiffs in which substantial questions of law have been framed and set out in the opening paragraph of this judgment.

5. Mr. S.D. Rajas, learned counsel appearing on behalf of the appellants/plaintiffs, would submit that the first appellate Court went absolutely wrong in holding that plaintiffs are not in possession of the suit land by recording a finding which is perverse and contrary to the record and it further erred in holding that Dhela Bai and Natthu, being purchasers from plaintiffs, are necessary parties in the suit, particularly when plaintiffs have not claimed any relief against them, as such, the judgment and decree passed by the first appellate Court deserves to be set aside.

6. Mr. Om Kukreja, learned counsel appearing on behalf of respondents No. 1 to 6/defendants No. 1 to 4, 6 and 8, would submit that the first appellate Court has rightly held that plaintiffs are not in possession of the suit land as

decree for possession granted in favour of plaintiffs' mother was never executed and possession over the suit land was never delivered from defendants' father Mote Rathore and one Mohan and the plaintiffs did not even enter into witness box. He would rely upon the decisions rendered by the Supreme Court in the matters of Vidyadhar v. Manikrao & Anr.¹, Anathula Sudhakar v. P. Buchi Reddy (dead) by LRs. & Ors.², Agnigundala Venkata Ranga Rao v. Indukuru Ramachandra Reddy (dead) by LRs. & Ors.³ and Mohinder Kaur v. Sant Paul Singh⁴ to submit that the instant appeal deserves to be dismissed.

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

Answer to Substantial Questions of Law (A) &

C :-

8. It is not in dispute that in Civil Suit No. 267-A/59 filed by plaintiffs' mother Sunderbai against defendants No. 1 to 6's father Mote

1 (1999) 3 SCC 573

2 (2008) 4 SCC 594

3 (2017) 7 SCC 694

4 (2019) 9 SCC 358

Rathore and one Mohan, decree for declaration of title and delivery of possession was granted in favour of Sunderbai vide Exhibit P/7.

9. It is the case of the plaintiffs that the decree granted in favour of Sunderbai was executed and her name was also recorded in the revenue records and thereafter, they came to be in possession of the suit land. The suit land originally admeasured 3.62 acres, out of which plaintiffs' mother Sunderbai had already sold 0.40 acres and after her death, plaintiffs sold 0.32 acres of land to one Dhelabai, 0.87 acres of land to Natthu, 0.24 acres of land to some other person and again, 0.14 acres to Natthu by four separate sale deeds and delivered the peaceful possession of the said suit lands to the purchasers and the remaining part of the suit land admeasuring 1.65 acres is in possession of the plaintiffs and their names had also been recorded in the revenue records, but despite decree of possession passed against him in the earlier civil suit, defendants No. 1 to 6's father Mote Rathore got his and Mohan's name recorded in the revenue records as title-holders of 1.65 acres of suit land which necessitated

the plaintiffs to file suit for permanent injunction claiming that they are in possession of the suit land pursuant to the decree granted by the trial Court in favour of their mother Sunderbai, but defendants No. 1 to 6's father Mote Rathore malafidely got his and Mohan's name recorded in the revenue records, as such, defendants be restrained from interfering with their possession over 1.62 acres of suit land.

10. Learned trial Court decreed the suit of the plaintiffs holding that they have been in possession of the suit land after the death of her mother Sunderbai, whereas on appeal being preferred, learned first appellate Court interfered with the decree granted by the trial Court in favour of the plaintiffs.

11. Since the suit is for permanent injunction simpliciter, the main question is, whether plaintiffs were in possession of the suit land on the date of institution of the suit ?

12. It is the case of the plaintiffs that pursuant to the decree passed by the trial Court in Civil Suit No. 267-A/59, their mother Sunderbai came to be in possession of the suit land and also got her name mutated in the revenue records, but

after her death, in the year 1990, defendants No. 1 to 6's father Mote Rathore got his name mutated in the revenue records and the revenue proceedings were kept pending and ultimately, when the proper order was not passed in the revenue Court, plaintiffs preferred the instant suit.

13. Sukhiram (P.W. 1), who is the husband of plaintiff No. 2 Kali bai, has clearly stated in his statement before the trial Court that pursuant to the decree of possession granted by the trial Court in favour of plaintiffs' mother Sunderbai in the earlier civil suit, the decree was executed and he was also present on that day. He has also stated in paragraph 11 that though no formal proceeding was filed, but possession of the suit land was delivered to Sunderbai by Mohan. He has further admitted to the fact that Mote Rathore, predecessor-in-title of the defendants, is not in possession of the suit land. As such, in the cross-examination made by counsel for the defendants, P.W. 1 Sukhiram has clearly stated that decree for possession granted in the earlier suit was put to execution, and Sunderbai had taken

possession from Mohan, one of the defendants in the earlier suit.

14. Similarly, Narayan Das (P.W. 2), Babaram (P.W. 3), Natthulal (P.W. 4) and Heeramani (P.W. 5), who are purchasers/their LRs. of about 2 acres of suit land from the plaintiffs by four separate sale deeds, have firmly maintained that plaintiffs are in possession of the suit land admeasuring 1.62 acres after having sold the rest of the suit land to them.

15. Likewise, defendant No. 2 Kunwar Singh (D.W. 1) (now deceased), who is son of Mote Rathore, though examined himself in the trial Court, but he failed to state anything that plaintiffs are not in possession of the suit land. Not only this, but Exhibit D/11, which is the order of S.D.O dated 10/04/1997 wherein the plaintiffs challenged the order of the Tahsildar dated 20/07/1995, though the appeal stood dismissed, but it has been held that execution of decree passed in the earlier civil suit has been done after 12 years. As such, there is overwhelming evidence on record to hold that decree for possession passed in favour of plaintiffs' mother Sunderbai in the earlier civil suit was

executed and Sunderbai was placed in possession of the suit land admeasuring 3.62 acres out of which 2 acres of land has been sold by the plaintiffs in favour of Dhelabai, Nathhulal, Purushottam and Narayan Das, who are in possession of their respective purchased lands and the rest of the suit land admeasuring 1.62 acres is in possession of the plaintiffs which clearly appears from the statement of plaintiffs and other witnesses. Consequently, the substantial questions of law (A) and (C) are answered in favour of the plaintiffs and against the defendants. The first appellate Court absolutely erred in reversing the findings recorded by the trial Court in this regard.

Answer to Substantial question of law – (B) :-

16. Plaintiffs have filed the instant suit only for 1.62 acres of suit land. They have not claimed any relief whatsoever qua the alienation of 2 acres of suit land made by their mother and them in favour of the four purchasers therefore, the said purchasers are neither necessary nor proper party in the suit and thus, the suit is not bad for non-joinder of necessary party. As such, substantial question of law (B) is also answered

in favour of the plaintiffs and against the defendants.

17. As a fallout and consequence of the aforesaid discussion, it is held that the first appellate Court did not consider the evidence of the plaintiffs and defendants in its proper perspective and gravely erred in reversing the judgment and decree passed by the trial Court. Consequently, the judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is restored.

18. The second appeal is allowed to the extent indicated herein-above with no order as to cost(s).

19. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet