

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No.26 of 2010

- Shakuntala Devi, W/o Raja Lalit Kumar Singh,
Aged About 55 Years, R/o Rambhata, Raigarh,
Tahsil and District Raigarh, Chhattisgarh

----- Appellant

Versus

1. Chhunulal Upadhyay (Died) Through Legal Heir-

(A) Amita Upadhyay, D/o Chhunnulal Upadhyay,
Aged About 30 Years, R/o Sonarpara, Tahsil and
District Raigarh, Chhattisgarh
2. Maal Jamadar, Tahsil Office, Raigarh, Tahsil
and District Raigarh, Chhattisgarh
3. Patwari, Halka No.13, Tahsil Office, Raigarh,
Tahsil and District Raigarh, Chhattisgarh
4. State of Chhattisgarh Through Collector,
Raigarh, Tahsil and District Raigarh,
Chhattisgarh

----- Respondents

For Appellant Mr. Vipin Punjabi, Advocate

Hon'ble Justice Shri Sanjay K. Agrawal

Order On Board

21/06/2021

1. Heard on admission and formulation of

substantial question of law in this second

appeal preferred by the appellant/plaintiff.

2. By the impugned judgment and decree, the First Appellate Court has dismissed the appeal preferred by the appellant/plaintiff vide judgment and decree dated 30.01.2009 passed by the learned 3rd Additional District Judge (FTC), Raigarh (C.G.) in Civil Appeal No.58A/2008 affirming the judgment and decree of the Trial Court dated 28.02.2006 passed by the learned Civil Judge Class-I, Raigarh (C.G.) in Civil Suit No.13A/2004, whereby the learned Trial Court dismissed the suit preferred by the appellant/plaintiff.
3. Mr. Vipin Punjabi, learned counsel for the appellant/plaintiff, would submit that both the Courts below have erred in concurrently holding that the plaintiff is not entitled for decree for declaration of title, permanent injunction and possession. As such, the appeal be admitted for hearing by formulating substantial question of law.
4. I have heard learned counsel for the appellant, considered his submissions made herein-above and also went through the records with utmost circumspection.

5. The plaintiff filed a suit for declaration of title, possession and permanent injunction and declaring the order of the Revenue Court dated 16.06.2000 as illegal stating inter-alia that she is the title holder of Khasra No.192/3, Area 160 sq. mtr., which her father has purchased from Khedu Ram by registered sale deed in the year 1962 and the land bearing Khasra No.193/1, adjacent to the suit land, is owned by defendant No.1. It was further pleaded that the defendant No.1 got recorded the suit land as Khasra No.193/1 in the Revenue Records and tried to dispossess the plaintiff from the suit land. The defendant No.1 filed an application before the Tahsildar, Raigarh for recovery of possession of 160 sq. mtr. of land, a part of the suit land. The Tahsildar passed an order on 16.06.2000 in Revenue Case No.4/A-70/97-98 directing dispossession of the plaintiff from the suit land bearing Khasra No.192/3, area 160 sq. mtr. The order of the Tahsildar has also been affirmed by the SDO vide order dated 30.01.2001 and admittedly the plaintiff was dispossessed from the suit land on 16.02.2001.

As such the order of the Revenue Officer dated 16.06.2000 is invalid and the plaintiff is entitled for the decree as claimed.

6. The defendant No.1 filed a written statement stating inter-alia that he is the title holder of the land bearing Khasra No.193/1, which has been demarcated by the Revenue Officer and on 16.02.2001, the possession has been duly handed over to the defendant No.1 as per the order of the Revenue Court dated 16.06.2000 duly affirmed by the SDO in appeal preferred by the defendant No.1.
7. In the first round of litigation, the Trial Court passed judgment and decree dated 15.05.2004 in Civil Suit No.13-A/2004, which was set aside by the Appellate Court in Civil appeal No.19-A/2004 vide judgment and decree dated 13.12.2004 and the matter was remitted to the Trial Court for demarcation of the suit land and to consider the suit afresh. Accordingly, the Trial Court appointed Commissioner and the Tahsildar, Raigarh demarcated the suit land and the demarcation report has been filed as Ex-C/1, in which no

party has raised any objection qua its validity and correctness.

8. The Trial Court upon due consideration held that the defendant No.1 has been delivered possession of Khasra No.193/1 pursuant to the order passed by the Revenue Court, which is the land held by defendant No.1 and it does not relate to the land of the plaintiff and accordingly dismissed the suit. The First Appellate Court has also dismissed the appeal preferred by the plaintiff affirming the judgment and decree of the Trial Court.

9. The Trial Court has clearly indicated that pursuant to the demarcation order in the first round of litigation, the demarcation of land was done vide Ex-C/1 and the defendant No.1 has been found in possession of land bearing Khasra No.193/1, which is held by him. Since report of the Commissioner dated 24.09.2005 (Ex-C/1) demarcating the suit land is evidence within the meaning of Order 26 Rule 10 (2) of CPC, as Commissioner has also been examined before the Trial Court but his report could not be impeached by the plaintiff and no party

has raised objection and on the basis of the said report, the finding has been recorded by the two Courts below holding that the defendant NO.1 is in possession of his own land and as such, the finding recorded by the two Courts below holding that the plaintiff is not entitled for decree of declaration of title, possession and the order passed by the Revenue Court dated 16.06.2000 is in accordance with law are finding of fact. The finding recorded by the two Courts below is a finding of fact based on the material available on record, which is neither perverse nor contrary to law.

10. I do not find any substantial question of law for determination in this second appeal preferred by the appellant/plaintiff. It deserves to be and is hereby dismissed in *limine* without notice to the other side. No order as to cost (s).

Sd/-
Sanjay K. Agrawal
Judge