

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on :10.06.2021****Judgment delivered on:28.06.2021****Second Appeal No.251 of 2007**

Vinay Kumar S/o. Shri R.S.Kharsan Thakur, aged about 32 years, R/o. Kera Road, Janjgir, Tahsil Janjgir, Distt.-Janjgir Champa (CG)

----- Appellant/Defendant No.1**Versus**

1. Ganpati S/o Ram Ratan, aged about 50 years, R/o. Janjgir, Tah. Janjgir, Distt.-Janjgir-Champa (CG)

----- Plaintiff

2. State of Chhattisgarh Through:- Collector, Janjgir-Champa, Distt.-Janjgir-Champa (CG)

----- Respondents

For Appellant/Defendant No.1:

Mr.Sourabh Sharma, Advocate

For Respondent No.1/Plaintiff:

Mr.Somnath Verma, Advocate

For Respondent No.2: Mr.Ravi Bhagat, Dy.G.A.

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

1. This second appeal preferred by defendant No.1 was admitted for hearing on 11.7.2007 by formulating the following substantial question of law:-

"Whether the lower appellate Court was justified in reversing the well reasoned judgment and decree dated 28-12-2006 passed by the 1st Civil Judge Class-I, Janjgir-Champa in Civil Suit No.211-A/2003 and granting relief of permanent injunction against the appellant/defendant?"

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

2. The plaintiff filed a suit that he is title and possession holder of the suit land bearing Khasra No.3820 area 0.10 decimal situated at Tahsil Janjgir, which he has purchased from original holder Nathan Singh by registered sale deed dated 6.9.1961 (Ex.P-1), in which his name is also mutated and ultimately after change, khasra number became 3820/10 and through which he approaches his remaining land. It is the case of the plaintiff that defendant No.1 started creating nuisance and started construction on the land for which suit was filed seeking permanent injunction restraining defendant No.1 from interfering with his possession.

3. Resisting the suit, defendant No.1 filed his written statement and denied the averment made in the plaint stating inter-alia that he has purchased the suit land bearing Khasra No.3820/9 area 0.06 decimal from Nathan Singh by registered sale deed dated 15.5.1980 (Ex.D-1) and he is in possession of his land and making construction on his own land. Therefore, the plaintiff is not entitled for permanent injunction.

4. During the pendency of the suit, the trial Court

appointed Revenue Commissioner to ascertain whether the suit land is part of Khasra No.3820/10 or it is part of Khasra No.3820/9, in which the Commissioner submitted his report vide Ex.C-2.

5. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 28.12.2006, dismissed the suit. On appeal being preferred by the plaintiff, the first appellate Court granted decree in favour of the plaintiff, against which, defendant No.1 preferred this second appeal under Section 100 of the CPC before this Court, in which one substantial question of law has been formulated by this Court, which has been set-out in second paragraph of this judgment.

6. Mr. Sourabh Sharma, learned counsel for the appellant / defendant No.1, would submit that the first appellate Court is absolutely unjustified in granting decree for permanent injunction in favour of the plaintiff ignoring the Commissioner's report in which the Commissioner has clearly indicated that it is the defendant who is in possession of the said land and there is no objection to report of the Commissioner, therefore, the first appellate Court ought to have accepted the report of the Commissioner. He would further submit that it is only a suit for permanent injunction in which title could

not have been looked into by the first appellate Court. Even otherwise, finding recorded by the first appellate Court to grant decree in favour of the plaintiff is perverse because the plaintiff is not in possession of the suit land. It is only the defendant, who is in possession of the suit land and as such, the judgment and decree of the first appellate Court deserves to be set aside.

7. On the other hand, Mr. Somnath Verma, learned counsel for respondent No.1/plaintiff, would support the impugned judgment and decree of the first appellate Court and submit that written statement is not verified in accordance with Order 6 Rule 4 of the CPC and defendant-Vinay Kumar has even not entered into witness box to examine himself, therefore, the defendant did not have opportunity to cross-examine the plaintiff, as such, adverse inference against the defendant has to be drawn. He would reply upon the judgments of the Supreme Court in the matter of Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behara and another¹ and S. Kesari Hanuman Goud v. Anjum Jehan and others². He would further submit that taking the evidence of the Commissioner and other evidence on record, inevitable conclusion would be the plaintiff is in possession of the suit land and

¹ AIR 1999 SC 1341

² (2013) 12 SCC 64

decree for permanent injunction has rightly been granted in favour of the plaintiff, as such, the second appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

9. The suit land was earlier held by Nathan Singh, he sold the suit land bearing Khasra No.3820 area 0.10 decimal by registered sale deed dated 6.9.1961 (Ex.P-1) to the plaintiff showing no boundaries of land sold to the plaintiff and thereafter it was renumbered as Khasra No.3820/10, whereas he also sold the land bearing Khasra No.3820/9 area 0.06 decimal to defendant No.1-Vinay Kumar showing boundaries in the sale deed. When defendant No.1 started raising construction on his land, the plaintiff disputed his raising of construction by saying that the suit land bearing A,B,C and D as shown in map appended with plaint belongs to him and defendant No.1 is not competent to raise construction, which led to filing of suit for permanent injunction simpliciter stating inter-alia that the suit land in which construction is being made is owned by him and therefore, defendant No.1 be restrained from making construction on the suit land. Defendant No.1 after entering

appearance disputed the same by holding that it is the part of suit land bearing Khasra No.3820/9 and as such, he is making construction on his own land and therefore, the plaintiff is not entitled for permanent injunction.

10. The trial Court finding that there is dispute as to identification of the land directed for demarcation of the land held by the plaintiff and the defendant vide order dated 11.12.98, which demarcation report was submitted by revenue officer vide Ex.C-2 along with map. The Commissioner was also examined as Court witness No.2. The Commissioner in his report has clearly reported that defendant has purchased the land bearing Khasra No.3820/9 area 0.06 acre and the plaintiff has purchased the land bearing Khasra No.3820/10 area 0.10 acre, total area 0.16 acre, but in the spot, out of two khasra numbers only 0.10 acre of land is available. The Commissioner also held that the defendant's land bearing Khasra No.3820/9 area 0.06 acre is available on the spot. The Commissioner was examined as Court witness No.2, but nothing could be extracted from the statement of the Commissioner by the plaintiff and the defendant. By virtue of Order 26 Rule 10(2) of the CPC, the report of the Commissioner and his evidence shall be evidence in the suit and shall form part of the

record.

11. In the instant case, though the Commissioner was subjected to lengthy cross-examination by the plaintiff, but nothing could be extracted to hold that the plaintiff's land is also available in the spot, whereas the Commissioner has clearly held that it is the defendant's land i.e. Khasra No.3820/9 area 0.06 acre is available on the spot, in which he is making construction, as such, from perusal of the Commissioner's report, it is quite vivid that in the spot, defendant No.1 was making construction on his land and he is in possession of the said land, as such, defendant No.1 was making construction on his own land being in possession of the suit land and the plaintiff is not entitled for decree of permanent injunction as held by the Supreme Court in the matter of Balkrishna Datariya Galande v. Balkrishna Rambharose Gupta and another³ in which the Supreme Court has clearly held that in a suit filed under Section 38 of the Specific Relief Act, possession on the date of suit is a must for grant of permanent injunction, as such, the first appellate court failed into error in reversing the judgment and decree of the trial Court.

12. There is one more reason for not upholding the

³ (2019) SCC Online SC 135

judgment and decree of the first appellate Court. In sale deed dated 6.9.1961 (Ex.P-1) which the plaintiff has purchased, boundaries of his land have not been shown, whereas in sale deed dated 15.5.1980 (Ex.D-1) which defendant No.1 has purchased boundaries of the suit land have been shown.

13. The Supreme Court in the matter of Subhaga and others v. Shobha and others⁴ has clearly held that a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally the boundaries should prevail.

14. In that view of the matter, the defendant's land has identified by boundaries by the Commissioner in a demarcation held in presence of the parties and his report is binding to the parties, as such, the plaintiff has failed to establish that he is in possession of the suit land and on his land, defendant No.1 is making construction, whereas in the Commissioner's report and sale deed filed by defendant No.1, it is quite clear that defendant No.1 is in possession of his own land bearing Khasra

4 (2006) 5 SCC 466

No.3820/9 area 0.06 decimal and he was making construction on his own land, which is also apparent from sale deed (Ex.D-1), as such, the first appellate Court fell in grave legal error in reversing the judgment and decree of the trial Court, as such, the judgments cited by learned counsel for respondent No.1/plaintiff are distinguishable to the facts of the present case.

15. Consequently, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored meaning thereby the suit would stand dismissed.

16. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

17. Appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-