

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.416 of 2007

Smt. Inder Kour, aged 57 years (present age 67), wife of Shri Balwant Singh Chhabra, R/o Shanker Nagar, Raipur, Tehsil and District Raipur (C.G.)
(Plaintiff/Appellant)
---- Appellant

Versus

Municipal Corporation, Raipur, through the Commissioner, Municipal Corporation, Raipur (C.G.)
(Defendant/Respondent)
---- Respondent

For Appellant/Plaintiff: Mr. Arvind Shrivastava, Advocate.
For Respondent/Defendant: -
Mr. H.B. Agrawal, Senior Advocate with Ms. Swati Agrawal, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

21/06/2021

1. This second appeal preferred by the plaintiff was admitted for hearing by formulating the following substantial question of law, on 5-11-2019:-

“Whether first appellate Court was justified in holding that the plaintiff is not title holder of the suit land by recording a finding, which is perverse and contrary to the record?”

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

2. The plaintiff purchased the suit property bearing Khasra No.16/3, area 0.114 hectare, from one Jitendra Kumar, S/o Mohan Das, by registered sale deed Annexure P-1 on 27-3-1991 and got her name recorded in the concerned revenue record and claimed to be in possession from the date of purchase. It is the further case that on 5-

12-1997, boundary wall was dismantled by the defendant leading to issuance of notice and filing of suit for declaration of title and permanent injunction.

3. The defendant Municipal Corporation entered into defence by filing written statement stating inter alia that the suit land has been acquired in Land Acquisition Case No.105-A/82, 1978-79 on 15-8-1995 in the case of State of Madhya Pradesh v. Taturam and others. On behalf of the plaintiff, plaintiff Inder Kaur examined herself, whereas on behalf of the defendant, neither any document was filed nor any one was examined to support the case of the defendant.
4. The trial Court after appreciating oral and documentary evidence available on record, declined to grant decree in favour of the plaintiff which in turn was affirmed by the first appellate Court in appeal having been taken-up by the plaintiff and which has now been called in question in this second appeal by the plaintiff in which substantial question of law confining to title of the plaintiff has been formulated and which has been set-out in the opening paragraph of this judgment for the sake of convenience.
5. Mr. Arvind Shrivastava, learned counsel appearing for the appellant herein / plaintiff, would submit that since the plaintiff was permitted to lead secondary evidence of Exs.P-1 & P-2 i.e. copy of sale deed and copy of mutation order in her favour, respectively, and there is no counter evidence put forth by the defendant in rebuttal thereof, decree could have been inevitably passed in favour of the plaintiff which has not been granted relying upon the defence of the defendant of having acquired the suit land without there being any evidence, as such, both the Courts below have concurrently erred in not granting decree for declaration of title and permanent injunction in favour of the plaintiff.

6. Mr. H.B. Agrawal, learned Senior Counsel appearing for the respondent herein / defendant, would submit that since the land was acquired in a duly constituted land acquisition proceeding, therefore, the plaintiff could have examined Jitendra Kumar to prove her title over the suit land. He would further submit that both the Courts below have rightly concluded that even the attesting witnesses have not been examined on behalf of the plaintiff to prove that she has purchased the suit land from Jitendra Kumar.
7. 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.
8. The plaintiff purchased the suit land from Jitendra Kumar on 27-3-1991 to which the defendant disputed by pleading that the suit land has been acquired in a duly constituted land acquisition proceeding i.e. Land Acquisition Case No.105-A/82, 1978-79 (State of Madhya Pradesh v. Taturam and others), on 15-8-1995.
9. In that view of the matter, at least, the plaintiff in order to get a clear declaration of title under Section 34 of the Specific Relief Act, 1963, ought to have examined a competent witness apart from the plaintiff to prove that Jitendra Kumar has title over the suit land and he has right to alienate the suit land in favour of the plaintiff, particularly, when it is not admitted position on record that Jitendra Kumar had title over the suit land and he has right and title to alienate the suit land in favour of the plaintiff. If the title of Jitendra Kumar is admitted by the defendant then the question of examination of any other person to prove the title of Jitendra Kumar was absolutely not necessary, but in this case, the title of Jitendra Kumar, from whom the plaintiff has purchased the suit land, was seriously disputed by the defendant, though the defendant

did not adduce any evidence apart from taking defence, yet, in order to clear the doubt in the mind of the court and particularly, when the plaintiff is seeking declaration of title under Section 34 of the Specific Relief Act, 1963, it was incumbent upon the plaintiff to lead evidence to establish the title of Jitendra Kumar from whom she has purchased the suit property, as both the Courts below have found that it is only a self-serving statement of the plaintiff that has been brought on record and no evidence has been adduced even of the witnesses to the sale deed that Jitendra Kumar had right and title over the suit land to alienate the suit land in favour of the plaintiff.

10. The finding recorded by the two Courts below holding that the title of Jitendra Kumar is not established appears to be based on correct reasoning. Unless the plaintiff proves that Jitendra Kumar had title over the suit land, merely because he has executed sale deed in favour of the plaintiff on which secondary evidence has been allowed to be produced by accepting Exs.P-1 & P-2, it cannot be held that both the Courts below have erred in holding that in absence of proof of title of Jitendra Kumar, the plaintiff would get any title over the suit land resulting into decree for declaration of title in her favour.
11. As such, the plaintiff has miserably failed to establish her title over the suit land in absence of any evidence of the source of title having been brought on record, particularly when title of Jitendra Kumar is not admitted or established on record. I do not find any perversity or illegality in the finding of the first appellate Court affirming the judgment and decree of the trial Court dismissing the suit. The substantial question of law is answered accordingly.
12. The second appeal deserves to be and is accordingly, dismissed leaving the parties to bear their own cost(s).

13. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma