

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 195 of 2011**

Nankibai, Aged about 71 years, W/o Late Nansay Gond, R/o Village Kotaktal, Thana Patna, Tahsil Baikunthpur, Distt. Koriya, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Mahadeo, Aged about 82 years, S/o Late Dashrath Gond, R/o Village Murma, And Kotaktal, Thana Patna, Tahsil Baikunthpur, Distt. Koriya, Chhattisgarh.

2. State of Chhattisgarh, Through Collector, District Koriya, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:-	Mr. Shalvik Tiwari, Advocate
For Respondent 1	:-	Mr. V.K. Pandey, Advocate
For State	:-	Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/01/2021

1. This second appeal preferred by the appellant/plaintiff was admitted for hearing on the following substantial question of law :-

"Whether the lower appellate Court, even upon upholding the validity of registered deed of sale dated 23.5.1977 (Exhibit P/5)

executed by Jagbandhan in plaintiff's favour, was justified in dismissing the plaintiff's claim by holding that suit as framed without seeking the relief of possession is not maintainable ?"

[The parties will hereinafter be referred to as per their status and ranking shown before the trial Court.]

2. Plaintiff and respondent No. 1 are real brother and sister. The suit property was originally owned by one Jagbandhan.
3. Plaintiff/sister brought a suit against her brother/defendant No. 1 for declaration of title and permanent injunction stating inter alia that she was married with one Nansai, who died within one and half years of their marriage and after his death, she has been residing at her parental house. After the death of Nansai, from the money that plaintiff received, she purchased the suit property from Jagbandhan vide registered sale deed dated 23/05/1977 (Ex. P/5) and thereby came into possession of the said suit property, but in the revenue records, the suit property was registered in the name of defendant No. 1 for which she applied for mutation but it was rejected and on being threatened by defendant

No. 1 to be forcibly dispossessed from the suit property, the necessity for filing the suit arose claiming the relief of declaration of title and permanent injunction.

4. Resisting the suit, defendant No. 1 filed his written statement stating that prior to the sale of the suit property made in favour of the plaintiff, Jagbandhan had sold the suit property in his favour by agreement dated 11/06/1974 and since then, he has been in possession of the suit property and his name has also been recorded in the revenue records, as such, he has also perfected his title over the suit property by way of adverse possession.

5. Learned trial Court, after appreciation of oral and documentary evidence on record, decreed the suit vide its judgment and decree dated 31/10/2007 holding that plaintiff is the title-holder of the suit property on the basis of the sale deed (Ex. P/5) executed by Jagbandhan in her favour and defendant No. 1 has failed to prove the agreement dated 11/06/1974 allegedly executed by Jagbandhan in his favour. Learned trial Court further recorded a finding that plaintiff is in possession of the suit property

and accordingly, granted decree for declaration of title and permanent injunction in her favour.

6. On appeal being preferred by defendant No. 1 against the judgment and decree passed by the trial Court, learned first appellate Court, though affirmed the finding of the trial Court qua title of the plaintiff over the suit property on the basis of the sale deed (Ex. P/5) and further held that defendant has not perfected his title over the suit property by way of adverse possession, yet interfered with the judgment and decree passed by the trial Court by holding that plaintiff is not in possession of the suit property and her suit is hit by proviso to Section 34 of the Specific Relief Act, 1963 and accordingly, granted the appeal and dismissed the suit of the plaintiff vide its impugned judgment and decree dated 15/04/2011, which has been assailed by the plaintiff in this second appeal under Section 100 of CPC in which sole substantial question of law has been framed and set out in the opening paragraph of this judgment.

7. Mr. Shalvik Tiwari, learned counsel for the appellant/plaintiff, would submit that learned

first appellate Court is absolutely unjustified in holding that plaintiff is not in possession of the suit property particularly when both the Courts below have confirmed her title over the suit property and more particularly, when both the Courts below have negatived the plea of defendant No. 1 that he came in possession of the suit property pursuant to the agreement of sale dated 11/06/1974 executed by Jagmohan in his favour and ignoring the well-settled law laid down by the Supreme Court in the matter of **Anathula Sudhakar v. P. Buchi Reddy (dead) By Lrs. & Ors.**¹ Wherein it has been clearly been held that possession follows title, as such, the judgment and decree passed by the first appellate Court deserves to be set aside.

8. Mr. V.K. Pandey, learned counsel for respondent/defendant No. 1, would submit that learned first appellate Court is absolutely justified in holding that plaintiff is not in possession of the suit property and that her suit is hit by proviso to Section 34 of the Specific Relief Act after proper analysis of the oral as well as documentary evidence on record,

¹ (2008) 4 SCC 594

as such, the instant appeal deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
10. It is not in dispute that Jagbandhan was the original owner of the suit property and it is also not in dispute that he alienated the suit property in favour of the plaintiff by registered sale deed dated 23/05/1977 (Ex. P/5) and he is said to have placed her in possession pursuant to which she became the title-holder of the suit property.
11. Learned trial Court has clearly recorded a finding while answering issue No. 1 that plaintiff is title-holder of the suit property which in turn, has also been affirmed by learned first appellate Court in the appeal preferred by defendant No. 1, as such, it is established position on record that plaintiff is the title-holder of the suit property. This finding has attained finality as no second appeal has been

filed before this Court by the defendant No. 1 calling in question the said finding.

12. Defendant No. 1 claimed to be in possession of the suit property by agreement of sale dated 11/06/1974 executed by Jagbandhan in his favour and it has been pleaded by him that pursuant to the said agreement, the erstwhile owner of the suit property Jagbandhan placed him in possession of the suit property, but surprisingly, this agreement is said to have been filed but it has not been exhibited by the trial Court in accordance with the provisions contained under Order 13 Rule 4 of CPC. Even otherwise, both the Courts below have concurrently held that defendant No. 1 has failed to prove that he is in possession of the suit property pursuant to the agreement executed by Jagbandhan in his favour. This finding has also not been questioned by defendant No. 1 by filing cross-objection or otherwise and that has also attained finality. Furthermore, learned first appellate Court has also recorded the finding that defendant No. 1 has failed to prove that he has perfected his title by way of adverse possession.

13. Now, the only question that remains is whether learned first appellate Court is justified in holding that plaintiff is not in possession of the suit property particularly, taking into account the statement of D.W. - 3 namely Heeralal and D.W. - 4 namely Ramkishun.

14. It is not in dispute that plaintiff is said to have been in possession pursuant to the sale deed dated 23/05/1977 (Ex. P/5) executed by Jagbandhan in her favour. Learned first appellate Court has held that plaintiff is not in possession of the suit property by recording in paragraph 14 that since she could not spell out the boundaries of the suit property, she cannot be held to be in possession. Such a view taken by the first appellate Court is absolutely impermissible. A woman aged about 70 years particularly resident of a remote area cannot be expected to exactly know the boundaries of the suit property and simply in view of that, it cannot be held that she is not in possession especially when both the Courts below have concurrently held that she purchased the suit property by registered sale deed (Ex. P/5) and came in possession of the suit property.

15. The Supreme Court, in the matter of Anathula Sudhakar (Supra), has held that possession follows title and has observed as under :-

"16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs."

16. In view of the aforesaid legal analysis, I am of the considered opinion that learned first appellate Court is absolutely unjustified in holding that plaintiff is not in possession of the suit property and her suit is hit by proviso to Section 34 of the Specific Relief Act.

Plaintiff is held to be the title-holder of the suit property by both the Courts below on the basis of the sale deed dated 23/05/1977 (Ex. P/5) executed by Jagbandhan in her favour and merely, on the basis of the statements of D.W. - 3 and D.W. - 4, learned first appellate Court could not have concluded that plaintiff is not in possession of the suit property and defendant is in possession of the suit property and as such, plaintiff's suit is hit by proviso to Section 34 of the Specific Relief Act.

17. As a fallout and consequence of the aforesaid legal discussion, the impugned judgment and decree passed by the first appellate Court, partly modifying the judgment and decree of the trial Court and dismissing the suit of the plaintiff on the ground that plaintiff is not in possession of the suit property and her suit is hit by proviso to Section 34 of the Specific Relief Act, is hereby set aside and the judgment and decree of the trial Court is hereby restored.

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

19. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet