

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 98 of 2009****Judgment reserved on 26.11.2020****Judgment delivered on 04.01.2021**

Radheshyam, S/o Bhagat Ram Pradhan, Aged about 35 years, Occupation Agriculture, R/o Maharajpur, Tah. Sarangarh, Distt. Raigarh (C.G.)

---- Appellant/Plaintiff**Versus**

1. Puranjan Nayak, S/o Arjun Nayak, Aged about 50 years, Occupation Agriculture, R/o Amurra, Tah. : Sarangarh, Distt. Raigarh [C.G.]

2. State of Chhattisgarh, Through Collector, Raigarh

3. Mangal Das, S/o Ganeshram Chouhan, Aged about 34 years, Occupation Agriculture, R/o Manikpur Chote, Distt. Raigarh (C.G.)

---- Respondents

For Appellant	: Mr. N.K. Malviya, Advocate.
For Respondents No. 1 & 3	: Mr. Vivek Kumar Tripathi, Adv.
For Respondent No. 2	: Mr. Ravi Kumar Bhagat, Deputy Government Advocate

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

(1) The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiff/appellant herein states as under:

“Whether both the Courts below are justified in dismissing the suit of the plaintiff holding that plaintiff is not

entitled for the decree-claimed, 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 imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) Subject matter of the dispute is the suit land bearing Khasra No. 569/570, area 0.401 hectare situated at village Ammurra, Tahsil Sarangarh, District Raigarh, which was earlier held by one Ganeshram Chouhan (father of defendant No.3, who (Ganeshram Chouhan) by registered sale-deed dated 17.8.2000 (Ex.P-1) is said to have sold the suit land to the plaintiff and placed him in possession and, thereafter, the suit land was also recorded in the name of the plaintiff and *Rin pustika* has also been issued in his name. It is the case of the plaintiff that in the year 2003, he has sown the crop of sugarcane in the suit land. Defendant No. 1 as well as defendant No. 3 -Mangal Das (son of Ganeshram) threatened the plaintiff to harvest the said crops, as such, defendants No. 1 and 3 be restrained from harvesting the crops of sugarcane and decree of declaration of title and permanent injunction be granted in his favour. However, the plaint was amended during trial to the effect that

defendants No. 1 & 3 be restrained from interfering with his possession over the suit land in any manner based on subsequent event.

(2.2) By filing written statement, defendant No. 1, while opposing the plaint allegations, stated inter alia that the suit land was given to him on rag (lease) by Ganeshram (father of defendant No. 3) for a period of five years i.e. from the year 1999 to 2004 and after the expiry of said period i.e. 5 years, possession of suit land has been given back to son of Ganeshram Chouhan i.e. Mangaldas, defendant No. 3 herein as Ganeshram Chouhan has died in the meantime.

(2.3) Defendant No. 3 separately filed his written statement and opposed the prayer made in the plaint and asserted his possession over the suit land.

(3) The trial Court, upon appreciation of oral and documentary evidence available on record, by judgment & decree dated 27-4-2005 dismissed the suit of the plaintiff holding that though the plaintiff is title holder of the suit land but he has failed to establish his possession over the suit land.

(4) Plaintiff preferred first appeal thereagainst. First appellate Court after re-appreciating the evidence and material available on record dismissed the Appeal

affirming the judgment & decree of the trial Court dismissing the suit, against which this second appeal has been preferred by the plaintiff, in which substantial question of law has been formulated and set out in opening paragraph of the judgment for the sake of completeness.

(5) Shri N.K. Malviya, learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in holding that the plaintiff is not in possession of the suit land as he has purchased the suit land from Ganeshram (father of defendant No. 3) by registered sale deed (Ex.P-1) dated 17th August, 2000 and came in possession of the suit land and there is overwhelming evidence available on record to hold that the plaintiff is in possession of the suit land, as such, judgment & decree of both the courts below holding that the plaintiff is not entitled for decree of declaration of title and permanent injunction deserve to be set aside.

(6) On the other hand, Shri Vivek Kumar Tripathi, learned counsel appearing for defendants No. 1 & 3/ would submit that plaintiff is not in possession of the suit land and, therefore, he is not entitled either for decree of declaration of title or for permanent injunction, as such, appeal deserves to be dismissed.

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

(8) The suit land bearing Khasra No. 569/570, area 0.401 hectare situated at village Ammurra, Tahsil Sarangarh, District Raigarh was originally held by one Ganeshram, from whom the plaintiff has purchased vide registered sale deed dated 17.8.2020 vide Ex.P-1 and came in possession of the suit land and said to be in possession by cultivating the suit land by sowing the crops of sugarcane, which defendants No. 1 & 3 are said to have interfered with leading to filing of suit for declaration of title and permanent injunction.

(9) It is pertinent to mention here that the trial Court found the title of the plaintiff over the suit land but dismissed the suit filed by the plaintiff holding he has failed to establish his possession over the suit land, which has been affirmed by the first appellate Court in an appeal preferred by the plaintiff thereagainst as such the title of plaintiff over the suit land is established.

(10) The plaintiff has asserted his claim over the suit land and stated that he had given the suit land to defendant No. 1 – Puranjan Nayak on rag for cultivating

the crops of sugarcane on the said land in the year 2002 but he did not make payment of the said rag amount and threatened him to harvest the crops sown by him in the year 2003 and ultimately, defendant No. 1, at the behest of defendant No. 3 – Mangaldas, harvested the crops of sugarcane on 20.02.2004 necessitating him to amend the plaint seeking permanent injunction against defendants No. 1 and 3 not to interfere with his possession.

(11) Defendant No.1 – Puranjan Naik, has stated in his evidence that the suit land was given to him on rag by father of defendant No. 3 namely Ganeshram Chouhan for a period of five years, possession of which he has returned to defendant No. 3 (son of Ganeshram Chouhan) after harvesting the crops of sugarcane and defendant No. 3 is in possession of the suit land. Likewise, defendant No. 3- Mangaldas has asserted his possession over the suit land through his father.

(12) The plaintiff has purchased the suit land from father of defendant No. 3 vide registered sale deed dated 17.8.2000 (Ex.P-1) and father of defendant No. 3, who was admittedly the title holder of the suit land, has sold the suit land to the plaintiff and placed him in possession of the suit land. It appears from the record that Ganeshram (father of defendant No. 3) had earlier given the suit land on rag to defendant No. 1 but since

the suit land was sold by father of defendant No. 3 to the plaintiff, dispute arose between the parties leading to institution of suit.

(13) Plaintiff (PW-1) in his statement has clearly stated that he has purchased the suit land from father of defendant No. 3 and came in possession of suit land. His witnesses namely Bhola (PW-2) & Sohan (PW-3) have asserted that plaintiff is in possession of the suit land.

(14) Defendant No. 1 - Puranjan Naik (DW-1) has asserted the fact that from the year 1999 to 2004, he has taken the suit land on *rag* from the father of defendant No. 3 i.e. Ganesh Ram and after his death, *rag* amount has been given to his son- Mangaldas, defendant No. 3 herein and possession has also been handed over to him. Defendant No. 3 - Mangaldas (DW-2) has also stated in his evidence that he is in possession over the suit land and he has categorically denied the fact of sale dated 17.8.2000 (Ex.P-1) by his father in favour of plaintiff and also stated that he has initiated proceedings against the aforesaid sale, which is pending in the Court but no documents have been filed questioning the sale deed executed by his father in favour of the plaintiff and he has claimed that the sale deed (Ex.P-1) is only a document for security of loan, which his father has taken

from the plaintiff.

(15) From careful perusal of the record, it is apparent that Ganeshram -father of defendant No. 3 (predecessor-in-title of plaintiff) had earlier given the suit land on rag to defendant No. 1 but thereafter the suit land was sold by Ganeshram Chouhan (father of defendant No. 3) in favour of the plaintiff and thereafter Ganeshram Chauhan had died and thus the dispute arose between the parties. But the fact remains that pursuant to the registered sale deed dated 17.8.2000 (Ex.P-1) plaintiff has been placed in possession and possession of defendant No. 1, if any, is only on the basis of rag given by Ganeshram (father of defendant No. 3) and that was only permissive possession over the suit land and once the plaintiff has purchased the suit land by registered sale deed duly executed by father of defendant No. 3, title has been transferred in his favour, and as per recital in the sale deed, he has been placed in possession over the suit land and it cannot be held that plaintiff has no possession over the suit land. Since father of defendant No. 3 has already parted with the title as well as possession of the suit land in favour of the plaintiff, therefore, finding of both the courts below that plaintiff is not in possession over the suit land relying upon the statement of defendant No.1, who was only holding the land in rag (lease) and defendant No. 3, whose father has already

transferred title and possession in favour of plaintiff, is contrary to the evidence available on record, as such, finding recorded by both the courts below that plaintiff is not in possession of the suit land is perverse and contrary to the record. It is held that plaintiff is in possession of suit land. Substantial question of law is answered accordingly.

(16) In the result, second appeal is allowed. Judgment & decree of both the courts below being contrary to the material available on record are liable to be and are hereby set aside. It is declared that plaintiff is title holder of the suit land bearing Khasra No. 569/570, area 0.401 hectare situated at village Ammurra, Tahsil Sarangarh, District Raigarh and he is also in possession of the suit land and defendants No. 1 & 3 are restrained from interfering with his possession over the suit land. No order as to costs.

(17) Appellate decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

