



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.88 OF 2020

Western Coalfields Limited,
Through General Manager, Majri Area,
At Kuchna, Tahsil Bhadrawati,
District Chandrapur.

...APPELLANT

...V E R S U S...

Sau. Kusum W/o Shankar Thakur,
Aged about 60 years, Occ: Household,
R/o Majri, Tahsil, Bhadrawati, District
Chandrapur.

...RESPONDENT

Shri A.M. Ghare, Advocate for appellant.
Shri Akhtar Ansari, Advocate for respondent.

CORAM :- M.W. CHANDWANI, J.
DATED :- 03.02.2025.

ORAL JUDGMENT :

. In view of the order dated 13.02.2020, I have heard the appeal finally at the stage of admission with the consent of the learned counsel for the parties.

2. By the present appeal, the appellant is challenging the judgment and decree passed by the District Judge-1, Warora, District Chandrapur in Regular Civil Appeal No.214/2008 (Old RCA

No.144/2006) whereby the decree of dismissal of Regular Civil Suit No.20/2003 passed by the Civil Judge Junior Division, Bhadrawati has been reversed. Unfortunately, this appeal of 1997 is being dealt with in the year 2025. Without going into the question of who is to be blamed, I proceed to dispose of the appeal.

3. The appellant is a company engaged in the mining of coal. The respondent claims to be the owner of the agricultural land bearing Survey No.11 admeasuring 1.26 HR of village Kawadi, Tahsil Bhadrawati, District Chandrapur which came to be acquired by the appellant under the provisions of Land Acquisition Act in Land Acquisition Case No.8/65/89-90. Since the respondent became landless, when the son of the respondent attained majority, he applied for employment with the appellant as per policy. However, the appellant denied the right of the respondent and therefore, Regular Civil Suit No.20/2003 came to be filed. The trial Court dismissed the suit by holding that the respondent failed to prove her ownership of the land and also failed to place on record the policy document based on which the respondent claims employment. The first appellate Court relying on the written statement of the appellant held that the respondent is the owner of the land which

was acquired by the appellant and reversed the decree of the trial Court. Hence, this appeal has been filed by the appellant.

4. The following substantial question of law was framed by order dated 20.09.2021:

“Whether the first Appellate Court has committed error in interfering and reversing the judgment of the trial Court by wrongly appreciating the evidence?”

5. Mr. Ghare, learned counsel appearing on behalf of the appellant submitted that the trial Court has rightly considered all the aspects of the matter and rightly held that the respondent/plaintiff failed to prove the ownership as the executant and attesting witnesses of the sale-deed were not examined. According to him, even if it is presumed that she was the owner of the land and the said land was acquired by the appellant but, no policy document has been placed on record to show that she is entitled to get employment for her son. Therefore, he sought quashing of the impugned judgment reversing the decree.

Arguing on the application for filing additional documents, the learned counsel for the appellant submitted that there are some documents which will reveal the fact that the respondent is not entitled for appointment as one Kantakwar has

been appointed on the basis of no objection given by the respondent in his favour. It is the contention of the learned counsel for the appellant that those documents were not brought on record since the suit for declaration of ownership and appointment of son as the nominee was not maintainable and therefore, they could not be filed on record. These are the documents which were sought to be placed on record by the respondent before the first appellate Court which came to be rejected. Therefore, the appellant seeks permission to file those documents on record.

6. *Per contra*, Mr. Ansari, learned counsel for the respondent objected the application on the ground that there is no such reason as envisaged under Order XLI Rule 27 of the Code of Civil Procedure (for short “**CPC**”) to allow the appellant to file additional documents at the stage of second appeal particularly, when there is no such pleading to that effect. Production of the very same documents was opposed by the appellant before the first appellate Court. Hence, he sought rejection of the application.

On merits, the learned counsel for the respondent vehemently submitted that the written statement of the appellant itself is sufficient to decree the suit. According to him, not only the

ownership but also the policy has been admitted by the appellant in his written statement as it has not been specifically denied para 3 of the plaint. That apart, according to him, the very document which the appellant is intending to file goes to show the existence of the policy of granting employment to the nominees of a landless person. Therefore, according to him, nothing remains in the appeal and hence, he sought rejection of the appeal.

7. Having heard the learned counsel for the respective parties and having gone through the impugned judgment, pleadings, evidence and material available on record, it transpires that the respondent in her plaint in paras 1 and 2 has specifically mentioned about the ownership of the land bearing Survey No.11 admeasuring 1.26 HR which came to be acquired by the appellant. Perusal of the written statement of the appellant goes to show that there is no denial to the facts that the respondent was recorded as the owner of the land of Survey No.11 which came to be acquired by the appellant. However, these aspects which have not been considered by the trial Court have rightly been appreciated by the appellate Court and therefore, I do not find any perversity in the finding of the learned first appellate Court regarding ownership and acquisition of the land of the respondent by the appellant.

8. Let's turn to the submission of the learned counsel for the appellant that the trial Court was justified in recording the fact that no policy has been placed on record and in the absence of policy, the first appellate Court's direction that the nominee of the respondent is entitled for employment with the appellant is not a correct one. According to him, the first appellate Court has made the declaration on the premise that the policy is not disputed which is erroneous considering the material available on record.

9. It is worthwhile to consider the pleadings of the respondent as well as the appellant. In para 3 of the plaint, the respondent has averred as under:

"3. As per the policy matter of the Central Govt. and State Govt. it is duty of the acquiring body to give employment to person who belongs to land oustee or nominated person from land oustee on that basis the defendant already provided employment to several persons and they are working under the control of the defendant."

As against this, the appellant while replying to the same para has contended in its written statement as under:

"Reply to Para No.3:- It is totally denied that each and every land holder or his/her nominee is entitled for employment and are doing the service under the control of defendant. The rest of the contents of this para are denied. The plaintiff should strictly prove the contents of this para."

10. In wake of Order VIII Rule 3 and 4, the appellant ought to have dealt specifically with each allegation of truth of the fact which he does not admit except damages and should have avoided evasive denial. It is not sufficient for the defendant to deny the allegation made in the plaint. If the allegation of the fact in the plaint was not denied either specifically or by necessary implication or it was not stated to be specifically admitted in the written statement of the defendant, it shall be taken to be admitted. That apart, the documents which are tried to be placed on record by the appellant itself goes to show that one unknown person Kantakwar was given employment on the basis of acquisition of the land of the respondent who was later on removed by the appellant. Therefore, I do not find force in the argument of the learned counsel for the appellant that there is no such material available on record to show that the policy is placed in the service particularly, in absence of specific denial in the said averment made in para 3 of the plaint.

11. As far as production of these documents is concerned, it is nowhere pleaded by the appellant in its written statement therefore, those documents cannot be considered that too, in second appeal. That apart, no case is made out as contemplated under clause (a), (aa) and (b) of Order XLI Rule 27 of the CPC.

12. The observations of the Supreme Court made in the decision of *Santosh Hazari Vs. Purushottam Tiwari (deceased)* by *LRs*¹, has been relied upon by the appellant wherein, the Supreme Court has held that if appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact. While reversing a finding of fact, the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it.

13. In view of the judgment of the trial Court ignoring the admissions of the appellant in the written statement, the appellate Court was right in reversing the findings of the trial Court which were suffering from material irregularities. Therefore, the case of *Santosh Hazari (supra)* will not assist the appellant.

14. Thus, no substantial question of law arises in this appeal. Therefore, the appeal is liable to be dismissed and hence, it stands dismissed.

1 (2001) 3 SCC 179

15. Before parting with the judgment, it is submitted by the learned counsel for the appellant that though, the first appellate Court has declared that a nominee of the respondent is entitled for the employment as per policy but the nominee of the respondent has to fulfill the eligibility criteria. Needless to mention, the appellate Court has already taken care of this aspect and declared that the nominee of the respondent is entitled for the employment as per the Rules of the appellant.

(JUDGE)

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