
(2018) 07 CHH CK 0019
In the Chhattisgarh High Court
Case No : SA No. 53 of 2003

Balindar

APPELLANT

Vs

Smt.Sudhni Dead Lrs Kanhaiya Sukhram And Anor

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 145
Code Of Civil Procedure, 1908 — Section 100

Citation : (2018) 07 CHH CK 0019

Hon'ble Judges : PRASHANT KUMAR MISHRA, J

Bench : Single Bench

Advocate : A. K. Prasad, Anil Pillai

Final Decision : Dismissed

Judgement

1. This is plaintiff's second appeal under Section 100 of the CPC assailing the concurrent judgment and decree passed by the courts below dismissing

his suit for declaration of title and permanent injunction as also for declaring the sale deed dated 15.03.1994 between the defendant Nos. 1 to 3 with

defendant No.5 to be illegal and void.

2. Indisputably, a previous suit bearing Civil Suit No.29-A/1070 was filed by Chainsai, the predecessor in interest of the present defendant Nos.1 to 3,

against Amlu and Udairam, the predecessors in interest of the present appellant. The said suit was decreed against the plaintiff's ancestor vide

judgment and decree dated 27.02.1971, against which Udairam preferred an appeal before the District and Sessions Judge bearing Civil Appeal No.7-

A/1971, which was also dismissed on 30.09.1971.

3. In the present suit, the plaintiff asserted that despite the said judgment and decree, Udairam and thereafter the present plaintiff remained in

possession of the suit land as the decree was not executed and possession was not recovered by the opposite party despite lapse of 12 years from the date of judgment and decree, therefore, the present plaintiff being in peaceful and uninterrupted possession for more than 12 years, he has perfected his title, therefore, he is entitled to a decree for declaration of title, permanent injunction as also for declaring the sale deed dated 15.03.1994 executed by the defendant Nos.1 to 3 in favour of the defendant No.5 as null and void. The defendants contested the suit on the plea that immediately after the judgment and decree in the previous suit, they have been settled in possession and since thereafter they are in continuous possession, therefore, no case for passing a decree on the ground of adverse possession is made out.

4. While deciding Issue Nos.1 & 2 as to whether the plaintiff/appellant is entitled for declaration and permanent injunction, the trial Court has recorded

a finding that the plaintiff has failed to prove as to whether he is in possession of the entire suit land and whether the previous decree involves the

same land as is involved in the present suit. This finding is on a reasoning that in proceeding under Section 145 of the CrPC before the Sub Divisional

Magistrate, the plaintiff has raised a claim for possession of 20 plots admeasuring 5.257 Hectares, whereas in the present suit, the total land involved is

25 plots admeasuring 16.02 Hectares.

5. The above finding of the trial Court that the plaintiff has failed to prove possession vis-a-vis the entire suit land or with specific claim over any

particular land out of the total 16.02 Hectares of land has not been found proved, has been affirmed by the First Appellate Court. Even if the

reasoning on which the trial Court has recorded the above finding is ignored and the materials available in the record of the trial Court are considered,

it is to be seen that after the judgment and decree was delivered in the previous suit, the present defendants, whose predecessors in interest were the

decree holders, have claimed that they recovered possession after the previous decree. The khasra entries proved by the plaintiff in the present suit

vide Ex-P-8 would prove plaintiff's possession till 1975-76, as no revenue entries in favour of the present appellant or his predecessors have been

placed on record to substantiate the plea of remaining in possession even thereafter. Even in the said khasra entries, there are some entries mentioning

the name of Amlu on several plots, meaning thereby that even during those years till 1975-76, the plaintiff was not enjoying the peaceful possession over the entire suit land.

6. In a suit for declaration of title on the basis of adverse possession, the plaintiff having failed to produce any documentary evidence showing his possession over the suit land, would thus bank on the oral evidence, on the basis of which the two courts below have recorded concurrent finding against him to the effect that the plaintiff has failed to prove his possession over the suit land. While exercising jurisdiction under Section 100 of CPC, this Court is not entitled to upset the said concurrent finding of fact unless the same is shown to be perverse.

7. As discussed above, with reference to the evidence available on record, I have found that the finding is not perverse, therefore, the present is an appeal where no substantial question of law would arise for determination.

8. The second appeal deserves to be and is hereby dismissed.