

(2012) 10 CHH CK 0032
In the Chhattisgarh High Court
Case No : First Appeal No. 93 of 2012

Jagdish Sahu

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 7 Rule 11, 151, 35A, 47

Citation : AIR 2013 Chh 27 : (2013) 1 CG.L.R.W. 107

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Division Bench

Advocate : Sanjay S. Agrawal, for the Appellant; G.D. Vaswani, Govt. Advocate for the State/Respondent No. 1 and Shri Rajeev Shrivastav for the Respondent Nos. 2 to 4, for the Respondent

Judgement

Nawal Kishore Agarwal, J.—The instant appeal filed u/s 96 of the C.P.C. is directed against the order dated 14th June, 2012 passed by the 3rd Additional District Judge, Durg in Civil Suit No. 22-A/2012 whereby the trial Court rejected the plaint under Order VII Rule 11 of the C.P.C. This is a prime example of how a judicial process is being misused by the litigants.

2. Facts necessary for disposal of this appeal are summarized herein below:

(i) The respondents No. 2 to 4 (hereinafter referred to as the defendants) filed a suit for ejectment and delivery of possession over an area of 16665 sq. fit. forming part of Khasra Nos. 17/1, 17/2 and 17/5 of village Kasaridih, Ganjpara, Durg against the appellant/plaintiff (hereinafter referred to as the plaintiff). According to the defendants, defendant--Kasturchand purchased a land bearing Kh. No. 17/1 and 17/2 while defendant--Fattelal purchased land bearing Kh. No. 17/5 from the previous owners. Defendant No. 4-M/s. Sunil Trading Company purchased the superstructure constructed over the above land. The plaintiff was a watchman of the mill and, therefore, he was allowed to occupy a mud house standing over the said land. In due course, the plaintiff encroached over an area of 63" x 100" as per the plaint map and started using as a fuel stall and to run a

kirana shop.

(ii) The plaintiff opposed the suit. He denied that he was ever a Watchman. According to him, his grandfather Sukhram and his father Surajdeen had taken the suit property on lease from Sayeed Khan. Ever since then, i.e. 1943-44, the plaintiff and before him his predecessor-in-title are in possession of the suit property. He also submitted that he acquired title over the suit property on the basis of adverse possession.

(iii) The learned trial Court dismissed the defendants' suit.

(iv) The defendants preferred first appeal No. 32/1987 before the Hon'ble High Court of Madhya Pradesh. The Hon'ble High Court of M.P., vide its judgment and decree dated 11-2-1989, holding that the defendants are owner of the suit property, set aside the judgment and decree of the trial Court and remanded the matter to the trial court to decide whether the plaintiff acquired title over the suit property on the basis of adverse possession and whether the defendants are entitled for mesne profits.

(v) During retrial, the plaintiff, by filing an application under Order XIV of the C.P.C., prayed for framing of additional issue "whether the Khasra number of the suit property is 17/2 or 18?". The learned trial Court, vide its order dated 29-3-2000, dismissed the above application holding, the trial Court cannot go beyond the direction of the High Court in the remand order. Thereafter, the matter was heard and vide impugned judgment and decree dated 25-9-2001, trial Court decreed the defendants' suit so far as the relief of possession is concerned, finding inter alia, that the plaintiff failed to prove, that he acquired title by way of adverse possession and rejected defendants' claim of mesne profits.

(vi) The plaintiff preferred first Appeal No. 148/2001 before this Court. This Court, vide order dated 10-5-2011, dismissed plaintiff's appeal, finding inter alia, that the suit property described in the plaint map is a property on which plaintiff claims his possession as its owner or in alternative title by way of adverse possession. Therefore, the identity of the property as all is not in dispute. The High Court of M.P. in First Appeal No. 32/1987 has held, the plaintiffs are owner of suit property. The above finding was not assailed by the plaintiff had attained finality and now it is not open to challenge and that the plaintiff utterly failed to discharge his burden to claim prescription of title by way of adverse possession.

(vii) Petition for special leave to appeal (Civil) No. 26721/2011 preferred by the plaintiff was also dismissed by Hon'ble the Supreme Court.

(viii) During execution proceedings, the appellant/plaintiff filed an application under Order XXI Rule 97 read with Section 47 and 151 of the C.P.C., which was rejected by Executing Court as well as by this Court vide order dated 5-3-2012 passed in W.P. (227) No. 134/2012.

(ix) In order to get rid of the eviction decree, which has been affirmed by the Apex Court, the instant suit has been preferred by the plaintiff -- Jagdish Sahu seeking adverse possession against the State and permanent injunction against the defendants to restrain them from taking possession of the suit property in execution of the decree. The defendants, by filing application under Order VII Rule 11 of the C.P.C., prayed for rejection of the plaint, which was allowed by the trial Court rejecting the plaint. Hence, this appeal.

3. I have heard Shri Sanjay S. Agrawal, Shri G.D. Vaswani, Govt. Advocate and Shri Rajeev Shrivastava, learned counsel for the parties and perused the order impugned as well as the record of Court below.

4. The matter is pending since 1987 and till now the respondents/decreed holders were not allowed by the plaintiff to reap the fruits of the decree. A prayer was made by the plaintiff under Order XIV of the C.P.C. for framing of additional issues "whether the Khasra number of the suit property is 17/2 or 18", which was rejected by the trial Court and this Court in para-6 of its order has also held that the identity of the property is at all not in dispute.

5. Apart from the above, the plaintiff nowhere in the plaint claims to be in possession of any property other than the property in regard to which he had suffered an eviction decree.

6. The plaintiff's conduct, on the face, is also not equitable. For the same property, earlier he was claiming adverse possession against respondents No. 2 to 4 and now he is claiming adverse possession against respondent No. 1 with a specific prayer to restrain respondents No. 2 to 4 from interfering in possession over the suit property, for which, they have already obtained a decree.

7. The above facts are classic example of abuse of process of law. The Supreme Court, in the case of Ravinder Kaur Vs. Ashok Kumar and Another, has held in para-22 "raising a dispute in regard to the description or identity of the suit property or a dispute in regard to the boundary of the suit property is only a bogey to delay the eviction by the abuse of the process of court. Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system".

8. Way back in the year 1977, the three-judge Bench of the Supreme Court, in the case of T. Arivandandam Vs. T.V. Satyapal and Another, , observed in paras 5 & 6 of its judgment as under:

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a

flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful--not formal--reading of the complaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realized what George Bernard Shaw remarked on the assassination of Mahatma Gandhi

"It is dangerous to be too good."

6. The trial Court in this case will remind itself of S. 35-A, C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

9. Considering every aspect of the matter, in my opinion, the trial Court has rightly rejected the complaint under Order VII Rule 11 of the C.P.C. The appeal, being devoid of merit, is liable to be and is hereby dismissed. A decree be drawn accordingly.