
(2014) 02 CHH CK 0026

In the Chhattisgarh High Court

Case No : Second Appeal Nos. 225 and 226 of 2001

Municipal Corporation

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96
Specific Relief Act, 1963 — Section 34, 42

Citation : (2014) 1 CG.L.R.W. 191 : (2014) 3 CGLJ 500 : (2014) 5 MPHT 88

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : G.S. Agrawal, N.K. Shukla, Sr. Advocates, Satyawan Agrawal, Ram Kumar Tiwari and Amrita Dewangan, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J.

1. The substantial questions of law involved in both the appeals and to be answered by this Court are as under:

"1. Whether a suit for declaration filed by the plaintiff without seeking relief of possession is maintainable?

2. Whether in the facts and circumstances of the case the first appellate Court is justified in granting a decree for permanent injunction in favour of the plaintiff?"

[For the sake of convenience, the parties will be referred in the instant judgment as were referred in the suit.]

The necessary facts in nutshell required to be noticed for adjudication of both the appeals are as under:

(2.1) Plaintiff Managing Director, M.P. State Laghu Udyog Nigam Maryadit, Bhopal now substituted as Managing Director, Chhattisgarh State Industrial Development Corporation Limited, Raipur filed a suit for declaration and permanent injunction

stating inter alia that the scheduled suit land came to be allotted by lease-deed dated 22-8-1974 executed between defendant No. 3 Bhilai Steel Plant and the plaintiff in the red portion shown in the suit map annexed with the map the defendant No. 1 has illegally possessed the same on 19-11-1986 and started construction. It was further pleaded that by an agreement dated 13-10-1977, defendant No. 3 Bhilai Steel Plant has transferred the said land to defendant No. 1 Municipal Corporation Bhilai. It was further pleaded that the plaintiff has come to know that defendant No. 1 has allotted the said land to defendant No. 2 Agrawal Sewa Samiti for construction of Agrasen Bhawan and a construction is being made by defendant No. 2 by illegally taking possession of the land. With the aforesaid pleadings that in his possession of the land on the lease of 30 years the suit was filed stating that the allotment made by defendant No. 1 in favour of defendant No. 2 is illegal and, therefore, void and defendant No. 2 be restrained from making construction on the scheduled suit land.

(2.2) The defendant No. 1 the Special Area Development Authority now Municipal Corporation Bhilai filed its written statement before the trial Court stating inter alia that the suit land was given on lease by Bhilai Steel Plant to the plaintiff by registered lease-deed dated 22-8-1974 and some land including suit land has been transferred by Bhilai Steel Plant to defendant No. 1 on 12-10-1977 and the possession has also been delivered of the said land to defendant No. 1 and the permanent lease-deed has also been executed on 18-7-1986 and the suit land has been given on lease to the defendant No. 2 on 18-7-1986 on payment of premium of Rs. 1,55,614/- on permanent lease and delivered the peaceful possession of the said land to defendant No. 2 and defendant No. 1 is in possession making construction suit is liable to be dismissed.

(2.3) Defendant No. 2 in its written statement has reiterated the fact that the scheduled suit land has been given on lease by registered sale-deed by defendant No. 1 to him and he is in possession and continuing on the suit land by making construction.

2. The trial Court by its judgment and decree dismissed the suit of the plaintiff finding inter alia that--

(i) The suit land has been given by the Bhilai Steel Plant on lease to the plaintiff for 30 years but the plaintiff's possession on the suit land is not established.

(ii) The period of lease has already expired.

3. Feeling dissatisfied with the judgment and decree passed by the trial Court dismissing the suit, the plaintiff filed an appeal u/s 96 of the Code of Civil Procedure, 1908 (henceforth "the CPC") before the first appellate Court. The first appellate Court, by the impugned judgment and decree, allowed the appeal and decreed the suit finding inter alia that the plaintiff is in possession of the scheduled suit land and, therefore, without following the due procedure of law he cannot be evicted and, therefore, the plaintiff is entitled for a decree of permanent injunction.

4. Questioning the judgment and decree passed by the first appellate Court decreeing the suit of the plaintiff, defendant No. 1 Municipal Corporation Bhilai has filed Second Appeal No. 225/2001. Whereas, defendant No. 2 Agrawal Sewa Samiti has also challenged the judgment and decree passed by the first appellate Court by filing Second Appeal No. 226/2001.

5. Second Appeal No. 225/2001 has been preferred by defendant No. 1 Municipal Corporation Bhilai and Second Appeal No. 226/2001 has been preferred by defendant No. 2 Agrawal Sewa Samiti both u/s 100 of the CPC challenging the judgment and decree dated 2-3-2001 passed by 1st Additional District Judge, Durg in Civil Appeal No. 1-A/1997 arising out of the judgment and decree dated 2-1-1997 passed by 2nd Civil Judge Class-I, Durg in Civil Suit No. 118-A/94.

6. Shri Satyawan Agrawal, learned counsel appearing for defendant No. 1 Municipal Corporation Bhilai would submit that the first appellate Court has committed serious legal error in decreeing the suit of the plaintiff. It ought to have held that the plaintiff is not in possession of the suit land as apparent from the plaint averment and the evidence brought on record and since the plaintiff is not in possession bare suit for possession by the plaintiff without seeking relief of possession is hit by proviso to Section 34 of the Specific Relief Act 1963 and thus, the suit is liable to be dismissed. Learned counsel would further submit that in view of the fact that the plaintiff is not in possession of the suit land, the first appellate Court has further committed a legal error in granting the decree of permanent injunction in favour of the plaintiff.

7. Shri G.S. Agrawal, Leaned Senior Advocate appearing for defendant No. 2 Agrawal Sewa Samiti would, however, join the submissions of Shri Satyawan Agrawal, learned counsel appearing for defendant No. 1 Municipal Corporation Bhilai and would submit that the first appellate court has committed legal error in granting the suit for bare declaration as the plaintiff is not in possession of the scheduled suit land.

8. Dr. N.K. Shukla, learned Senior Advocate appearing for defendant No. 3 Bhilai Steel Plant would, however, support the plea of defendants and would submit that the scheduled suit land was allotted to the defendant No. 1 Municipal Corporation Bhilai (the then Special Area Development Authority) and delivered the possession to defendant No. 1.

9. No one has entered into appearance before this Court on behalf of plaintiff Managing Director, Chhattisgarh State Industrial Development Corporation though the notice is duly issued and served upon him.

10. I have heard and considered the rival submissions and have perused the record with utmost circumspection.

Answer to First Substantial Question of Law:

11. In order to find out as to whether the plaintiff is in possession of the suit land so as to maintain the bare suit for declaration, it would be proper to have a brief

survey of the plaint averments. In the opening paragraphs, specifically in paragraph 3, the plaintiff has categorically stated that the scheduled suit land was earlier granted on lease by lease-deed dated 22-8-1974 to the plaintiff and the area shown in the map attached with the plaint in red colour has been illegally possessed by defendant No. 2 on 19-11-1986 by starting construction and it has been further averred in paragraph 4 that the suit land has already been transferred by the Bhilai Steel Plant to Municipal Corporation Bhilai on 13-10-1977 on lease. In the latter part of paragraph 7 again, the plaintiff has reiterated that defendant No. 2 is making illegal construction by possessing the scheduled suit land for which an FIR has been lodged in the police station. Apart from this, the witnesses of the plaintiff, K.S. Kumar (PW-1), who is General Manager of the plaintiff/Corporation, though has initially stated in paragraph 15 that the scheduled suit land has been transferred by the defendant No. 3 Bhilai Steel Plant in favour of defendant No. 1 Municipal Corporation Bhilai and has also stated in paragraph 19 that a foundation stone has been laid down by defendant No. 2 in the suit land yet he has stated in latter part of paragraph 19 that on being passed an interim order of stay by the Court the defendant No. 2 did not do anything on the suit land after the laying down of the foundation stone. P.S. Bisen (PW-2) has made a statement about the lodging of FIR with regard to the possession and construction by defendant No. 2. Sawariya Agrawal (PW-4) has clearly stated that the suit land has been transferred by Bhilai Steel Plant to the defendant No. 1 on 13-10-1977 and the defendant No. 1 has allotted the land to defendant No. 2 and he has lodged the FIR in regard to illegal construction by the defendant No. 2 in the suit land. The aforesaid plaint averments read with the testimonies clearly establish that the suit land is in possession of defendant No. 2. Defendant No. 1 Municipal Corporation Bhilai has examined its Revenue Officer Sanad Kumar Banchhor as DW-1, who has clearly stated that the possession of the suit land is in favour of defendant No. 2 and the possession letter is Ex. D-4. The land in dispute has been allotted by defendant No. 1 in favour of defendant No. 2 by order dated 18-7-1986 (Ex. D-1) and a lease deed has been executed in favour of defendant No. 2 by defendant No. 1 on 8-7-1987 (Ex. D-2) and possession has been delivered by defendant No. 1 in favour of defendant No. 2 on 10-7-1987 vide Ex. D-4. A bare perusal of the aforesaid documents and the statements would make it clear that admittedly land in dispute has been transferred undisputedly by defendant No. 3 Bhilai Steel Plant in favour of defendant No. 1 Municipal Corporation Bhilai on 13-10-1977 and possession has also been delivered in favour of defendant No. 1. Defendant No. 1 gave the suit land measuring area 23,672 Sq. Ft. on permanent lease to defendant No. 2 vide Ex. D-1 and executed a lease-deed vide Ex. D-2 and delivered possession of the said land vide Ex. D-4 over which the defendant No. 2 started the construction of Agrasen Dharamshala after the allotment. Thus, it clearly establishes that scheduled suit land has been allotted by defendant No. 1 to defendant No. 2 and since then defendant No. 2 is in possession of the suit land and therefore, the finding recorded by the first appellate Court that the plaintiff is in possession of the suit land is contrary to the record and is clearly

perverse.

12. Now, the determination of the question that the plaintiff is not in possession of the suit land takes me to first substantial question of law so framed by this Court whether a suit for mere declaration filed by the plaintiff without seeking consequential relief of possession would be maintainable?

13. Section 34 of the Specific Relief Act, 1963 provides as under:

"34. Discretion of court as to declaration of status or right.--Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee."

14. A bare perusal of the above-quoted provision makes it abundantly clear that any person who is entitled to a legal character or any property which is sought to be denied by the other party may institute a suit for declaration and the Court may grant such relief but the proviso to Section 34 of the Specific Relief Act, 1963 further lays down that no such declaration shall be granted when a person approaches the Court being able to seek further relief than a declaration to of title omits to do so.

15. In *Ram Saran and Another Vs. Smt. Ganga Devi*, , the Supreme Court has clearly held that the plaintiff is not in possession he must ask for relief of possession otherwise the suit would be hit by Section 34 of the Specific Relief Act, 1963. Paragraph 4 of the report reads thus:

"4. We are in agreement with the High Court that the suit is hit by Section 42 of the Specific Relief Act. As found by the fact finding courts, Ganga Devi is in possession of some of the suit properties. The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence the suit is not maintainable. In these circumstances, it is not necessary to go into the other contention that the suit is barred by limitation."

16. In *Vinay Krishna Vs. Keshav Chandra and another*, , the Supreme Court in paragraph 14 held that if the plaintiff has been in possession then the suit for permanent injunction would be maintainable and logical corollary whereof would be that if the plaintiff is not in possession, a suit for mere declaration would not be maintainable. Paragraph 14 of the report reads thus:

"14. From the reading of the plaint it is clear that the specific case of the plaintiff

Jamuna Kunwar was that she was in exclusive possession of property bearing No. 52 as well. She thought that it was not necessary to seek the additional relief of possession. However, in view of the written statement of both the first and the second defendant raising the plea of bar u/s 42, the plaintiff ought to have amended and prayed for the relief of possession also. Inasmuch as the plaintiff did not choose to do so she took a risk. It is also now evident that she was not in exclusive possession because admittedly Keshav Chandra and Jagdish Chandra were in possession. There were also other tenants in occupation. In such an event the relief of possession ought to have been asked for. The failure to do so undoubtedly bars the discretion of the Court in granting the decree for declaration."

17. In *Meharchand Das Vs. Lal Babu Siddique and Others*, , while relying upon the decision in *Vinay Krishna* case (supra), the Supreme Court has held that suit for bare possession would not be maintainable. Their Lordships held as under:

"12. The High Court, in our opinion, committed a manifest error in not relying upon the decision of this Court in *Vinay Krishna Vs. Keshav Chandra and another*, . The said decision categorically lays down the law that if the plaintiff had been in possession, then a suit for mere declaration would be maintainable; the logical corollary whereof would be that if the plaintiff is not in possession, a suit for mere declaration would not be maintainable."

18. Very recently in *Union of India (UOI) Vs. Ibrahim Uddin and Another*, , the Supreme Court has held that suit seeking declaration of title of ownership of property without seeking possession when the plaintiff is not in possession is not maintainable. Paragraphs 55 to 58 of the report state as under:

"Section 34 of the Specific Relief Act, 1963

55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of tide, omits to do so.

56. In *Ram Saran and Another Vs. Smt. Ganga Devi*, this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 (hereinafter called "the Specific Relief Act") and, thus, not maintainable. In *Vinay Krishna Vs. Keshav Chandra and another*, , this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. [See also *Gian Kaur Vs. Raghubir Singh*,]

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."

19. Thus, having ascertained the legal position with regard to the maintainability of the suit for declaration filed by the plaintiff without seeking relief of possession, reverting back to the facts to the case, it would be clear that the plaintiff is not in possession of the scheduled suit land as is apparent from the plaint averment, the statement made by the plaintiff and his witnesses before the trial Court and the defendant witnesses and the documents brought on record by the defendants and, therefore, the first appellate Court has fallen into error that the plaintiff is in possession of the suit land. The said finding of the first appellate Court, holding the plaintiff in possession, is set aside and in light of the proviso to Section 34 of the Specific Relief Act, 1963 and the above-quoted decisions, it is held that a suit for mere declaration without seeking relief of possession would not be maintainable. The first substantial question of law is answered accordingly.

Answer to Second Substantial Question of law:

20. Determination of first substantial question of law takes me to second substantial question of law whether in the facts and circumstances of the case, the first appellate Court was justified in granting a decree for permanent injunction in favour of the plaintiff? It has already been held in foregoing paragraphs that the plaintiff is not in possession of the suit land the first appellate Court is not right in granting permanent injunction in favour of the plaintiff. Since the plaintiff is not in possession of the suit land, the plaintiff is also not entitled for a decree of permanent injunction. In *G. Suryakumari and Another Vs. B. Chandramouli and Others*, , the Supreme Court has held that possession is sine qua non for grant of permanent injunction, therefore, impugned judgment restoring judgment of trial Court granting injunction as prayed for by plaintiff calls for no interference. In the instant case, since the suit is not maintainable and the plaintiff is not in possession, therefore, grant of permanent injunction is equally bad and it is set aside. The second substantial question of law is answered accordingly.

21. Having answered both the substantial questions of law against the plaintiff and in favour of the defendants. Second Appeal No. 225/2001 filed by defendant No. 1 Municipal Corporation Bhilai and Second Appeal No. 226/2001 filed by defendant No. 2 Agrawal Sewa Samiti are allowed. The impugned judgment and decree passed by the first appellate Court is set aside and the suit filed by the plaintiff is hereby dismissed. Parties to bear their own costs. A decree be drawn-up accordingly in both the appeals.