

(2025) 08 CHH CK 0335
In the Chhattisgarh High Court
Case No : SA No. 359 of 2003

Vishwa Nath

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 29-08-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 145, 146

Citation : (2025) 08 CHH CK 0335

Hon'ble Judges : Rakesh Mohan Pandey, J

Bench : Single Bench

Advocate : Ravish Verma, Vedant Shadangi, Meera Ansari

Final Decision : Dismissed

Judgement

Rakesh Mohan Pandey, J

1. This Second Appeal preferred by defendant No. 1 was admitted for hearing vide order dated 06.10.2005 on the following substantial question of law:-

"Whether setting aside the finding of the trial Court that plaintiff/respondent No. 2 is not the owner entitled for possession of suit land by the first appellate Court is perverse?"

2. The facts of the present case are that the plaintiff/Madholal filed a suit for declaration of title, possession, and mesne profit for a sum of Rs. 2400/-against defendant No. 1/appellant, namely Vishwa Nath. The plaintiff pleaded that he purchased survey No. 288, admeasuring 1.14 acres, situated at Village Bavli, Patwari Circle No. 42, Revenue Circle Patharia, Tahsil Mungeli, through a registered sale-deed dated 27.05.1987 from one Krishna Kumar. It is further pleaded that initially, the property was recorded in the name of Surajmal Agrawal, and after his death, Krishna Kumar inherited it. It is also pleaded that a proceeding under Section 145/146 of CrPC was launched against the plaintiff by father of defendant No. 1 in the Court of Sub-Divisional Magistrate, Mungeli, wherein an order was passed in favour of defendant No. 1. It is also pleaded that

the suit property never remained in possession of defendant No. 1. The plaintiff further pleaded that through an unregistered agreement dated 23.10.1987, defendant No. 1 purchased part of survey No. 288 admeasuring 0.41 acres, survey No. 307/1 admeasuring 0.64 acres and survey No. 310 admeasuring 0.59 acres. The plaintiff also pleaded that he had purchased the entire area of survey No. 288, admeasuring 1.14 acres, but defendant No. 1 is in possession of 0.41 acres.

3. Defendant No. 1 filed a written statement and denied the plaint averments. Defendant No. 1 denied the factum of partition between the legal heirs of Surajmal. It is also denied that survey No. 288, admeasuring 1.14 acres, fell in the share of Krishna Kumar. Defendant No. 1 pleaded that he has been in possession of 0.41 acres of survey No. 288 since 1987 pursuant to the order passed by the Sub-Divisional Magistrate in a proceeding under Section 145 of CrPC.

4. The learned trial Court framed issues, and the parties led oral as well as documentary evidence. The learned trial Court vide judgment dated 09.11.2001 dismissed the suit filed by the plaintiff. The plaintiff preferred an appeal, and the learned appellate Court vide judgment dated 30.04.2003 partly decreed the suit.

5. Learned counsel for the appellant would argue that the learned trial Court specifically recorded a finding that the plaintiff is not the owner and possession holder of the suit property bearing survey No. 288, admeasuring 1.14 acres. He would further submit that such a finding was recorded by the learned trial Court on the basis that Krishna Kumar, from whom the plaintiff purchased the suit property, failed to prove the source of his title. He would also submit that the plaintiff could not prove the fact that there was a partition between the legal heirs of Sagarmal and that the suit property fell in his share. He would contend that Krishna Kumar had no right to execute a sale deed in favour of the plaintiff. He would further contend that the plaintiff failed to prove the partition between the legal heirs of Sagarmal, and therefore, the learned trial Court rightly recorded a finding against the plaintiff. He would also contend that defendant No. 1 had purchased part of survey No. 288, admeasuring 0.41 acres, through a registered sale-deed dated 15.06.1990 from Sagarmal and Lakhoram, and the possession was also handed over. It is contended by Mr. Verma that when the plaintiff interfered with the possession of defendant No. 1, a proceeding under Section 145/146 of CrPC was initiated before the Sub-Divisional Magistrate, wherein it was found that defendant No. 1 was found in the possession of 0.41 acres of survey No. 288, whereas the plaintiff was found in possession of 0.73 acres of the said survey number. It is further contended that the order passed by the Sub-Divisional Magistrate was affirmed by the learned Sessions Court. It is also contended that the learned appellate Court reversed the findings with regard to title and possession of defendant No. 1 over survey No. 288, area 0.41 acres, on flimsy grounds. The learned Appellate Court recorded a finding that there was a partition between Surajmal and Jaggannath. It is stated by Mr. Verma that the

learned appellate Court considered the evidence of PW/2 Sagarmal, who admitted the partition between Jaggannath and Surajmal. It is further stated that the findings recorded by the learned appellate Court that the property sold to plaintiff and defendant No. 1 was one and the same are erroneous and without any foundation. It is also stated that the learned appellate Court has placed reliance on revenue case No. 9-A-6/92-93 dated 05.06.1993, passed by the Naib Tahsildar, while holding that the application moved by defendant No. 1 for mutation was rejected by the Naib Tahsildar, though there is no such pleading in the plaint, nor documents in this regard have been placed on record.

He would further argue that the finding recorded by the learned appellate Court to the effect that the plaintiff was the owner and title holder of survey No. 288, admeasuring 1.14 acres, is erroneous and without any foundation. He would also argue that, as the plaintiff could not prove the fact that he purchased the suit property from the true owner, the learned appellate Court committed an error of law while partly decreeing the suit.

6. On the other hand, Mrs. Meera Ansari, Advocate, appearing for the plaintiff/respondent No. 2, would submit that the learned trial Court wrongly decided the issues with regard to title and ownership of the plaintiff. She would further submit that the plaintiff had purchased the suit property through a registered sale-deed dated 27.05.1987, whereas defendant No. 1 purchased the part of the same property through a registered sale-deed dated 15.06.1990. She would also submit that the order passed by the Sub-Divisional Magistrate would not be binding over the Civil Court. She would contend that the revenue records clearly establish that initially, the suit property was recorded in the name of Surajmal, and after his death, Krishna Kumar inherited the property with the consent of the other siblings. She would further contend that there was a partition between the legal heirs of Surajmal and survey No. 288, admeasuring 1.14 acres fell in the share of Krishna Kumar, and therefore, he had the right to alienate the property. She would also contend that defendant No. 1 had not challenged the sale deed executed by Krishna Kumar in favour of the plaintiff.

7. Mr. Vedant Shadangi, Panel Lawyer, appearing for the State, would support the judgment passed by the learned appellate Court.

8. I have heard learned counsel for the parties and perused the documents placed on the record.

9. Perusal of the written statement filed by defendant No. 1 would clearly establish that the execution of the sale deed by Krishna Kumar in favour of the plaintiff has not been challenged or disputed. Krishna Kuamr executed a sale deed of survey No. 288 admeasuring 1.14 acres in favour of the plaintiff on 27.05.1987, and a copy of the sale-deed has been placed on record as Ex. P/1.

10. Perusal of the revenue records, Ex. P/2 and P/3 would make it clear that the suit property survey No. 288, admeasuring 1.14 acres, was recorded in the name of the plaintiff/Madholal. Ex. P/4 would reveal that survey No. 288, admeasuring

1.14 acres, was recorded in the name of Surajmal in the year 1986-87; thus, it can safely be held that the total area of survey No. 288 was 1.14 acres, and the entire property was sold by Krishna Kumar to the plaintiff through the registered sale-deed dated 27.05.1987.

11. Defendant No. 1 purchased the part of the suit property through a registered sale-deed dated 15.06.1990 vide Ex. D/1. The property was sold by one Sagarmal, and in the written statement, defendant No. 1 has not pleaded as how Sagarmal got the title and possession of the said property.

12. As the entire property of survey No. 288, admeasuring 1.14 acres, was already sold by Krishna Kumar, there was no occasion for Sagarmal to sell any part of survey No. 288 to anyone else, and therefore, the sale-deed executed subsequently shall not confer any right or title in favour of defendant No. 1.

13. The learned trial Court wrongly decided the issue with regard to the title and ownership against the plaintiff. The findings recorded by the learned Appellate Court with regard to the title and ownership of the plaintiff are not perverse. The learned appellate Court, considering the facts of the case, exhibited documents and material available on the record, reversed the findings with regard to the ownership and title of the plaintiff; therefore, the substantial question of law is decided in the negative against the appellant, and consequently, the appeal is hereby dismissed. No cost(s).

14. A decree be drawn accordingly.