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Chhattisgarh High Court

Case No: Second Appeal No. 179 Of 2004

Shankar And Ors — APPELLANT

Vs

Sant Ram — RESPONDENT

Date of Decision: Aug. 20, 2019

Acts Referred:

- Transfer Of Property Act, 1882 - Section 54

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: R.N. Jha, Ravindra Agrawal

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. This defendants' second appeal has been admitted for hearing on the following substantial questions of law: -

(1) Whether the finding in relation to the ownership of the suit property as given vide para 34 of the impugned judgment is perverse and erroneous?

(2) Whether the lower appellate Court was not justified in passing a decree for possession in the absence of any positive proof either of ownership or

of dispossession of the plaintiff giving rise a cause of action in his favour?

(For the sake of convenience, parties would be referred as per their status shown in the trial Court.)

2. The suit property was originally held by the State Government. It is the case of the plaintiff that vide Ex.P-1 and thereafter vide Ex.P-5, he was

granted patta under the Madhya Pradesh Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 on

which he has constructed a house and gave the same on license to defendant No.10 who is his step-son and thereafter, the defendants are not

vacating the suit premises leading to filing of suit in which defendants No.1 to 9 have set up a plea that defendant No.10 has sold the suit land in

favour of defendant No.3 for a cash consideration of â,¹ 14,900/- and delivered peaceful possession of the suit land. The trial Court dismissed the suit

finding no merit, as the plaintiff has failed to prove allotment in his favour by the State Government holding Exs.P-1 & P-5 are not proved. However,

in appeal preferred by the plaintiff, the first appellate Court accepted Exs.P-1 & P-5 and negatived the case of defendant No.3 to have purchased the

suit property from defendant No.10 and decreed the suit in favour of the plaintiff which has been questioned by the defendants before this Court.

3. Mr. R.N. Jha, learned counsel for the appellants / defendants, would submit that the first appellate Court is absolutely unjustified in granting decree

in favour of the plaintiff relying upon Exs.P-1 & P-5, as the khasra number and area of the land in both the documents are different and there cannot

be two allotments in favour of one person, as such, the finding recorded by the first appellate Court deserves to be set aside.

4. Mr. Ravindra Agrawal, learned counsel appearing for the respondent / plaintiff, would support the judgment & decree of the first appellate Court.

5. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.

6. Admittedly, patta was granted in favour of the plaintiff vide Ex.P-1 and thereafter, vide Ex.P-5. In Ex.P-1, area of the land is shown as 900 sq.ft.,

whereas in Ex.P-5, area of the land is shown as 1,302 sq.ft. and allotment was made under the Madhya Pradesh Nagariya Kshetro Ke Bhoomihin

Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 on the ground that the plaintiff is landless person and the land is Aabadi land.

7. It is not the case of the defendants that the suit land is not owned by the plaintiff or patta has not been granted to him. The defence set-out by the

defendants is that they have purchased the suit land from the plaintiff's step son - defendant No.10 by a cash consideration of â‚¹ 14,900/- which the

Court has rightly not believed as the sale exceeding â‚¹ 100/- has to be effected by a registered instrument by virtue of the provisions contained in

Section 54 of the Transfer of Property Act. As such, defendants No.1 to 9 have no title over the suit land except the plea of purchase setup which the

first appellate Court has negatived and in my opinion, in absence of registered instrument executed, produced and proved before the trial Court to

establish the plea of sale from defendant No.10, non- acceptance of such plea by the first appellate Court is a finding of fact based on record which is

neither perverse nor contrary to record.

8. Now, the question comes to the title of the plaintiff. Exs.P-1 & P-5 would categorically demonstrate that patta was granted by the competent

authority in favour of the plaintiff under the Madhya Pradesh Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana)

Adhiniyam, 1984 being landless person on which he constructed a house. The defendants could not bring any evidence except contradicting that the

plaintiff has not proved the allotment of land in his favour, whereas it is their case that they have purchased the suit land from none other than the

step-son of the plaintiff meaning thereby impliedly, they are accepting that the plaintiff has title which his step-son has sold in their favour and which

the first appellate Court has not accepted and negatived the said plea.

9. In view of the aforesaid finding, I am unable to accept the submission of learned counsel for the appellants / defendants that the first appellate

Court legally erred in granting decree in favour of the plaintiff. The finding recorded by the first appellate Court accepting the title of the plaintiff and

negativing the title of the defendants qua acquisition of title from defendant No.10 is a finding of fact based on the evidence available on record, it is

neither perverse nor contrary to record.

10. In view of the above, the substantial questions of law are answered accordingly. The judgment & decree of the first appellate Court is affirmed

and the second appeal is dismissed leaving the parties to bear their own cost(s).

11. A decree be drawn-up accordingly.