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**(2019) 02 CHH CK 0525**

**Chhattisgarh High Court**

**Case No:** First Appeal No. 95 Of 2005

Mannu Ram And Ors

APPELLANT

Vs

Ram Khilawan And Ors

RESPONDENT

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**Date of Decision:** Feb. 28, 2019

**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96
- Specific Relief Act, 1963 - Section 5, 6, 6(iv)

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Malay Kumar Bhaduri, Vinod Deshmukh, Ravish Verma

**Final Decision:** Dismissed

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### **Judgement**

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 8-4- 2005 passed by the 2nd

Additional District Judge, (FTC), Mungeli CG in Civil Suit No. 1-A/2004 wherein the said court decreed the suit filed by the respondent/plaintiff for

possession of land and house constructed upon Khasra No. 543/2 area 0.03 acres situated at village Mohbhata Patwari Halka No. 47, Tahsil Mungeli,

Dist. Bilaspur now District Mungeli.

2. The suit bearing registration 1-A/2004 is filed by the respondent/plaintiff against the appellants/defendants for recovery of possession of suit land

and house on the ground that he purchased the same from one Balram who was father of the appellant No.2 Rajkumari. Appellant No.2 Rajkumari is

wife of the appellant No.1 Mannu Ram and by registered sale deed dated 15-7-2003 he took possession of the suit land and since then he was residing in the suit property. Balram died on 21-7- 2003. Last rite of Balram was performed in the suit house as requested by the wife and other daughters of late Balram. Accordingly the suit land and house were given to the said persons for performing of the last rites. On 3-8-2003 in absence of respondent the appellants forcibly entered into the suit land/house and unauthorisedly occupied the property in question. They did not vacate even after request of the respondent that is why he lodged a report in concerned Police Station and he was advised to go to the Court by the Police Authorities, that is why suit under Sections 5 & 6 of the Specific Relief Act, 1963 (for short, "the Act, 1963") was filed before the trial Court.

3. As per version of the appellants they are legal heirs of deceased Balram, therefore, they are entitled to retain possession of the suit house. The appellants never dispossessed the plaintiff because they are having possession on the suit land and house during the life time of deceased Balram. Sale deed was executed by playing fraud and same is void. The trial Court after marshalling of the oral and documentary evidence recorded finding that respondent/plaintiff is owner of the suit land by virtue of registered sale deed dated 15-7-2003 and appellants forcibly entered into house and unauthorizedly holding the possession of the suit land and house.

4. Learned counsel for the appellants submits as under:

I) The trial Court decided the title of the plaintiff in the suit though question of title cannot be adjudicated in the suit filed under Sections 5 & 6 of the Act, 1963.

ii) The trial Court wrongly came to the conclusion that the appellants have wrongly dispossessed the respondent from the suit land and house, but failed to consider Ex.D/1 to D/4 in which continuous possession of the appellants is shown, therefore, finding of the trial Court is not proper.

Iii) The respondent has wrongly filed the suit under Sections 5 & 6 of the Act, 1963 because both Sections of the Act are different in nature, therefore, suit was not maintainable.

iv) The trial Court passed a decree on the basis of title under Section 5 of the Act, 1963. The suit is valued at Rs.51,000/-, but court fees was fixed as

per norms of Section 6 of the said Act, therefore, the trial Court ought to have directed the respondent to affix deficit court fees. Hence, being insufficiency of court fees, impugned judgment is bad-in-law.

v) 1. Proceeding under Sections 5 & 6 of the Act, 1963 is in nature of summary proceeding, hence title cannot be considered in the nature of proceeding, therefore, finding of the trial Court is liable to be set aside.

5. On the other hand, learned counsel for the respondent submits that the finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered while invoking jurisdiction of the appeal.

6. I have heard learned counsel for the parties and perused the impugned judgment/decreed passed by the trial Court.

7. PW/2 Ramkhilawan and PW/4 Urmila Bai deposed before the trial Court that property in question was owned by one Shyamlal as per record of the right (Ex.P/1) who executed will in favour of Balram for the said property. On the basis of will, Balram was recorded owner of the property in

question as per Ex.P/2. There is nothing on record to rebut both documents and appellants were also saying that Balram was owner of the property in question. Looking to the evidence of both sides, it is established that Balram was owner of the property in question. From the evidence of

Ramkhilawan (PW/1), he purchased the property from Balram as per Ex.P/4 dated 15-7-2003 through registered sale deed. PW/2 Ramkhilawan

Kurmi who is attesting witness of the sale deed (Ex.P/4) executed by Balram in favour of respondent deposed before the trial Court that the sale deed

was executed by Balram in favour of respondent in his presence and he signed in the said document. PW/1 Ramkhilawan deposed before the trial

Court that after registration possession was delivered to him and he was in possession of the land/house in question which is supported by

Ramkhilawan Kurmi (PW/2), Faguva Sahu (PW/3) and Urmila Bai (PW/4) who is wife of late Balram. Exhibit P/4 reveals that property in question

was sold for cash consideration of Rs.1,10,000/-. Looking to the entire evidence the trial Court opined that after execution of the sale deed respondent

was in possession of the property in question.

8. Witnesses Mannulal (DW/1), Sevakram (DW/2), Parmanand (DW/3) and Manharan (DW/4) deposed that appellants were in possession of the

property during life time of Balram and respondent did not possess the property, but version of these witnesses is not acceptable because wife of

Balram namely Urmila Bai (PW/4) clearly deposed that Balram handed over possession of the house and land in question to respondent. The suit is

filed on the ground that the appellants possessed the property illegally while the same was handed over to wife of Balram namely Urmila Bai (PW/4)

for last rite of Balram. This version is supported by version of wife of Balram namely Urmila Bai (PW/4).

9. From the evidence of Urmila Bai (PW/4), it is clearly established that after execution of sale deed respondent was in possession of the property and

he handed over the house to her for last rites of her husband Balram, but after last rites, the appellant did not deliver possession of the property and

illegally possessed the same house. This witness is firm to her statement during cross examination. Looking to the entire evidence, the trial court

recorded a finding that respondent was earlier in possession of the property in question after execution of sale deed and he handed over the property

to wife of Balram for some days to perform last rites of Balram but after last rites the appellants possessed the property illegally and did not hand over

the property to respondent No.1. Looking to the evidence of respondent side, the finding arrived at by the trial court is based on probability and this

court has no reason to substitute the contrary finding. The respondent not only proved his title before the trial court but also proved his earlier

possession before illegal possession of the appellant.

10. Sections 5 & 6 of the Act, 1963 embodied in the Act to recover possession if one is illegally dispossessed other than in due course of law. As per

Section 6(iv) of the said Act, 1963, nothing in these sections shall bar any person of showing to establish his title to such property and to recover

possession thereof. If person enables to show dispossession he can succeed on the strength of title.

11. In the present case, property in question was admittedly property of Balram and is not ancestral property. Balram was sole owner of the property

and he executed sale deed in favour of respondent during his life time. The right of inheritance opened on the date of death of Balram, but on the said

date property in question was already alienated and it was not left for inheritance, therefore, version of the appellants regarding inheritance is without substance. As the possession of the respondent is supported by title while possession of the appellant is not legally founded and respondent was in possession of the property earlier, therefore, finding of the trial Court is not liable to be disturbed.

12. Accordingly, judgment and decree is passed against the appellants and in favour of the respondent No.1 as under:

Â (i) The appeal is dismissed with cost.

Â (ii) Appellants to bear the cost of respondent No.1 through out.

Â (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.

Â (iv) A decree be drawn up accordingly.